



Commonwealth Edison

One First National Plaza, Chicago, Illinois
Address Reply to: Post Office Box 767
Chicago, Illinois 60690 - 0767

RECORDATION NO. 18716 FILED 1425

FEB 24 1994 - 11 50 AM

INTERSTATE COMMERCE COMMISSION

February 23, 1994

0100123042
36.00

Office of the Secretary
Recordations Unit
Interstate Commerce Commission
Room 2303
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

Attention: Ms. Mildred Lee

Dear Ms. Lee:

In accordance with the provisions of Section 11303 of Title 49 of the U.S. Code, and Rules and Regulations of the Interstate Commerce Commission ("ICC") thereunder ("Rules and Regulations"), enclosed herewith for filing and recordation are two executed and acknowledged originals of a Lease Agreement dated as of February 1, 1994, between Hero Leasing, Limited Partnership, as lessor, and Commonwealth Edison Company, as lessee (the "Lease Agreement").

The Lease Agreement is a primary document as defined in the Rules and Regulations. The names and addresses of the parties to the Lease Agreement are as follows:

Lessor: Hero Leasing, Limited Partnership
c/o ML Leasing Equipment Corp.
North Tower -- 27th Floor
World Financial Center
250 Vesey Street
New York, New York 10281-1327

Lessee: Commonwealth Edison Company
One First National Plaza
10 South Dearborn
Chicago, Illinois 60603

LICENSING BRANCH

FEB 24 11 43 AM '94

RECEIVED
OFFICE OF THE
SECRETARY

C. [Signature]

Office of the Secretary
February 23, 1994
Page 2

A description of the railroad equipment covered by the Lease Agreement is as follows: One hundred thirty (130) new 121-ton, aluminum-sided, rotary dump gondola "coalporter" cars bearing identification marks and numbers CWEX 2554, 2556-2677, inclusive, 2679-2685, inclusive, A.A.R. car type J312, and any other railroad equipment hereafter acquired by lessor covered by the Lease Agreement intended for use related to interstate commerce.

A filing fee of \$18.00 is enclosed to cover the required recordation fee. Please return the duplicate copy of this letter and the original copy of the enclosed document not needed by the Commission for recordation to the bearer of this letter.

A short summary of the Lease Agreement to appear in the index follows:

Lease Agreement dated as of February 1, 1994, between Hero Leasing, Limited Partnership, c/o ML Leasing Equipment Corp., North Tower -- 27th Floor, World Financial Center, 250 Vesey Street, New York, New York 10281-1327, as lessor, and Commonwealth Edison Company, One First National Plaza, 10 South Dearborn Street, Chicago, Illinois 60603, as lessee, covering 130 121-ton, aluminum-sided, rotary dump gondola "coalporter" cars bearing identification marks and numbers CWEX 2554, 2556-2677, inclusive, 2679-2685, inclusive, A.A.R. car type J312, and any other railroad equipment hereafter acquired by lessor covered by the Lease Agreement intended for use related to interstate commerce.

Very truly yours,

COMMONWEALTH EDISON COMPANY

By: 
Patricia L. Kamp
Assistant Treasurer

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

2/24/94

OFFICE OF THE SECRETARY

Patricia L. Kampling
Assistant Treasurer
Commonwealth Edison
One First National Plaza
Chicago, ILL. 60690-0767

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions
of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303,
on 2/24/94 at 11:50am, and assigned
recording number(s). 18716 18716-A & 18716-B

Sincerely yours,

Secretary
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

THIS LEASE AGREEMENT
IS CONFIDENTIAL
AND PROPRIETARY

RECORDATION NO. 18716 FILED 1425

FEB 24 1994 - 11 50 AM

INTERSTATE COMMERCE COMMISSION

CONFIDENTIAL AND PROPRIETARY

LEASE AGREEMENT

Dated as of February 1, 1994

BETWEEN

Hero Leasing, Limited Partnership

as Lessor

AND

Commonwealth Edison Company

as Lessee

RECEIVED
OFFICE OF THE
SECRETARY
FEB 29 11 44 AM '94
LICENSING BRANCH

THIS LEASE HAS BEEN ASSIGNED AS SECURITY
FOR INDEBTEDNESS OF THE LESSOR. SEE SECTION 20.

This Lease has been manually executed in 6 counterparts, numbered consecutively from 1 through 6 of which this is No. 3. To the extent, if any, that this Lease constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction) no security interest in this Lease may be created or perfected through the transfer or possession of any counterpart other than the original executed counterpart which shall be the counterpart identified as counterpart No. 1.

TABLE OF CONTENTS

<u>Section</u>	<u>Headings</u>	<u>Page</u>
1.	Defined Terms	1
2.	Representations, Warranties and Certain Agreements of Lessee	11
3.	Lease of Equipment	15
4.	Operating Lease	16
5.	Delivery	16
6.	Initial Term; Extended Term	20
7.	Rent and Other Payments	20
8.	Restricted Use; Compliance with Laws	22
9.	Maintenance, Improvement and Repair of Equipment	26
10.	Insurance	27
11.	Indemnities	30
12.	Lessee's Right to Terminate	33
13.	Lessee's Rights of Purchase and Renewal	35
14.	Lessor's Right to Terminate	35
15.	Loss of or Damage to Equipment	38
16.	Surrender of Equipment	39
17.	Events of Default	41
18.	Rights upon Default	42

<u>Section</u>	<u>Headings</u>	<u>Page</u>
19.	Equipment to be Personal Property	45
20.	Sale or Assignment by Lessor	45
21.	Income Taxes	46
22.	Notices and Requests	46
23.	Covenant of Quiet Enjoyment	48
24.	Right to Perform for Lessee	48
25.	Merger, Consolidation or Sale of Assets	48
26.	Expenses	49
27.	Permitted Contests	49
28.	Miscellaneous	50
29.	No Recourse	52
30.	No Personal Contract	52
	Exhibit A - Categories of Equipment	
	Exhibit B - Description of Barges	
	Exhibit C - Description of Railcars	
	Exhibit D - Form of Unit Leasing Record	

CONFIDENTIAL

LEASE AGREEMENT

Lease Agreement, dated as of February 1, 1994 (as the same may be amended, restated, modified or supplemented from time to time, "this Lease"), between Hero Leasing, Limited Partnership, a Delaware limited partnership, as lessor (the "Lessor"), and Commonwealth Edison Company, an Illinois corporation, as lessee (the "Lessee").

SECTION 1. Defined Terms.

Unless the context otherwise requires, each term defined in this Section 1 shall, when used in this Lease, have the meaning indicated:

"Accrued Default Obligations" has the meaning set forth in Section 18 hereof.

"Acquisition Cost" means, with respect to any Unit of Equipment, an amount equal to the sum of (a) the vendor's invoice price therefor, including any progress payments, costs of labor, delivery or installation, sales, use, excise or similar taxes and any other charges included in such invoice, after deduction for any refundable fleet or other discounts or credits actually used by the Lessor; (b) similar amounts paid or payable with respect to such Unit to parties other than the vendor of such Unit; (c) similar costs incurred with respect to such Unit by the Lessee; and (d) legal, printing, reproduction, closing and other normally capitalizable administrative fees and expenses paid by the Lessee and approved by the Lessor.

"Additional Rent" has the meaning set forth in paragraph (d) of Section 7 hereof.

"Adjusted Acquisition Cost" means, at any time of determination, with respect to any Unit of Equipment, its Acquisition Cost less the aggregate amount of all Monthly Rent Components paid as portions of Basic Rent for such Unit of Equipment as of such time of determination.

"Affiliate" of any Person means any other Person controlling, controlled by or under direct or indirect common control with such Person. For the purposes of this definition, "control," when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Applicable Law" means, with respect to any matter or Person, any law, rule, regulation, order, decree, or other requirement having the force of law relating to such matter or Person and, where applicable, any interpretation thereof by any authority having jurisdiction with respect thereto or charged with the administration thereof.

"Appraisal Procedure" means the following procedure whereby an independent appraiser shall be appointed by the Lessor and the Lessee, with the consent of the Assignee, to determine (i) the amount of wear and tear in excess of that attributable to normal use of any Equipment to which the provisions of Section 12(b)(iii) or Section 12(c)(iii) apply or (ii) the fair market value of any Equipment to be purchased, if such determination is required under paragraph (c) of Section 13 of this Lease. If no such appraiser is appointed by the Lessor and the Lessee within ten (10) days of the written request of either the Lessor or the Lessee that an appraiser be appointed, the Lessor and the Lessee shall each appoint an independent appraiser within fifteen (15) days thereafter, and the two appraisers so appointed shall appoint a third independent appraiser. Each appraiser appointed pursuant to the foregoing procedure shall, within ten (10) days after appointment of the last appraiser, independently determine the amount of wear and tear in excess of that attributable to normal use or the fair market value, as the case may be. If the Lessor or the Lessee shall fail to appoint an independent appraiser within the above-mentioned fifteen (15) day period, the appraiser appointed by the other party shall determine such amount or value. If a single appraiser is appointed, such appraiser's determination shall be final. If three appraisers are appointed, the amounts or values determined by the three appraisers shall be averaged, the amount or value which differs the most from such average shall be excluded, the remaining two amounts or values shall be averaged and such average shall be final. The expenses of all appraisers shall be paid by the Lessee.

"Assignee" means each Person to which any part of the Lessor's interest under this Lease or in any Unit of Equipment shall at the time have been assigned, conditionally or otherwise, by the Lessor in accordance with Section 20 of this Lease. For purposes only of paragraph (d) of Section 2, paragraphs (d) and (e) of Section 5, Section 11, clause (ii) of paragraph (a) of Section 14 and clause (iii) of paragraph (a) of Section 27 hereof, the term "Assignee" shall also include any lender to the Lessor or other Person providing credit support to the Lessor pursuant to a Credit Agreement.

"Assignment" means each assignment agreement referred to in Section 20 hereof, between the Lessor and a third party, pursuant to which the Lessor assigns certain of its rights under this Lease to such third party, as the same may be amended, restated, modified or supplemented from time to time.

"Atomic Energy Act" means the Atomic Energy Act of 1954, as amended from time to time, and the regulations from time to time issued, published or promulgated pursuant thereto.

-3-

"Barge" means each, and **"Barges"** means every, non-self propelled vessel of the type more fully described in Exhibit B hereto, including, without limitation, the Initial Barges, together with any and all equipment, parts and modifications from time to time appertaining thereto, constituting a part of the Equipment leased under this Lease and evidenced by a Unit Leasing Record.

"Basic Rent" means, with respect to any Unit of Equipment:

(a) for each calendar month during the Lease Term of such Unit, the sum of the Monthly Rent Component for such Unit plus an amount (the "Variable Component of Basic Rent") computed by multiplying the following:

- (i) the Adjusted Acquisition Cost of such Unit before payment of Basic Rent for such month, by
- (ii) a fraction having a numerator equal to the number of days in such month and a denominator of 365, or in a leap year, 366, by
- (iii) the decimal equivalent of a percentage (which percentage will be based upon the Lessee's Senior Debt Rating as follows: if the Lessee's Senior Debt Rating is AAA, the percentage shall be 0.781% during the Initial Term (for those Units of Equipment with Initial Terms of greater than one year) and 0.75% during the Extended Term (and during the Initial Term for those Units of Equipment which have an Initial Term of one year or less), if the Lessee's Senior Debt Rating is AA/A, the percentage shall be 0.837% during the Initial Term (for those Units of Equipment with Initial Terms of greater than one year) and 0.80% during the Extended Term (and during the Initial Term for those Units of Equipment which have an Initial Term of one year or less), if the Lessee's Senior Debt Rating is BBB, the percentage shall be 0.950% during the Initial Term (for those Units of Equipment with Initial Terms of greater than one year) and 0.90% during the Extended Term (and during the Initial Term for those Units of Equipment which have an Initial Term of one year or less), if the Lessee's Senior Debt Rating is BB, the percentage shall be 1.174% during the Initial Term (for those Units of Equipment with Initial Terms of greater than one year) and 1.10% during the Extended Term (and during the Initial Term for those Units of Equipment which have an Initial Term of one-year or less), and if the Lessee's Senior Debt Rating is B, the percentage shall be 1.624% during the Initial Term (for those Units of Equipment with Initial Terms of greater than one year) and 1.50% during the Extended Term (and during the Initial Term for those Units of Equipment which have an Initial Term of one year or less), plus (A) the weighted average bond yield equivalent percentage

-4-

cost per annum (including, as part of such cost, any fees payable under or pursuant to any Credit Agreement and any dealer discount or placement agency commission payable by the Lessor in respect of its Commercial Paper) on all Commercial Paper of the Lessor issued to finance or refinance the acquisition and ownership of Equipment outstanding at any time during the period from and including the 16th day of the preceding calendar month to and including the 15th day of the calendar month for which Basic Rent is being computed (the "Computation Period"), or (B) if no such Commercial Paper of the Lessor is outstanding during the Computation Period, the Lessor's weighted average percentage cost per annum (including, as part of such cost, any fees, or interest at a default rate, payable under or pursuant to any Credit Agreement) of other borrowings outstanding at any time during the Computation Period for which Basic Rent is being computed to finance or refinance the acquisition and ownership of Equipment or (C) if both Commercial Paper and other borrowings are outstanding at any time during the Computation Period for which Basic Rent is being computed, a blended, weighted average rate based on the calculations referred to in clauses (A) and (B) above;

(b) for any partial first calendar month during the Lease Term of such Unit, an amount computed by multiplying the following:

- (i) the Acquisition Cost of such Unit, by
- (ii) a fraction having a numerator equal to the number of days such Unit is under lease during such partial first month and a denominator of 365, or in a leap year, 366, by
- (iii) the decimal referred to in paragraph (a)(iii) above; provided, that if the Effective Date for such Unit falls on or after the Lease Rate Date during such partial first calendar month such decimal shall be the decimal determined as of the next succeeding Lease Rate Date; and

(c) for each calendar month during the Renewal Term, if any, of such Unit, an amount equal to the fair market value rental thereof, determined as provided in paragraph (c) of Section 13 hereof.

"Basic Rent Payment Date" means the 20th day of any calendar month during the Lease Term or Renewal Term of any Equipment or, if such day is not a Business Day, the next succeeding Business Day.

-5-

"Business Day" means any day other than a Saturday, a Sunday or a day on which banking institutions in the City of New York are authorized by law to close.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commercial Paper" means all promissory notes of the Lessor issued pursuant to a Credit Agreement maturing not more than ninety (90) days from the date of issuance thereof.

"Computation Period" has the meaning set forth in subclause (a)(iii)(A) of the definition of Basic Rent in Section 1 hereof.

"Consent" means each consent of the Lessee to an Assignment, pursuant to which the Lessee consents to the terms of such Assignment insofar as they relate to this Lease, as the same may be amended, restated, modified or supplemented from time to time.

"Credit Agreement" means each credit or loan agreement which has been entered into between the Lessor and a lender or lenders related to the financing of Equipment, as the same may be amended, restated, modified or supplemented from time to time.

"Effective Date" means, with respect to any Unit of Equipment, the date on which such Unit becomes subject to this Lease, as evidenced by execution by the Lessor of a Unit Leasing Record with respect to such Unit.

"Equipment" means personal property of any type (including, without limitation, any Barges and any Railcars), leased or to be leased hereunder and, when leased, evidenced by Unit Leasing Records, and all related appliances, appurtenances, accessions, furnishings, materials and parts leased or to be leased by the Lessor to the Lessee as provided herein and including all replacements and subsequent replacements of such related appliances, appurtenances, accessions, furnishings, materials and parts. "Unit", when referring to the personal property leased under this Lease, means a particular item of Equipment, as the context may require.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"Event of Default" has the meaning set forth in Section 17 hereof.

"Extended Term" has the meaning set forth in paragraph (b) of Section 6 hereof.

"FERC" means the Federal Energy Regulatory Commission, or any successor agency thereto.

-6-

"First Mortgage Bonds" means bonds issued by the Lessee pursuant to that certain mortgage of the Lessee to Continental Bank, National Association, and M.J. Kruger, as trustees, dated as of July 1, 1923, as the same has been and may from time to time be amended or supplemented and in effect.

"GAAP" means generally accepted accounting principles in the United States in effect from time to time.

"Governmental Action" has the meaning set forth in paragraph (d) of Section 2 hereof.

"Indemnified Person" has the meaning set forth in Section 11 hereof.

"Initial Barges" means 56 open hopper river barges, each constructed with five watertight compartments which shall be placed under Lease under a single Unit Leasing Record and prior to any other Barges being placed under Lease. The Initial Barges were built in 1978 and 1979 of welded steel construction by Twin City Shipyard, Inc. Of the 56 Initial Barges, 32 are rake bow type and 24 are box type. The Lessor's cost of the Initial Barges is approximately \$5,600,000.

"Initial Radio Communication Systems" means the 900 Mhz Trunked Radio Communication Systems comprised of approximately 640 vehicle mounted radios, 490 portable radios with accessories, 85 control and dispatch consoles, and 12 trunking sites and other related system control equipment which shall be placed under Lease under a single Unit Leasing Record and prior to any other telecommunication systems being placed under Lease. The Initial Radio Communication Systems are to be manufactured and supplied by Motorola and will be used in the Lessee's operations. The Lessor's cost of the Initial Radio Communication Systems is approximately \$11,200,000.

"Initial Railcars" means 265 gondola Railcars built new in 1994 by Johnstown America Corporation, which shall be placed under Lease under a single Unit Leasing Record and prior to any other Railcars being placed under Lease. Each such Railcar is designed to carry up to 121 tons of coal, and is equipped with an aluminum body and rotary dump coupler. The Initial Railcars are marketed under the trade name of Bethgon Coalporter. The Lessor's cost of the Initial Railcars is approximately \$11,800,000.

"Initial Term" has the meaning set forth in paragraph (a) of Section 6 hereof.

"Insurance Requirements" means all terms of any insurance policy covering or applicable to any Equipment, all requirements of the issuer of any such policy, all statutory requirements and all orders, rules, regulations and other requirements of any governmental body related to insurance applicable to any Equipment.

-7-

"Lease Rate Date" has the meaning set forth in paragraph (b) of Section 7 hereof.

"Lease Term" means, with respect to any Unit of Equipment, the Initial Term plus the Extended Term thereof.

"Lease Termination Event" has the meaning set forth in subparagraph (a)(ii) of Section 14 hereof.

"Legal Requirements" means all laws, judgments, decrees, ordinances and regulations and any other governmental rules, orders and determinations and all requirements having the force of law, now or hereinafter enacted, made or issued, whether or not presently contemplated, and all agreements, covenants, conditions and restrictions, applicable to each Unit and/or the construction, ownership, operation or use thereof, including, without limitation, compliance with all requirements of labor laws and environmental statutes, compliance with which is required at any time from the date hereof through the Lease Term and any Renewal Term, whether or not such compliance shall require structural, unforeseen or extraordinary changes to any Equipment or the operation or use thereof.

"Lessee" has the meaning set forth in the first paragraph of this Lease.

"Lessee Revolver" means the \$800 million Credit Agreement dated as of October 1, 1991, as amended, among the Lessee, the banks named therein and Citibank, N.A., as agent.

"Lessor" means Hero Leasing, Limited Partnership or any successor or successors to all of its rights and obligations as the Lessor hereunder and, for purposes of Section 11 hereof, shall include any partnership (general or limited), corporation, trust, individual or other entity which computes its liability for income or other taxes on a consolidated basis with Hero Leasing, Limited Partnership or the income of which for purposes of such taxes is, or may be, determined or affected directly or indirectly by the income of the Lessor or its successor or successors.

"Lien" means any security interest, mortgage (including, without limitation, preferred ship mortgage), pledge, hypothecation, assignment, encumbrance, lien (statutory, maritime or other), or other security agreement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction in respect of any of the foregoing).

"Merrill" means Merrill Lynch Money Markets Inc., a Delaware corporation.

"Merrill Leasing" means ML Leasing Equipment Corp., a Delaware corporation.

"Merrill Lynch" means Merrill Lynch & Co., Inc., a Delaware corporation.

"Monthly Rent Component" means, with respect to each Unit of Equipment, for each calendar month during the Lease Term of such Unit, the amount determined in accordance with Schedule B, if any, to the Unit Leasing Record relating to such Unit or if no amount for such Unit shall be provided in Schedule B to such Unit Leasing Record, the Acquisition Cost of such Unit of Equipment divided by the number of calendar months in the Lease Term with respect to such Unit. Schedule B to the Unit Leasing Record, unless otherwise agreed by the Lessee and the Lessor with the consent of the Assignee, such consent not to be unreasonably withheld, shall, with respect to each Unit of Equipment, provide or be deemed to provide that the Monthly Rent Component applicable to each Unit shall be the Acquisition Cost of each Unit of Equipment divided by the number of calendar months in the Lease Term with respect to such Unit.

"Natural Gas Act" means the Natural Gas Act, as amended from time to time, and the regulations from time to time issued, published or promulgated pursuant thereto.

"1935 Act" means the Public Utility Holding Company Act of 1935, as amended from time to time, and the regulations from time to time issued, published or promulgated pursuant thereto.

"NRC" means the Nuclear Regulatory Commission, or any successor agency thereto.

"Pension Plan" means a "pension plan", as such term is defined in Section 3(2) of ERISA, which is subject to Title IV of ERISA (other than a Multiemployer Plan, as defined in Section 3(37) of ERISA), and to which the Lessee or any corporation, trade, or business that is, along with the Lessee, a member of a controlled group of corporations or a controlled group of trades or businesses, as described in Sections 414(b) and 414(c), respectively, of the Code, or Section 4001 of ERISA, may have any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five years, or by reason of being deemed to be contributing sponsor under Section 4069 of ERISA.

"Permitted Contest" has the meaning set forth in paragraph (a) of Section 27 hereof.

"Permitted Liens" means the following Liens and other matters affecting the title of any Unit of Equipment: (a) the rights of the Lessee under this Lease, including, without limitation, subleases of and interchange agreements permitted hereunder involving any Unit

of Equipment; (b) materialmen's, mechanics', workmen's, repairmen's or employees' Liens or other like Liens arising in the ordinary course of business which are either not delinquent or, if delinquent, are being contested by the Lessee in good faith as a Permitted Contest; (c) Liens securing the payment of taxes, assessments and other governmental charges or levies which are either not delinquent or, if delinquent, are being contested by the Lessee in good faith as a Permitted Contest; (d) the Lien created pursuant to a Credit Agreement; (e) such other or additional matters as may be approved in writing by the Lessor and any Assignee with respect to the Unit of Equipment in question; and (f) non-consensual maritime liens arising out of the operation of the Barges in the ordinary course of the Lessee's business by operation of law and incurred and satisfied in the normal course of events.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization of government or any agency or political subdivision thereof.

"Potential Default" means any event which, but for the lapse of time, or giving of notice, or both, would constitute an Event of Default.

"Prospectus" has the meaning set forth in paragraph (e) of Section 2 hereof.

"Railcar" means each, and "Railcars" means every, non-self propelled railcar of the type more fully described in Exhibit C hereto, including, without limitation, the Initial Railcars, together with any and all equipment, parts and modifications from time to time appertaining thereto, constituting a part of the Equipment leased under this Lease and evidenced by a Unit Leasing Record.

"Reconciliation Amount" has the meaning set forth in paragraph (f) of Section 7 hereof.

"Renewal Term" has the meaning set forth in paragraph (b) of Section 13 hereof.

"Responsible Officer" shall mean the President, any Vice President, the Secretary or the Treasurer of the Lessee, or any other officer or similar official of the Lessee responsible for the administration of the obligations of the Lessee with respect to this Lease.

"Senior Debt Rating" shall mean the rating set forth in the Senior Debt Rating column below corresponding to the highest two equivalent ratings assigned to the Lessee's first mortgage bonds by Standard & Poor's Corporation ("S&P"), Moody's Investors Service, Inc. ("Moody's") or Duff & Phelps ("D&P") (or the equivalent of such ratings if such rating agencies change their terminology for such ratings) as indicated under the Rating Agency Ratings columns below. To the extent that the highest two ratings differ, the lower of the highest two shall apply.

<u>Moody's</u>	<u>Rating Agency Ratings</u> <u>S&P</u>	<u>D&P</u>	<u>Senior Debt Rating</u>
Aaa	AAA	AAA	AAA
Aa1 to A3	AA+ to A-	AA+ to A-	AA/A
Baa1 to Baa3	BBB+ to BBB-	BBB+ to BBB-	BBB
Ba1 to Ba3	BB+ to BB-	BB+ to BB-	BB
B1 and below	B+ and below	B+ and below	B

"Short-term Barge Lease" has the meaning set forth in paragraph (e) of Section 8 hereof.

"Short-term Railcar Lease" has the meaning set forth in paragraph (e) of Section 8 hereof.

"Termination Event" has the meaning set forth in subparagraph (a)(ii) of Section 14 hereof.

"Termination Event Date" has the meaning set forth in paragraph (c) of Section 14 hereof.

"Termination Settlement Date" has the meaning set forth in paragraph (c) of Section 14 hereof.

"Unit Leasing Record" means an instrument, substantially in the form of Exhibit C hereto, evidencing the lease of any Unit or Units of Equipment under this Lease.

"United States Coast Guard" and "USCG" mean the United States Coast Guard and any successor agency or agencies.

"Utility Termination Event" has the meaning set forth in subparagraph (a)(ii) of Section 14 hereof.

"Variable Component of Basic Rent" has the meaning set forth in the definition of Basic Rent in Section 1 hereof.

"Welfare Plan" means a "welfare plan", as such term is defined in Section 3(1) of ERISA.

SECTION 2. Representations, Warranties and Certain Agreements of Lessee.

The Lessee represents and warrants to the Lessor:

(a) Corporate Matters. The Lessee (i) has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Illinois, (ii) has full power, authority and legal right to own and operate its properties and to conduct its business as presently conducted and to execute, deliver and perform its obligations under this Lease and any Consent, (iii) is duly qualified to do business as a foreign corporation in good standing in each jurisdiction in which its ownership or leasing of properties or the conduct of its business requires such qualification and (iv) is a citizen of the United States as defined in the Shipping Act, 1916, as amended.

(b) Binding Agreement. This Lease and any Consent have been duly authorized, executed and delivered by the Lessee and, assuming the due authorization, execution and delivery of this Lease by the Lessor, this Lease and any Consent are legal, valid and binding obligations of the Lessee, enforceable according to their terms.

(c) Compliance with Other Instruments. The execution, delivery and performance by the Lessee of this Lease and any Consent will not result in any violation of any term of the articles of incorporation or the by-laws of the Lessee, do not require shareholder approval or the approval or consent of any trustee or holders of indebtedness of the Lessee except such as have been obtained prior to the date hereof and will not conflict with or result in a breach of any terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than a Permitted Lien) upon any property or assets of the Lessee under, any indenture, mortgage or other agreement or instrument to which the Lessee is a party or by which it or any of its property is bound, or any existing applicable law, rule, regulation, license, judgment, order or decree of any government, governmental body or court having jurisdiction over the Lessee or any of its activities or properties.

(d) Governmental Consents. There are no consents, licenses, orders, authorizations, approvals, waivers, extensions or variances of, or notices to or registrations or filings with (each a "Governmental Action"), any governmental or public body or authority which are or will be required in connection with the valid execution, delivery and performance of this Lease, any Consent or any Governmental Action (i) which is or will be required in connection with any participation by the Lessor in the transaction contemplated by any bill of sale, assignment, assumption, ownership agreement, operating agreement, or other agreement relating to any Equipment or (ii) which is or will be required to be obtained

-12-

by the Lessor, the Lessee, Merrill, Merrill Leasing, any Assignee or any Affiliate of the foregoing, during the term of this Lease, with respect to any Equipment except such Governmental Actions, (A) as have been duly obtained, given or accomplished, with true copies thereof delivered to the Lessor, and (B) as may be required by applicable law not now in effect.

(e) Financial Statements. The Lessee has furnished to the Lessor copies of its Annual Report on Form 10-K for the year ended December 31, 1992, its Quarterly Reports on Form 10-Q for the quarters ended March 31, 1993, June 30, 1993 and September 30, 1993, its Current Reports on Form 8-K dated January 28, 1993 and September 24, 1993, and its Prospectus dated January 7, 1994 (the "Prospectus"). The financial statements contained in such documents fairly present the financial position, results of operations and statements of cash flow of the Lessee as of the dates and for the periods indicated therein and have been prepared in accordance with generally accepted accounting principles applied on a consistent basis (except as otherwise indicated therein).

(f) Changes. Except as described in the Lessee's Quarterly Report on Form 10-Q for the quarter ended September 30, 1993 or in the Prospectus, since September 30, 1993, there has been (i) no material adverse change in the business, assets, revenues, financial condition, results of operations or operations of the Lessee and (ii) no change which would materially impair the ability of the Lessee to perform its obligations under this Lease.

(g) Litigation. There is no action, suit, proceeding or investigation at law or in equity by or before any court, governmental body, agency, commission or other tribunal now pending or, to the knowledge of the Lessee, threatened against or affecting the Lessee which questions the enforceability of this Lease, or as to which a Unit of Equipment, placed under Lease at the time this representation and warranty is made, is subject, or as to which there is a significant possibility of an adverse determination and, if adversely determined, may have a material adverse impact on the assets, revenues, results of operations, operations, financial condition or business of the Lessee, or in which there is a significant possibility of an adverse determination that would materially impair the ability of the Lessee to perform its obligations hereunder.

(h) Accuracy of Appraisal. The information contained in any appraisal report furnished by the Lessee to the Lessor with respect to any Unit of Equipment is accurate and complete in all material respects.

(i) Compliance with Legal Requirements and Insurance Requirements. The operation, use and physical condition of the Equipment are in full compliance with all Legal Requirements and Insurance Requirements.

(j) Liens. No Equipment is subject to any Lien, except Permitted Liens.

-13-

(k) ERISA. During the preceding twelve-consecutive-month period, no steps have been taken to terminate any Pension Plan, and no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a Lien under Section 302(f) of ERISA. No condition exists or event or transaction has occurred with respect to any Pension Plan which would result in the incurrence by the Lessee of any material liability, fine, or penalty. The Lessee has no contingent liability with respect to any post-retirement benefit under a Welfare Plan, other than (i) liability for continuation coverage described in Part 6 of Title I of ERISA and (ii) as set forth in note 12 to the notes to the Lessee's consolidated financial statements set forth in the Lessee's Quarterly Report on Form 10-Q for the quarter ended September 30, 1993.

(l) Regulation. The Lessor will not be nor become, solely by reason of either its entering into this Lease or any other agreement or document contemplated hereby or entered into in connection herewith to which it is, or is to become, a party, or the transactions contemplated hereby or thereby (including, without limitation, the acquisition, ownership or leasing of any Equipment), subject to regulation (A) under the 1935 Act, the Federal Power Act, the Natural Gas Act or the Atomic Energy Act, (B) by any state or local public utility commission or other similar regulatory body, authority or group or (C) in any manner by the NRC or the FERC.

(m) Lease Term. The Lease Term of each Unit of Equipment subject to this Lease will not exceed the economic useful life of such Unit of Equipment, as reasonably determined by the Lessee at the time such Unit is leased hereunder.

(n) Barges. All Barges placed hereunder will be in seaworthy condition on their Effective Date.

The Lessee covenants to the Lessor:

(o) Delivery of Information. The Lessee shall deliver to the Lessor, with copies to any Assignee, at its address set forth in the relevant Credit Agreement or related security agreement, from time to time, (i) (A) as soon as available and in any event within 105 days after the end of each fiscal year of the Lessee, a copy of its Annual Reports on Form 10-K, (B) as soon as available and in any event within 60 days after the end of the first three quarters of each fiscal year of the Lessee, a copy of its Quarterly Reports on Form 10-Q and (C) promptly after the filing thereof, any other reports it files with the Securities and Exchange Commission, (ii) promptly upon request, such other information as shall be available with respect to the Lessee's operations, business, properties, assets, financial condition or litigation as the Lessor shall reasonably request, provided such information, if not financial information generally made available to Lessee's lenders, is reasonably related to the Lessee's performance hereunder, (iii) promptly after a Responsible Officer of the Lessee obtains knowledge of any Event of Default or any Potential Default hereunder, a

-14-

certificate of a Responsible Officer of the Lessee specifying the nature and period of existence of such Event of Default or Potential Default, and what action, if any, the Lessee has taken, is taking, or proposes to take with respect thereto, (iv) promptly after a Responsible Officer of the Lessee obtains knowledge of any material adverse change in the financial condition or business of the Lessee or of any litigation of the type described in paragraph (g) of this Section 2, a certificate of a Responsible Officer of the Lessee describing such change or litigation as the case may be and (v) as soon as possible and in any event within five days after receipt by the Lessee of a credit downgrading on the First Mortgage Bonds by any one of Moody's, S&P or D&P, notice thereof and any details with respect thereto.

(p) Compliance with Laws, Etc. The Lessee will comply in all material respects with all Applicable Laws, such compliance to include compliance with ERISA.

(q) Status. The Lessee will maintain its existence as an Illinois corporation (or maintain its existence in such other form as shall be permitted by Section 25 hereof) and its status as a public utility regulated by the ICC and FERC.

(r) Franchises. The Lessee will maintain all of its franchises, permits and licenses, except to the extent that the Lessee's chief financial officer certifies to the Lessor and any Assignee that the loss of any such franchise, permit, or license, either individually or with all other franchises, permits and licenses lost since the date hereof, would not result in a change of the type set forth in paragraph (f) of Section 2 hereof.

(s) Insurance. The Lessee will maintain such insurance as may be required by law and such other insurance, to such extent and against such hazards and liabilities, as is customarily maintained by companies similarly situated.

(t) Taxes and Liabilities. The Lessee will pay when due all taxes, assessments, governmental charges and other liabilities imposed upon it or its property, except to the extent contested in good faith and by appropriate proceedings and in respect of which adequate reserves for the payment thereof have been set aside by the Lessee in accordance with GAAP.

(u) Maintenance of Properties. The Lessee will cause all properties used or useful in the conduct of the business of the Lessee to be maintained and kept in reasonable condition, repair and working order, and cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Lessee may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; provided, however, that the Lessee shall not be prevented from discontinuing the operation and maintenance of any such properties if the chief financial officer of the Lessee certifies to the Lessor and any Assignee that such

-15-

discontinuance is desirable in the conduct of the Lessee's business and such discontinuance, individually or with all such other discontinuances since the date hereof, would not result in a change of the type set forth in paragraph (f) of Section 2 hereof.

(v) **Conduct of Business.** The Lessee will carry out and conduct its business in substantially the same manner and in substantially the same fields as such business is now carried on and conducted.

(w) **Transactions with Affiliates.** The Lessee will not enter into any transaction prohibited by Section 5.02(g) of the Lessee Revolver entitled "Transactions with Affiliates", as such provision may be amended; this covenant being deemed waived or deleted to the extent waived or deleted by the lenders under the Lessee Revolver.

SECTION 3. Lease of Equipment.

(a) Subject to the terms and conditions hereof, the Lessor shall lease to the Lessee, and the Lessee may lease from the Lessor pursuant to this Lease, any Equipment, when and as the Lessee has need of such Equipment; provided, that:

- (i) such Equipment is available for purchase;
- (ii) the Lessor has approved the purchase order or acquisition with respect to such Equipment (which approval shall be in the sole discretion of the Lessor);
- (iii) at the time any such Equipment is to be ordered or leased hereunder there exists no Event of Default or Potential Default;
- (iv) the sum of (A) the Acquisition Cost of such Equipment and (B) the aggregate Adjusted Acquisition Cost of all other Equipment leased hereunder would not, at the time any such Equipment is to be leased hereunder, exceed such amount as the Lessor and the Lessee may from time to time agree; and
- (v) except with regard to Initial Railcars, Initial Barges and Initial Radio Communication Systems, the Lessee shall have provided an opinion of counsel reasonably acceptable to the Lessor and any Assignee addressing, with respect to such Equipment, the validity, binding effect and enforceability of the Lease and the absence of any requirement for regulatory approval thereof.

-16-

(b) The lease of each Unit of Equipment to the Lessee under this Lease shall be evidenced by a Unit Leasing Record. The Lessee shall prepare and execute a Unit Leasing Record with respect to each Unit of Equipment (which Unit Leasing Record may relate to more than one Unit of Equipment) and deliver it promptly to the Lessor. Contemporaneously with the payment required by paragraph (b) of Section 5 hereof, the Lessor shall execute the acceptance of such Unit Leasing Record and promptly return one copy of such Unit Leasing Record to the Lessee.

(c) The Lessee shall prepare each Unit Leasing Record pursuant to the procedures provided by the Lessor. Each Unit Leasing Record shall give a full description of the Unit or Units of Equipment covered thereby, the Acquisition Cost of each such Unit, the Initial Term, Extended Term and Renewal Term for each such Unit, the Monthly Rent Component with respect to each such Unit, its location and such other details as the Lessor and the Lessee may from time to time agree.

(d) Execution by the Lessee of a Unit Leasing Record shall constitute (i) acknowledgment by the Lessee that the Equipment specified in such Unit Leasing Record has been delivered to the Lessee in good condition and has been accepted for lease hereunder by the Lessee as of the Effective Date, (ii) acknowledgment by the Lessee that the Equipment specified in such Unit Leasing Record is subject to all of the covenants, terms and conditions of this Lease, and (iii) certification by the Lessee that the representations and warranties contained in paragraphs (a) through (n), inclusive, of Section 2 of this Lease are true and correct on and as of the Effective Date as though made on and as of the Effective Date and that there exists on the Effective Date no Event of Default or Potential Default.

SECTION 4. Operating Lease.

The Lessor and the Lessee hereby declare that it is their mutual intent that for accounting and regulatory purposes this Lease be treated as an operating lease and not an instrument or evidence of indebtedness, and that the relationship between the Lessor and the Lessee under this Lease shall be that of lessor and lessee only. Title to and ownership of any Equipment shall at all times remain in the Lessor and at no time become vested in the Lessee except in accordance with an express provision of this Lease. The Lessee does not hereby acquire any right, equity, title or interest in or to any Equipment except pursuant to the terms hereof.

SECTION 5. Delivery.

(a) The Lessee shall acquire or order and accept Equipment pursuant to the procedures provided by the Lessor. The Lessor shall not be liable to the Lessee for any failure to obtain, or delay in obtaining, any Equipment or any delay in the delivery of title to the Lessor or possession of the Equipment to the Lessee.

-17-

(b) Upon acceptance for lease of a Unit of Equipment by the Lessee and the Lessor and receipt by the Lessor of (i) the vendor's invoice or invoices for such Unit of Equipment, (ii) invoices or other evidence satisfactory to the Lessor for any amounts included in the Acquisition Cost of such Unit payable to parties other than the vendor, (iii) invoices or other evidence satisfactory to the Lessor (including an appraisal with respect to a Unit of Equipment) for any amounts included in the Acquisition Cost of such Unit that have been paid to the vendor or other parties by the Lessee and for any costs included in the Acquisition Cost of such Unit incurred by the Lessee, (iv) a Unit Leasing Record with respect to such Unit prepared and duly executed by the Lessee, (v) in the case of the Barges, (1) a letter, certificate or other evidence satisfactory to the Lessor as to due compliance with the insurance provisions of Section 10 of this Lease, (2) an opinion of counsel to the Lessee with respect to matters, if any, relating to such Barges requested by the Lessor and any Assignee, (3) if new construction, a Certificate of Builder (Form CG-1261), or, if already in service, a Bill of Sale (Form CG-1340) or other certificate or form of bill of sale acceptable to the USCG, (4) evidence satisfactory to the Lessor that application for documentation of the Barge in the name of the Lessor has been duly made with the USCG and (5) a Certificate of Ownership (Form CG-1330) showing that the Lessor is the owner of record of the Barge with no recorded encumbrances, (vi) in the case of Railcars, (1) evidence that the filings and other actions required in respect of such Railcars by paragraph (b) of Section 8 hereof have occurred and (2) an opinion of counsel to the Lessee with respect to matters, if any, relating to such Railcars, requested by the Lessor and any Assignee, (vii) the opinion required by paragraph (a)(v) of Section 3 hereof and (viii) such other documentation as the Lessor may reasonably require, the Lessor shall (A) pay to such vendor the amount of the vendor's invoice or invoices and/or contract of sale for such Unit except to the extent previously paid by the Lessee, (B) pay to such other parties such amounts payable, except to the extent previously paid by the Lessee and (C) reimburse the Lessee for such amounts paid to the vendor or other parties by the Lessee, for such costs incurred by the Lessee and, if agreed between the Lessor and the Lessee, for the appraised value of the Equipment; provided, however, that in no event shall the sum of all payments made pursuant to clauses (A), (B) and (C) above exceed the Acquisition Cost of such Equipment.

(c) The Lessee shall ensure that the installation or erection of any Equipment is in accordance with the specifications and requirements of the vendor thereof.

(d) The obligation of the Lessee to pay all amounts payable pursuant to this Lease (including specifically and without limitation amounts payable under Sections 7 and 11 hereof) shall be absolute and unconditional under any and all circumstances of any character, and such amounts shall be paid without notice, demand, defense, setoff, deduction or counterclaim and without abatement, suspension, deferment, diminution or reduction of any kind whatsoever, except as herein expressly otherwise provided. The obligation of the Lessee to lease and pay Basic Rent for any and all Equipment accepted for use pursuant to this Lease is without any warranty or representation, express or implied, as to any matter

-18-

whatsoever on the part of the Lessor or any Assignee or any Affiliate of either, or anyone acting on behalf of any of them.

THE LESSEE HAS SELECTED AND SHALL SELECT ALL EQUIPMENT ACQUIRED OR ORDERED ON THE BASIS OF ITS OWN JUDGMENT. NEITHER THE LESSOR NOR ANY ASSIGNEE NOR ANY AFFILIATE OF EITHER, NOR ANYONE ACTING ON BEHALF OF ANY OF THEM MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, AS TO THE SAFETY, TITLE, CONDITION, QUALITY, QUANTITY, FITNESS FOR USE, MERCHANTABILITY, CONFORMITY TO SPECIFICATION, OR ANY OTHER CHARACTERISTIC, OF ANY EQUIPMENT, OR AS TO WHETHER ANY EQUIPMENT OR THE OWNERSHIP, USE, OCCUPANCY OR POSSESSION THEREOF COMPLIES WITH ANY LAWS, RULES, REGULATIONS OR REQUIREMENTS OF ANY KIND.

AS BETWEEN THE LESSEE AND THE LESSOR, ANY ASSIGNEE OR ANY INDEMNIFIED PERSON, THE LESSEE ASSUMES ALL RISKS AND WAIVES ANY AND ALL DEFENSES, SET-OFFS, DEDUCTIONS, COUNTERCLAIMS (OR OTHER RIGHTS), EXISTING OR FUTURE, AS TO THE LESSEE'S OBLIGATION TO PAY BASIC RENT AND ALL OTHER AMOUNTS PAYABLE HEREUNDER, INCLUDING, WITHOUT LIMITATION, ANY RELATING TO:

(A) THE SAFETY, TITLE, CONDITION, QUALITY, QUANTITY, FITNESS FOR USE, MERCHANTABILITY, CONFORMITY TO SPECIFICATION, OR ANY OTHER QUALITY OR CHARACTERISTIC OF ANY EQUIPMENT, LATENT OR NOT, AND, IN THE CASE OF A BARGE, ITS SEAWORTHINESS;

(B) ANY SET-OFF, COUNTERCLAIM, RECOUPMENT, ABATEMENT, DEFENSE OR OTHER RIGHT WHICH THE LESSEE MAY HAVE AGAINST THE LESSOR, ANY ASSIGNEE OR ANY INDEMNIFIED PERSON FOR ANY REASON WHATSOEVER ARISING OUT OF THIS OR ANY OTHER TRANSACTION OR MATTER;

(C) ANY DEFECT IN TITLE OR OWNERSHIP OF EQUIPMENT OR ANY TITLE ENCUMBRANCE NOW OR HEREAFTER EXISTING WITH RESPECT TO THE EQUIPMENT;

-19-

(D) ANY FAILURE OR DELAY IN DELIVERY OR ANY LOSS, THEFT OR DESTRUCTION OF, OR DAMAGE TO, ANY EQUIPMENT, IN WHOLE OR IN PART, OR CESSATION OF THE USE OR POSSESSION OF ANY EQUIPMENT BY THE LESSEE FOR ANY REASON WHATSOEVER AND OF WHATEVER DURATION, OR ANY CONDEMNATION, CONFISCATION, REQUISITION, SEIZURE, PURCHASE, TAKING OR FORFEITURE OF ANY EQUIPMENT, IN WHOLE OR IN PART;

(E) ANY INABILITY OR ILLEGALITY WITH RESPECT TO THE USE, OWNERSHIP, OCCUPANCY OR POSSESSION OF THE EQUIPMENT BY THE LESSEE;

(F) ANY INSOLVENCY, BANKRUPTCY, REORGANIZATION OR SIMILAR PROCEEDING BY OR AGAINST THE LESSEE OR THE LESSOR OR ANY ASSIGNEE;

(G) ANY FAILURE TO OBTAIN, OR EXPIRATION, SUSPENSION OR OTHER TERMINATION OF, OR INTERRUPTION TO, ANY REQUIRED LICENSES, PERMITS, CONSENTS, AUTHORIZATIONS, APPROVALS OR OTHER LEGAL REQUIREMENTS;

(H) THE INVALIDITY OR UNENFORCEABILITY OF THIS LEASE OR ANY OTHER INFIRMITY HEREIN OR ANY LACK OF POWER OR AUTHORITY OF THE LESSOR OR THE LESSEE TO ENTER INTO THIS CONTRACT;

(I) THE INVALIDITY OR UNENFORCEABILITY OF ANY BILL OF SALE OF ANY EQUIPMENT EXECUTED IN CONNECTION WITH THIS LEASE OR ANY OTHER INFIRMITY THEREIN OR LACK OF POWER OR AUTHORITY OF ANY PARTY THERETO TO ENTER INTO SUCH BILL OF SALE; OR

(J) ANY OTHER CIRCUMSTANCES OR HAPPENING WHATSOEVER, WHETHER OR NOT SIMILAR TO ANY OF THE FOREGOING.

THE LESSEE HEREBY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS WHICH IT MAY NOW HAVE OR WHICH AT ANY TIME HEREAFTER MAY BE CONFERRED UPON IT, BY STATUTE OR OTHERWISE, TO TERMINATE, CANCEL, QUIT, RESCIND OR SURRENDER THIS LEASE EXCEPT IN ACCORDANCE WITH THE EXPRESS TERMS HEREOF. Each payment of Basic Rent, Additional Rent and any other amount due hereunder made by the Lessee shall be final, and the Lessee, without waiving any other remedies it may have, will not seek or have any right to recover all or any part of such payment from the Lessor or any Assignee for any reason whatsoever.

-20-

(e) Notwithstanding any other provision contained in this Lease, it is specifically understood and agreed that neither the Lessor nor any Assignee nor any Affiliate of either, nor anyone acting on behalf of any of them makes any warranties or representations or has any responsibility to disclose any relevant information, or has any other responsibility or duty, nor, except as set forth in Section 21 of this Lease, has the Lessor or any Assignee or any Affiliate of either, or anyone acting on behalf of any of them made any covenants or undertakings, as to the accounting treatment to be accorded the Lessee or as to the U.S. Federal or any state income or any other tax consequences, if any, to the Lessee as a result of or by virtue of the transactions contemplated by this Lease.

SECTION 6. Initial Term; Extended Term.

(a) The "Initial Term" with respect to any Unit of Equipment leased hereunder shall commence on the Effective Date set forth in the Unit Leasing Record for such Unit of Equipment and shall continue for any partial first calendar month plus the number of calendar months set forth opposite such type of Equipment under the heading "Initial Term" in Exhibit A hereto, unless terminated earlier pursuant to Section 12, 13, 14, 15, 18 or 19 hereof.

(b) The "Extended Term" with respect to any Unit of Equipment shall commence on the first day of the calendar month following the last day of the Initial Term of such Unit and shall continue for the number of calendar months set forth opposite such type of Equipment under the heading "Extended Term" in Exhibit A hereto and specified in the Unit Leasing Record for such Unit of Equipment, unless terminated earlier pursuant to Section 12, 13, 14, 15, 18 or 19 hereof.

(c) With respect to each Unit of Equipment, it is understood and agreed that the Initial Term of each Unit of Equipment shall in no event exceed 75% of its economic useful life.

(d) Notwithstanding anything contained in this Section 6, the provisions of Sections 10 and 11 hereof and paragraph (a) of Section 15 hereof shall apply with respect to any Equipment from the time such Equipment is ordered by the Lessee, with the approval of the Lessor, pursuant to procedures supplied by the Lessor.

SECTION 7. Rent and Other Payments.

(a) The Lessee hereby agrees to pay the Lessor (i) on each Basic Rent Payment Date, Basic Rent for the calendar month (or part thereof) in which such Basic Rent Payment Date falls, with respect to each Unit of Equipment leased during any part of such calendar month hereunder for which the Effective Date is before the Lease Rate Date for such

-21-

calendar month, and (ii) on the Basic Rent Payment Date in the next succeeding calendar month, Basic Rent for any partial first calendar month, with respect to each Unit of Equipment for which the Effective Date is on or after the Lease Rate Date for such calendar month.

(b) The Lessor shall furnish to the Lessee on the 16th day of each calendar month the percentage referred to in paragraph (a)(iii) of the definition of "Basic Rent" in Section 1 hereof for such calendar month, or, if such day is not a Business Day, on the next succeeding Business Day (the "Lease Rate Date"). Prior to each Basic Rent Payment Date the Lessor shall furnish the Lessee with a summary of the calculations of Basic Rent payable on such Basic Rent Payment Date.

(c) The Lessee hereby agrees to pay on demand all amounts (other than Basic Rent) payable hereunder, including, without limitation, all amounts payable to any Indemnified Person pursuant to Section 11 hereof.

(d) Without prejudice to the full exercise by the Lessor of its rights under Sections 17 and 18 hereof, the Lessee shall pay to the Lessor from time to time, on demand, as additional rent ("Additional Rent") (i) amounts required to reimburse the Lessor for its obligations, costs and expenses (not previously included in Basic Rent) incurred in acquiring, financing (including equity financing) and leasing any Equipment, and (ii) to the extent legally enforceable, an amount computed by multiplying (A) all sums not paid by the Lessee to the Lessor as provided in this Lease on or before the date such payments are due, by (B) the decimal equivalent of the percentage referred to in paragraph (a)(iii) of the definition of "Basic Rent" as most recently furnished by the Lessor, and by (C) a fraction having a numerator equal to the number of days in the period from but excluding such due date to and including the date of payment thereof and a denominator of 365 or in a leap year, 366. The Lessee shall also pay to the Lessor on demand an amount equal to any expenses incurred by the Lessor in collecting such unpaid sums.

(e) Basic Rent and Additional Rent and any other amount payable by the Lessee to the Lessor shall be paid such that immediately available funds in the full amount due are available on the date due, to the account of the Lessor at such bank, or to such account of such other Person at such bank, or otherwise as the Lessor may from time to time designate.

(f) During the Lease Term of any Unit of Equipment, the Lessor shall calculate, on each Lease Rate Date (except the first Lease Rate Date hereunder), the difference, if any, between (i) the Variable Component of Basic Rent paid by the Lessee for the previous calendar month and (ii) an amount equal to what the Variable Component of Basic Rent would have been for such calendar month had the Variable Component of Basic Rent been calculated using the weighted average bond yield equivalent percentage cost per annum on all Commercial Paper of the Lessor outstanding at any time or the weighted

average percentage cost per annum of other borrowings outstanding at any time or a blended rate if both Commercial Paper and other borrowings are outstanding at any time (as specified in clauses (A), (B) and (C), respectively, in subparagraph (a)(iii) of the definition of Basic Rent) during the previous calendar month (rather than during the applicable Computation Period); provided, that with respect to the Variable Component of Basic Rent for the last month of the Lease Term, such calculation shall occur on the last day of the Lease Term. On or about August 16, 1994 (or such other date that the Lessor so chooses), and thereafter on or about August 16 of each year, and on the last day of the Lease Term, the Lessor shall furnish to the Lessee a calculation of the aggregate difference between the amounts determined under clause (i) above and the correlating amounts determined under clause (ii) above (the "Reconciliation Amount") for each calendar month since the date of this Lease or each calendar month since the last time the Reconciliation Amount was calculated, whichever is later. The Lessor and the Lessee agree that if the Reconciliation Amount is a positive number, then such amount shall be credited against the amount of Basic Rent that the Lessee is required to pay on the next Basic Rent Payment Date (or Basic Rent Payment Dates, if such amount shall exceed the amount of Basic Rent payable in the next succeeding month), and if the Reconciliation Amount is a negative number, then such amount shall be payable by the Lessee on the next Basic Rent Payment Date in addition to the amount of Basic Rent due and payable on such Basic Rent Payment Date, except that with respect to the Reconciliation Amount computed on the last day of the Lease Term, such amount shall be paid by the Lessor to the Lessee (in the case of a positive number) or by the Lessee to the Lessor (in the case of a negative number) on the last day of the Lease Term. Any notices required by this paragraph (f) which are furnished to the Lessee by the Lessor shall be conclusive, absent manifest error, as to the contents thereof.

SECTION 8. Restricted Use; Compliance with Laws.

(a) So long as no Event of Default shall have occurred and be continuing, the Lessee may (i) use the Equipment in the regular course of its business for any lawful purpose, (ii) possess and use the Railcars or permit any of its Affiliates to possess and use the Railcars upon lines of railroad over which the Lessee or any such Affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such Affiliate is regularly operated pursuant to contract, (iii) permit the use of the Railcars upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, (iv) possess and use the Barges and operate or contract to have the Barges operated by third parties upon the inland waters of the United States of America, provided, however, that such third parties shall be recognized inland marine operators and (v) sublease any Equipment to the extent permitted by paragraph (e) of this Section 8. The Lessee will not do or permit any act or thing which is contrary to any Legal Requirement or Insurance Requirement (including, without limitation, with respect to the use, maintenance and operation of each Railcar or Barge, compliance with all laws of the jurisdiction in which its operations involving any Railcar or Barge may extend, with the interchange rules of the

Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission, the USCG and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over any Railcar or Barge, as the case may be), or which might impair, other than in the normal use thereof, the value or usefulness of any Equipment.

(b) The Lessee shall promptly and duly execute, deliver, file and record, at the Lessee's expense, all such documents, statements, filings and registrations, and take such further action, as the Lessor shall from time to time reasonably request in order to establish, perfect and maintain the Lessor's title to and interest in the Equipment and any Assignee's interest in this Lease or any Equipment as against the Lessee or any third party in any applicable jurisdiction. The Lessee, at its own expense, will cause this Lease and any agreement assigning an interest therein to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 on or before the Effective Date on which Railcars are first placed under lease. The Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor and any Assignee for the purpose of proper protection, to their satisfaction, of the interest of the Lessor and any Assignee in the Railcars and this Lease, or for the purpose of carrying out the intention of this Lease. The Lessee shall in this regard, or before the Effective Date relating to all additional Railcars placed under this Lease, cause this Lease and any agreement assigning an interest therein to any Assignee to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303, in respect of such additional Railcars. The Lessee shall cause each Barge to remain in documentation with the USCG and shall on or before each anniversary date of each Barge's acquisition shall comply with 46 C.F.R. §67.163 or any amendment thereto. The Lessee may, after notice in writing to the Lessor and at the Lessee's own cost and expense, change the place of principal location of any Equipment; provided, that prior notice shall not be required in the case of Equipment used for transportation (such as, without limitation, automobiles and trucks), but in such event the Lessee shall notify the Lessor in writing of the change of the principal location of such transportation Equipment not later than thirty (30) days after such change is made. Notwithstanding the foregoing, no change of location shall be undertaken unless and until all Legal Requirements shall have been met. At least once each year prior to the anniversary of the date of this Lease, and more frequently at the reasonable request of the Lessor or any Assignee, the Lessee shall advise the Lessor in writing where all Equipment leased hereunder as of such date is principally located. Notwithstanding anything in this Section 8(b) to the contrary, the Lessee may, without any notice to the Lessor with respect thereto, change the location of the Railcars within the continental United States. Upon the reasonable request of the Lessor, the Lessee shall advise the Lessor in writing as to the location at which the Railcars may be inspected.

-24-

(c) The Lessee shall use every reasonable precaution to prevent loss or damage to Equipment and to prevent injury to third persons or property of third persons. The Lessee shall cooperate fully with the Lessor and all insurance companies providing insurance pursuant to Section 10 hereof in the investigation and defense of any claims or suits arising from the ownership, operation or use of any Equipment; provided, that nothing contained in this paragraph (c) shall be construed as imposing on the Lessor any duty to investigate or defend any such claims or suits. The Lessee shall comply and shall cause all Persons using or operating Equipment to comply with all Insurance Requirements and Legal Requirements applicable to such Equipment and to the acquiring, titling, registering, leasing, insuring, using, operating and disposing of Equipment, and the licensing of operators thereof.

(d) The Lessor or any Assignee or any authorized representative of either may during reasonable business hours from time to time inspect Equipment and deeds, registration certificates, certificates of title and related documents or records covering Equipment wherever the same may be located, but neither the Lessor nor any Assignee shall have any duty to make any such inspection; provided, however, that any such inspection shall in no way interfere with any repairs or maintenance or the use or operation of any Unit of Equipment; and provided further, that, in exercising such right of inspection, no such person shall unreasonably interfere with the Lessee's normal business operations.

(e) The Lessee shall not, without the prior written consent of the Lessor, permit, or suffer to exist, any Lien, including mechanics' liens, other than Permitted Liens or those Liens placed thereon by, or arising from, the Lessor's own actions or which are subject to a Permitted Contest, nor may it assign any right or interest herein or in any Equipment. The Lessee shall not, without the prior written consent of the Lessor, sublease or otherwise relinquish possession of any Equipment, other than pursuant to a Short-term Railcar Lease or Short-term Barge Lease, as defined below, except that (i) the Lessee may otherwise relinquish possession of Equipment to any contractor for use in performing work for the Lessee; provided, that such relinquishment of possession shall in no way affect the obligations of the Lessee or the rights of the Lessor hereunder and with respect to the Equipment and (ii) the Lessee may sublease any Unit of Equipment; provided, that (A) the terms of the instrument of sublease and the identity of the sublessee shall be subject to the prior written approval of the Lessor and any Assignee, which approval shall not be unreasonably withheld or delayed, (B) each such sublease shall expressly be made subject and subordinate to the provisions hereof and shall, at the sole option of the Lessor, by its terms be subject to termination upon the termination for any reason of this Lease, (C) no such sublease shall modify or limit any right or power of the Lessor hereunder or affect or reduce any obligation of the Lessee hereunder, and all such obligations shall continue in full force and effect as obligations of a principal and not of a guarantor or surety, as though no such subletting had been made, (D) the sub-lease lessee, in the case of Barges, must be a citizen of the United States of America and (E) any such sublease made otherwise than as expressly permitted by this paragraph (e) shall be void and of no force and effect. The foregoing notwithstanding,

-25-

the Lessee may sublease Railcars or Barges for a term not in excess of six (6) months ("Short-term Railcar Lease" or "Short-term Barge Lease", as the case may be) so long as no Potential Default or Event of Default shall have occurred and be continuing and so long as clauses (ii)(B), (C) and (D) are complied with. As additional security to the Lessor for the performance of the Lessee's obligations under this Lease, the Lessee hereby assigns to the Lessor all of its right, title and interest in and to all subleases permitted hereby and agrees to cause any sublessee to enter into attornment agreements with the Lessor as the Lessor shall request. The Lessor shall have the present and continuing right to collect and enjoy all rents and other sums of money payable under any such sublease, and the Lessee hereby irrevocably assigns such rents and other sums to the Lessor for the benefit and protection of the Lessor; provided, that unless an Event of Default shall have occurred and be continuing hereunder, the Lessee shall be entitled to collect and enjoy such rents and other sums. The Lessee shall, within thirty (30) days after the execution of any such sublease, except in the case of a Short-term Railcar Lease or Short-term Barge Lease, deliver a conformed copy thereof to the Lessor. Nothing contained in this Lease shall be construed as constituting the consent or request of the Lessor, express or implied, to or for the performance by any contractor, laborer, materialman or vendor of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to any Equipment or any part thereof. Notice is hereby given that neither the Lessor nor any Assignee will be liable for any labor, services or materials furnished or to be furnished to the Lessee, or to anyone holding any Equipment or any part thereof through or under the Lessee, and that no mechanics' or other liens for any such labor, services or materials shall attach to or affect the interest of the Lessor in and to the Equipment.

(f) The Lessee shall register and title all automotive Equipment in the name of the Lessor except that, where required or permitted by law or regulation, Equipment may, with the written approval of the Lessor be registered (but not titled) in the name of the Lessee. If requested by the Lessor or any Assignee, the Lessee shall cause one of its officers to hold in his custody and control all registration certificates and certificates of title covering automotive Equipment, as custodian for the Lessor. The Lessee agrees to cause such officer to furnish to the Lessor or any Assignee, upon reasonable request, a certificate to the effect that all registration certificates and certificates of title pursuant to any Legal Requirement have been obtained and are being held on behalf of the Lessor.

(g) On or prior to the pertinent Effective Date, the Lessee shall affix or cause to be affixed to each Unit of Equipment, except for motor vehicles in states with documents of title, in the place designated by the Lessor (or, if no such place shall have been designated, in a prominent place), labels, plates or other markings stating that such Unit of Equipment is owned by the Lessor, and with respect to each Railcar, shall cause each Railcar to be kept numbered with the identification number set forth in the Unit Leasing Record relating to such Railcar. The Lessee shall not without the prior written permission of the Lessor change or

remove (or permit to be changed or removed or otherwise permit a decrease in the visibility of) any insignia or lettering which is on any Equipment at the time of delivery thereof or which is thereafter placed thereon indicating the Lessor's ownership thereof.

(h) If any Lien or charge of any kind or any judgment, decree or order of any court or other governmental authority (including, without limitation, any state or local tax lien affecting the Equipment), whether or not valid, shall be asserted or entered which might interfere with the due and timely payment of any sum payable or the exercise of any of the rights or the performance of any of the duties or responsibilities under this Lease, the Lessee shall, upon obtaining knowledge thereof or upon receipt of notice to that effect from the Lessor, promptly take such action as may be necessary to prevent or terminate such interference.

(i) The Lessee, at its own cost and expense, shall forthwith upon the Effective Date with respect to any Barge, cause the Barge to be duly documented and at all times thereafter to be duly documented in the name of the Lessor with the USCG.

(j) The Lessee shall not permit the Barges to be operated beyond the trading limits of the insurance policies applicable thereto. In addition, the Lessee shall maintain or cause the Barges to be maintained in seaworthy condition. The Lessee shall restrict the use of the Barges to the transport of coal and such other lawful commodities as the Lessor may from time to time approve in writing.

SECTION 9. Maintenance, Improvement and Repair of Equipment.

(a) Upon request of the Lessee, the Lessor will, so long as no Event of Default shall have occurred and be continuing, assign or otherwise make available to the Lessee any and all rights the Lessor may have under any vendor's or manufacturer's warranties or undertakings with respect to any Equipment.

(b) The Lessee shall pay all costs, expenses, fees and charges incurred in connection with the ownership, use and operation of any Unit of Equipment. Except as otherwise provided in Section 15 hereof, the Lessee shall at all times, at its own expense, and subject to reasonable wear and tear, keep Equipment in good operating order, repair, condition and appearance. The foregoing undertaking to maintain Equipment in good repair shall apply regardless of the cause necessitating repair and regardless of whether the Lessee has possession of the Equipment, and as between the Lessor and the Lessee all risks of damage to Equipment are assumed by the Lessee.

(c) Unless required by Legal Requirements or for the ongoing operation of any Equipment for its intended use, the Lessee shall not make any material alterations to any Equipment without the prior written consent of the Lessor. Any improvements or additions

to any Equipment, including any and all parts installed on and additions and replacements made to any Railcar or Barge which are required for the operation or use of such Railcar or Barge by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the Department of Transportation, the USCG or any other applicable regulatory body, as the case may be, shall become and remain the property of the Lessor, except that any addition to Equipment made by the Lessee shall remain the property of the Lessee if it can be removed from such Equipment without impairing the functioning of such Equipment or its resale value, excluding such addition and, with respect to a Railcar or Barge, if it can be removed without resulting in the failure of the Railcar or Barge to comply with the interchange rules of the Association of American Railroads or the regulations of the Interstate Commerce Commission, the Department of Transportation, the USCG or any applicable regulatory body, as the case may be. Any improvements or additions which do not remain property of the Lessee shall be evidenced by a revised Unit Leasing Record and paid for by the Lessor in accordance with procedures agreed from time to time by the Lessor and the Lessee.

SECTION 10. Insurance.

(a) **Public Liability Insurance with Respect to Equipment.** The Lessee will carry at its own expense public liability insurance and property damage insurance with respect to all Equipment (i) in amounts which are not less than the public liability and property damage insurance applicable to similar equipment owned, leased or held by the Lessee; provided, that in no event shall such amounts be less than \$15,000,000 per occurrence, (ii) of the types usually carried by corporations engaged in the same or a similar business, similarly situated with the Lessee, and owning or operating similar equipment and which cover risk of the kind customarily insured against by such corporations, and (iii) which are maintained in effect with insurers of recognized responsibility reasonably satisfactory to the Lessor and any Assignee. The insurance required by this paragraph (a) may be subject to such deductibles and the Lessee may self-insure with respect to the required coverage only to the extent approved in writing by the Lessor.

(b) **Insurance Against Loss or Damage to Equipment.** The Lessee will maintain in effect with insurers of recognized responsibility reasonably satisfactory to the Lessor and any Assignee, at its own expense, physical damage insurance with respect to all Equipment, which is of the type usually carried by corporations engaged in the same or similar business, similarly situated with the Lessee, and owning or operating similar equipment and which cover risks of the kind customarily insured against by such corporations, and in substantially the amount applicable to similar equipment owned, leased or held by the Lessee; provided, that such insurance shall at all times be in an amount not less than the aggregate Adjusted Acquisition Cost of all Equipment. The insurance required by this paragraph (b) may be subject to such deductibles and the Lessee may self-insure with respect to the required coverage only to the extent approved in writing by the Lessor and the Assignee.

-28-

(c) The Lessee will maintain or cause to be maintained at its own expense, as to the Barges, (i) Hull (including collision liability insurance) and increased value hull insurance, subject to current American Hull Institute clauses in use at the time as respects marine risks, in an amount in dollars at least equal to the Adjusted Acquisition Cost of the Barge at such time; and (ii) Protection and Indemnity insurance policies or entries, providing a limit of liability not less than \$15,000,000 per occurrence.

(d) Additional Insureds; Notice. Any policies of insurance carried in accordance with this Section 10 and any policies taken out in substitution or replacement for any such policies (i) shall name the Lessor, Merrill, Merrill Lynch, Merrill Leasing, the general partner of the Lessor and its shareholders, officers and directors, the limited partners of the Lessor, and each Assignee as additional insureds, as their respective interests may appear (but without imposing upon any such Person any obligation imposed on the insured, including, without limitation, the liability to pay the premium for any such policy), (ii) with respect to insurance carried in accordance with the preceding paragraph (b), shall name the Assignee, if any, or the Lessor, if no Assignment has been made, as loss payee, (iii) with respect to insurance carried in accordance with the preceding paragraph (b), shall provide that as against the Lessor the insurers shall waive any rights of subrogation, (iv) shall provide that if the insurers cancel such insurance for any reason whatsoever, or any substantial change is made in the coverage or the same is allowed to lapse for nonpayment of premium or such insurance coverage is reduced, such cancellation, change, lapse or reduction shall not be effective as to the Lessor, Merrill, Merrill Lynch, Merrill Leasing, the general partner of the Lessor and its shareholders, officers and directors, the limited partners of the Lessor, or any Assignee for thirty (30) days (ten (10) days in the case of cancellation for non-payment of premium) after receipt by the Lessor, Merrill, Merrill Lynch, Merrill Leasing, the general partner of the Lessor and its shareholders, officers and directors, the limited partners of the Lessor, or such Assignee, as the case may be, of written notice by such insurers of such cancellation, change, lapse or reduction, and (v) shall provide that in respect of the interest of the Lessor, Merrill, Merrill Lynch, Merrill Leasing, the general partner of the Lessor and its shareholders, officers and directors, the limited partners of the Lessor, and each Assignee in such policies the insurance shall not be invalidated by any action or inaction of the Lessee or any other Person (other than of the Lessor, Merrill, Merrill Lynch, Merrill Leasing, the general partner of the Lessor and its shareholders, officers and directors, the limited partners of the Lessor, or any such Assignee in respect of its own interest) and shall insure the interests of the Lessor, Merrill, Merrill Lynch, Merrill Leasing, the general partner of the Lessor and its shareholders, officers and directors, the limited partners of the Lessor, and each such Assignee, as they appear, regardless of any breach or violation of any warranties, declarations or conditions contained in such policies by the Lessee or any other Person. Each liability policy (A) shall be primary without right of

contribution from any other insurance which is carried by the Lessor with respect to its interest as such in the Equipment and (B) shall expressly provide that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

(e) Application of Insurance Proceeds for Loss. As between the Lessor and the Lessee, it is agreed that any insurance payments received as the result of the occurrence of any event of loss described in paragraph (c) of Section 15 hereof with respect to any Unit of Equipment, shall be paid to an account of the Lessor and disposed of, as set forth in paragraph (c) of Section 15 hereof.

(f) Application of Insurance Proceeds for Other than Loss. As between the Lessor and the Lessee, the insurance proceeds of any property damage loss to any Equipment will be held in an account of the Lessor and applied in payment (or to reimburse the Lessee) for repairs or replacement in accordance with the terms of paragraph (b) of Section 15 hereof. The Lessee shall be entitled (i) to receive the amounts so deposited against certificates, invoices or bills satisfactory to the Lessor, delivered to the Lessor from time to time as such work or repair progresses, and (ii) to direct the investment of the amounts so deposited as provided in paragraph (g) of this Section 10. To the extent that the Lessor estimates that the cost of such work or repair shall exceed the amount of proceeds, the Lessee shall make adequate provisions for the payment thereof, which provisions shall be acceptable to the Lessor. Any moneys remaining in the aforesaid account after final payment for repairs has been made shall be paid to the Lessee.

(g) Investment. The Lessor, at the Lessee's instruction, may invest the amounts deposited with the Lessor pursuant to paragraph (f) of this Section 10 in any investments permitted under a Credit Agreement. Such investments shall mature in such amounts and on such dates so as to provide that amounts shall be available on the draw dates sufficient to pay the amounts requested by and due to the Lessee. Any interest earned on investments of such funds shall be paid to the Lessee. The Lessor shall not be liable for any loss resulting from the liquidation of each and every such investment and the Lessee shall bear the risk of such loss, if any.

(h) Application in Default. Any amount referred to in paragraphs (d), (e) or (f) of this Section 10 which is payable to the Lessee shall not be paid to the Lessee or, if it has been previously paid to the Lessee, shall not be retained by the Lessee, if an Event of Default or Potential Default shall have occurred and be continuing. In such event, all such amounts shall be paid to and held by the Lessor as security for the obligations of the Lessee hereunder or, at the Lessor's option, applied by the Lessor toward payment of any of such obligations of the Lessee at the time due hereunder as the Lessor may elect. At such time there shall not be continuing any Event of Default or Potential Default, all such amount

-30-

the time held by the Lessor in excess of the amount, if any, which the Lessor shall have elected to apply as above provided shall be paid to the Lessee.

(i) Certificates, Etc. On or before the execution of this Lease, on the Effective Date with respect to any Unit of Equipment, and annually on or before the anniversary of the date of this Lease, the Lessee will furnish to the Lessor certificates or other evidence reasonably acceptable to the Lessor certifying that the insurance then carried and maintained on each Unit of Equipment complies with the terms hereof.

(j) Use or Operation of Equipment. The Lessee covenants that it will not use or operate any Equipment or permit the use or operation of any Equipment at a time when the insurance required by this Section 10 is not in force with respect to such Equipment.

(k) Prosecution of Claims. The Lessee may, at its cost and expense, prosecute any claim against any insurer or contest any settlement proposed by any insurer, and the Lessee may bring any such prosecution or contest in the name of the Lessor, the Lessee, or both, and the Lessor will join therein at the Lessee's request; provided, that the Lessee shall indemnify the Lessor against any losses, costs or expenses (including reasonable attorneys' fees) which the Lessor may incur in connection with such prosecution or contest.

SECTION 11. Indemnities.

The Lessee shall indemnify and hold harmless the Lessor, Merrill, Merrill Lynch, Merrill Leasing, any Assignee, any successor or successors, and any Affiliate of each of them, and their respective officers, directors, incorporators, shareholders, partners (general and limited, including, without limitation, the general and limited partners of the Lessor), employees, agents and servants (each of the foregoing an "Indemnified Person") from and against all liabilities (including, without limitation, strict liability in tort), taxes, losses, obligations, claims (including, without limitation, strict liability in tort), damages, penalties, causes of action, suits, costs and expenses (including, without limitation, attorneys' and accountants' fees and expenses) or judgments of any nature relating to or in any way arising out of:

(a) The ordering, delivery, acquisition, construction, title on acquisition, rejection, installation, possession, titling, retitling, registration, reregistration, custody by the Lessee of title and registration documents, ownership, use, non-use, misuse, financing, operation, transportation, repair, control or disposition, including, without limitation, disposition at the end of any Extended or Renewal Term, of any Equipment leased or to be leased hereunder, (i) except to the extent that such costs are included in the Acquisition Cost of such Equipment within the limitations provided in paragraph (a)(iv) of Section 3 hereof (or within any change of such limitations agreed to in writing by the Lessor and the Lessee), (ii) except for any general administrative expenses of the Lessor, (iii) except the income taxes

-31-

with respect to which indemnification is excluded under paragraph (c) of this Section 11 and (iv) except that this indemnity shall not increase any payment required to be made by the Lessee pursuant to paragraphs (b)(iii)(A) or (c)(iii)(A) of Section 12 of this Lease;

(b) The assertion of any claim or demand based upon any infringement or alleged infringement of any patent or other right, by or in respect of any Equipment; provided, however, that upon request of the Lessee, the Lessor will make available to the Lessee the Lessor's rights under any similar indemnification arising from any manufacturer's or vendor's warranties or undertakings with respect to any Equipment;

(c) All U.S. Federal, state, county, municipal, foreign or other fees and taxes of whatsoever nature, including but not limited to license, qualification, franchise, sales, use, gross income, gross receipts, ad valorem, business, personal property, real estate, value added, excise, motor vehicle, occupation fees and stamp or other taxes or tolls of any nature whatsoever, and penalties and interest thereon, whether assessed, levied against or payable by the Lessor or otherwise, with respect to any Equipment or the acquisition, purchase, sale, rental, use, operation, control, ownership or disposition of any Equipment or measured in any way by the value thereof or by the business of, investment in, or ownership by the Lessor with respect thereto; provided, that this indemnity shall not apply to Federal net income taxes, or to state and local net income taxes, except that such indemnity shall apply to state and local net income taxes (A) to the extent imposed by reason in whole or in part of (1) a relation or asserted relation of any such taxing jurisdiction to the Equipment or to the transactions contemplated herein or (2) the actual or deemed use by any person of the Equipment in such taxing jurisdiction, other than in the case of both clauses (1) and (2), taxes to the extent such taxes would have been imposed by a taxing jurisdiction because of a relationship between the Lessor and such taxing jurisdiction without regard to the circumstances described in clauses (1) and (2) and (B) to the extent imposed as a result of the inability to claim, disallowance or other loss by Hero Leasing, Limited Partnership of deductions customarily allowed in computing net income (e.g., interest expense, financing, administrative, ordinary operating expenses and other fees and expenses); or

(d) Any violation by the Lessee, or alleged violation by the Lessee, of this Lease or of any contracts or agreements to which the Lessee is a party or by which it is bound or of any laws, rules, regulations, orders, writs, injunctions, decrees, consents, approvals, exemptions, authorizations, licenses and withholdings of objection, of any governmental or public body or authority and all other Legal Requirements.

The Lessee shall forthwith upon demand reimburse any Indemnified Person for any sum or sums expended with respect to any of the foregoing or, upon request from any Indemnified Person, shall pay such amounts directly. Any payment made to or on behalf of any Indemnified Person pursuant to this Section 11 shall be increased to such amount as will, after taking into account all taxes imposed with respect to the accrual or receipt of such pay-

ment (as the same may be increased pursuant to this sentence), equal the amount of the payment, reduced by the amount of any savings in such taxes actually realized by the Indemnified Person as a result of the payment or accrual of the amounts in respect of which the payment to or on behalf of the Indemnified Person hereunder is made. To the extent that the Lessee in fact indemnifies any Indemnified Person under the indemnity provisions of this Lease, the Lessee shall be subrogated to such Indemnified Person's rights in the affected transaction and shall have a right to determine the settlement of claims therein.

The indemnities contained in this Section 11 shall not be affected by any termination of this Lease as a whole or in respect of any Unit of Equipment leased hereunder or any failure or refusal of the Lessee to accept any Equipment acquired or ordered pursuant to the terms hereof.

Notwithstanding any provisions of this Section 11 to the contrary, the Lessee shall not indemnify and hold harmless any Indemnified Person against any claims and liabilities arising solely from the gross negligence or willful misconduct of such Indemnified Person.

In the event any claim, action, proceeding or suit is brought against an Indemnified Person with respect to which the Lessee would be required to indemnify such Indemnified Person, the Lessee shall have the right to assume the defense thereof, including the employment at its expense of counsel; provided that the Lessee shall not have the right, to the extent that such Indemnified Person shall deliver to the Lessee a written notice waiving the benefits of the indemnification of such Indemnified Person provided by this Section 11 in connection with such claim, action, proceeding or suit. Notwithstanding the foregoing, if (i) any criminal proceeding is brought against an Indemnified Person who is an individual, (ii) the action threatens to restrain or adversely affect the conduct of the business of the Indemnified Person, but not the business of the Lessor's ownership of the Property or Equipment under this Lease, (iii) the claim, action, proceeding or suit seeks damages of more than \$10,000,000, or (iv) independent counsel to an Indemnified Person shall conclude that there may be defenses available to the Indemnified Person which are different from, or additional to, and may conflict with those available to the Lessee, the Lessee shall not have the right to assume the defense of any such action on behalf of the Indemnified Person if such Indemnified Person chooses to defend such action, and all reasonable costs, expenses and attorneys' fees incurred by the Indemnified Person in defending such action shall be borne by the Lessee; provided, that, in connection with any civil litigation or proceedings in the same jurisdiction with respect to a matter, the Lessee shall not be liable for more than one separate firm (together with not more than one local counsel) on behalf of all Indemnified Persons with common defenses. Notwithstanding the assumption of its defense by the Lessee pursuant to this paragraph, any Indemnified Person shall have the right to employ separate counsel and to participate in its defense, but the fees and expenses of such counsel shall be borne by the Indemnified Person. In addition, the Lessee will not be liable

for any settlement of any claim, action, proceeding or suit unless the Lessee has consented thereto in writing. Any decision by an Indemnified Person to employ its own counsel rather than counsel selected by the Lessee (whether or not at the Lessee's expense) shall in no way affect any rights of such Indemnified Person otherwise arising under this Section 11.

SECTION 12. Lessee's Right to Terminate.

(a) So long as no Event of Default has occurred and is continuing, the Lessee shall have the right, upon ninety (90) days' notice to the Lessor, to terminate the lease of all Units of Equipment under a single Unit Leasing Record on the Basic Rent Payment Date of the last month of the Initial Term or on any Basic Rent Payment Date during the Extended Term or the Renewal Term, if any, by arranging, at its own cost and expense, for the sale of such Equipment for cash in an arms' length transaction on the date of termination and the receipt by the Lessor of the proceeds of such sale. At the time a Unit of Equipment is sold pursuant to this Section 12, such Unit shall not be undergoing any repairs, additions or alterations, shall be in compliance with all Legal Requirements and shall not be subject to any Liens or Permitted Contests.

(b) In the event the Lessee exercises its right to terminate the lease of any Equipment pursuant to this Section 12 on the Basic Rent Payment Date of the last month of the Initial Term with respect to such Equipment or in the event a termination of the lease of any Equipment occurs pursuant to Section 14 (a)(i) hereof and the Basic Rent Payment Date on which such termination occurs is on or before the last month of the Initial Term of such Equipment and the Lessee chooses to effect a sale pursuant to this Section:

- (i) if the proceeds of sale are greater than the Adjusted Acquisition Cost of the Equipment sold, the Lessor shall pay to the Lessee the amount by which such proceeds exceed such Adjusted Acquisition Cost;
- (ii) if the proceeds of sale are equal to or less than the Adjusted Acquisition Cost of the Equipment sold, but greater than or equal to 17% of the Adjusted Acquisition Cost of such Equipment, the Lessee shall pay to the Lessor an amount equal to (A) such Adjusted Acquisition Cost less (B) the proceeds of such sale; and
- (iii) if the proceeds of sale are less than 17% of the Adjusted Acquisition Cost of the Equipment sold, the Lessee shall pay to the Lessor an amount equal to the sum of (A) 83% of such Adjusted Acquisition Cost and (B) the amount by which the residual value of such Equipment has been reduced by wear and tear in excess of that attributable to normal use (the amount of such excess wear and tear to be such amount as the Lessor and the Lessee

agree, or if no agreement is reached, the amount determined pursuant to the Appraisal Procedure).

(c) In the event the Lessee exercises its right to terminate the lease of any Equipment pursuant to this Section 12 on any Basic Rent Payment Date during the Extended Term or Renewal Term with respect to such Equipment or a sale of Equipment occurs during the Extended Term or Renewal Term as the result of the Lessee's election under paragraph (b)(i) of Section 14 hereof:

- (i) if the proceeds of sale are greater than the Adjusted Acquisition Cost of the Equipment sold, the Lessor shall pay to the Lessee the amount by which such proceeds exceed such Adjusted Acquisition Cost;
- (ii) if the proceeds of sale are equal to or less than the Adjusted Acquisition Cost of the Equipment sold, but greater than or equal to 13% of such Adjusted Acquisition Cost, the Lessee shall pay to the Lessor an amount equal to (A) such Adjusted Acquisition Cost less (B) the proceeds of such sale; and
- (iii) if the proceeds of sale are less than 13% of the Adjusted Acquisition Cost, the Lessee shall pay to the Lessor an amount equal to the sum of (A) 87% of such Adjusted Acquisition Cost and (B) the amount by which the residual value of such Equipment has been reduced by wear and tear in excess of that attributable to normal use (the amount of such excess wear and tear to be such amount as the Lessor and the Lessee agree, or if no agreement is reached, the amount determined pursuant to the Appraisal Procedure).

(d) All payments and credits referred to in paragraphs (b) and (c) above shall be made on the termination date of any Equipment pursuant to this Section 12, and the parties shall account to each other for such payments and credits, and the Lessee shall pay to the Lessor all Basic Rent payable, the Variable Component of Basic Rent accrued with respect to such Equipment and any Additional Rent and other amounts owing hereunder. Upon receipt by the Lessor of the proceeds of sale and all other amounts then due and owing hereunder, the Lessor shall transfer title to such Equipment to the purchaser at the sale designated by the Lessee. The "proceeds of sale" referred to in paragraphs (b) and (c) above shall mean the proceeds of sale without reduction for any amounts paid by the Lessee. In the event of a sale pursuant to this Section 12, neither the Lessee nor any Affiliate of the Lessee shall purchase the Equipment sold.

(e) In its notice given pursuant to paragraph (a) of this Section 12, the Lessee shall advise the Lessor if the sale provided for in such notice will result in the applicability of paragraph (b)(iii) of Section 12 or paragraph (c)(iii) of Section 12 hereof. If the Lessee

-35-

advises the Lessor that any such Section will be applicable, the Lessor may arrange for such sale to be made to a purchaser designated by the Lessor, if such purchaser will pay an amount sufficient to render paragraph (b)(iii) of Section 12 or paragraph (c)(iii) of Section 12 hereof inapplicable. Unless the Lessor shall arrange for such sale and shall give the Lessee notice thereof within thirty (30) days of the Lessor's receipt of the Lessee's notice, the Lessee may proceed with the sale to a purchaser designated by it. Within thirty (30) days of the Lessee's receipt of the Lessor's notice provided for in the preceding sentence, the Lessee may arrange for such sale to be made to another purchaser designated by it, if such purchaser shall pay an amount sufficient to render paragraph (b)(iii) of Section 12 or paragraph (c)(iii) of Section 12 hereof inapplicable.

SECTION 13. Lessee's Rights of Purchase and Renewal.

(a) So long as no Event of Default has occurred and is continuing, the Lessee shall have the right, upon ninety (90) days' written notice to the Lessor, to purchase any Unit of Equipment on the Basic Rent Payment Date of the last month of the Initial Term or on any Basic Rent Payment Date during any month of the Extended Term or the Renewal Term, if any, thereof for an amount equal to the greater of its Adjusted Acquisition Cost or its fair market value. In connection with any purchase under this paragraph (a), on the Basic Rent Payment Date upon which such purchase occurs, the Lessee shall pay to the Lessor the purchase price, all Basic Rent payable, the Variable Component of Basic Rent accrued with respect to such Equipment and any Additional Rent and other amounts owing hereunder.

(b) So long as no Event of Default has occurred and is continuing, the Lessee shall have the right, upon ninety (90) days' written notice to the Lessor, to renew the lease of any Unit of Equipment for a term (the "Renewal Term") equal to the number of calendar months set forth opposite such type of Equipment under the heading "Renewal Term" in Exhibit A hereto, commencing on the first day of the calendar month following the last day of the Lease Term thereof, at the fair market value rental.

(c) The fair market value of any Unit of Equipment for purposes of paragraph (a) of this Section 13 and the fair market value rental of any Unit of Equipment for purposes of paragraph (b) of this Section 13 shall be as agreed by the Lessor and the Lessee or, if they are unable to agree, pursuant to the Appraisal Procedure.

SECTION 14. Lessor's Right to Terminate.

(a)(i) The Lessor shall have the right upon written notice to the Lessee to terminate the lease of any or all Equipment as of a Basic Rent Payment Date stipulated such notice if (i) at any time, for any reason (other than an Event of Default by the Lessee under a Credit Agreement (as therein defined) which has not been caused by or results in an Event of Default under this Lease or from a breach by the Lessee of its obligations:

any agreement or document executed and delivered in connection with this Lease), Commercial Paper cannot be issued by the Lessor upon terms reasonably acceptable to the Lessor, the Lessor cannot arrange for bank borrowings to finance or refinance the purchase of such Equipment upon terms reasonably acceptable to the Lessor, and the Lessor may no longer make or continue borrowings under a Credit Agreement sufficient to finance or refinance such purchase, (ii) at any time, for any reason (other than an Event of Default by the Lessor under a Credit Agreement (as therein defined) which has not been caused by or resulted from an Event of Default under this Lease or from a breach by the Lessee of its obligations under any agreement or document executed and delivered in connection with this Lease), a limited partner or partners of the Lessor cannot arrange for borrowings from the bank or banks acting as lender under a Credit Agreement in an amount equal to such limited partners' limited partnership interest or interests in the Lessor or (iii) such bank or banks which shall act as lender to a limited partner or partners of the Lessor shall make a material change in the terms of any such lending arrangement a condition precedent to the extension of such lending arrangement without a corresponding change being effected under the Credit Agreement to which such lender is a party.

(ii) A "Termination Event" shall occur upon the happening of any of the events listed in clauses (A) through (D) below. The lease of any Unit or Units hereunder shall terminate immediately upon the happening of an event listed in clauses (A), (B) or (C) below in respect thereof (each such event a "Utility Termination Event") and this Lease shall terminate in respect of all Units immediately upon the happening of an event listed in clause (D) below (such event a "Lease Termination Event"): (A) as a result of the lease hereunder of any one or more Units or of any of the transactions contemplated by this Lease in respect thereof, the Lessor becomes (or with the passage of time would become), or is declared by the SEC to be, a "holding company" or an "electric utility company" or a "gas utility company" as defined in the 1935 Act, or the Lessor, Merrill, Merrill Leasing, Merrill Lynch, any Assignee, any successor or successors and any Affiliate of the foregoing or their respective officers, directors, shareholders, partners (general and limited, including, without limitation, the general and limited partners of the Lessor) or employees shall become subject to regulation under the 1935 Act; (B) as a result of the lease hereunder of any one or more Units or of any of the transactions contemplated by this Lease in respect thereof, the Lessor becomes (or with the passage of time would become), or is declared by the Secretary of Energy (or any successor thereto) or the FERC to be, a public utility, or the Lessor, Merrill, Merrill Leasing, Merrill Lynch, any Assignee, any successor or successors and any Affiliate of the foregoing or their respective officers, directors, shareholders, partners (general and limited, including, without limitation, the general and limited partners of the Lessor) or employees shall become subject to regulation under the Federal Power Act, the Natural Gas Act or the Atomic Energy Act or otherwise subject to regulation by the FERC or the NRC; (C) as a result of the lease hereunder of any one or more Units or of any of the transactions contemplated by this Lease in respect thereof, the Lessor becomes (or with the passage of time would become), or is declared by any relevant governmental body or similar entity

under the laws of any state or locality, to be, a public utility, or the Lessor, Merrill, Merrill Leasing, Merrill Lynch, any Assignee, any successor or successors and any Affiliate of the foregoing or their respective officers, directors, shareholders, partners (general and limited, including, without limitation, the general and limited partners of the Lessor) or employees shall become subject to regulation as a public utility under any such laws; or (D) any law or regulation or interpretation of any law or regulation shall be adopted or enforced by any governmental or regulatory authority (including, without limitation, the Secretary of Energy, the FERC, the public service commission of any state or any similar commission of any locality, the SEC and the NRC), and as a result of such adoption or enforcement, approval of the transactions contemplated by this Lease shall be required and shall not have been obtained within any grace period after such adoption or enforcement, or as a result of which adoption or enforcement this Lease or any transaction contemplated hereby, including any payments to be made by the Lessee or the ownership of any Equipment or interest therein by the Lessor, shall be or become unlawful or unenforceable or the performance of this Lease shall be rendered impracticable in any material way.

(b) In the event of a termination with respect to any or all Equipment pursuant to paragraph (a)(i) of this Section 14, the Lessee shall be required, at its option, either (i) to arrange for such Equipment to be sold under the terms and subject to meeting the conditions of Section 12 above and with the consequences therein provided, except that such sale must occur on the Basic Rent Payment Date stipulated in the written notice contemplated in paragraph (a)(i) of this Section 14, or (ii) to purchase, on the Basic Rent Payment Date stipulated in the written notice contemplated by paragraph (a)(i) of this Section 14, such Equipment for cash at its Adjusted Acquisition Cost. In connection with any purchase or sale under this paragraph, on the Basic Rent Payment Date upon which such purchase or sale occurs, the Lessee shall pay to the Lessor, in addition to any purchase price payable, all Basic Rent payable, the Variable Component of Basic Rent accrued with respect to such Equipment and any Additional Rent and other amounts owing hereunder.

(c) Upon the date of the occurrence of a Utility Termination Event or Lease Termination Event (such date being herein called the "Termination Event Date"), (i) with respect to a Utility Termination Event, the lease hereunder of all Units resulting in such Event shall terminate, and (ii) with respect to a Lease Termination Event, this Lease shall terminate, in both cases, except with respect to obligations and liabilities of the Lessee, actual or contingent, which arose under this Lease on or prior to the Termination Event Date and except for the Lessee's obligations set forth in Sections 7, 8, 9, 10, 15, 16, 17, 18 and 19 hereof, and in this Section 14(c), all of which obligations will continue with respect to the affected Units until the payment by the Lessee provided for below and the delivery of a bill of sale, a deed or similar documentation by the Lessor in respect of any affected Units, which Lessor shall not unreasonably withhold or delay upon receipt of payment as provided herein, and except that Lessee's obligations under Section 11 hereof shall continue as set forth herein. Forthwith also upon such termination, in the case of a Utility Termination

Event, title to, and the entire interest of the Lessor in the Units resulting in such Event shall automatically transfer to and be vested in the Lessee and in the case of a Lease Termination Event, title to, and the entire interest of the Lessor in, all Equipment shall automatically transfer to and be vested in the Lessee, without the necessity of any action by either the Lessor or the Lessee, but subject to the rights of any Assignee. As soon as possible after either the Lessor or the Lessee shall learn of the happening of any Utility Termination Event, such party shall give notice thereof to the other party hereto which notice shall (i) acknowledge that in respect of all Units resulting in such Event, the lease hereunder of such Units has terminated, subject to the continuing obligations of the Lessee mentioned above, and that title to and ownership of such Units has transferred to and vested in the Lessee, subject as aforesaid and (ii) state that on the Business Day prior to the last Business Day of the calendar month next succeeding the Termination Event Date (such date being herein called the "Termination Settlement Date"), the Lessee shall be obligated to pay to the Lessor, as the purchase price for such Units, the Adjusted Acquisition Cost of such Units. As soon as possible after either the Lessor or the Lessee shall learn of the happening of any Lease Termination Event (for purposes of this provision, any Lease Termination Event shall be deemed to have happened upon the passage of any applicable grace period), such party shall give notice thereof to other party hereto which notice shall (i) acknowledge that this Lease has terminated, subject to the continuing obligations of the Lessee mentioned above, and that title to and ownership of all Equipment has transferred to and vested in the Lessee, subject as aforesaid and (ii) state that on the Termination Settlement Date, the Lessee shall be obligated to pay to the Lessor, as the purchase price for all Equipment, the sum of the Adjusted Acquisition Costs of all Equipment. In connection with any purchase under this paragraph (c), on the date upon which such purchase occurs, the Lessee shall pay to the Lessor, in addition to any purchase price payable, all Basic Rent payable, the Variable Component of Basic Rent accrued with respect to the Units being purchased in the case of a Utility Termination Event or the Variable Component of Basic Rent accrued with respect to all Equipment in the case of a Lease Termination Event and any Additional Rent and other amounts owing hereunder. Upon the delivery of notice as provided in this paragraph (c), the Lessee shall become obligated to make the payment required on the Termination Settlement Date to the same extent as if it had acknowledged in writing its obligation so to do. The Lessee's obligation to make such payment shall be unconditional and unaffected by any event or matter whatsoever including, without limitation, failure of the Lessor to deliver a bill of sale, a deed or similar confirmatory documentation of the quality, condition, existence, utility or title of or to any of the Equipment. Any such payment made by Lessee shall not prejudice, or constitute a waiver of, any right, claim or cause of action which the Lessee shall have against the Lessor.

SECTION 15. Loss of or Damage to Equipment.

(a) The Lessee hereby assumes all risk of loss of or damage to Equipment, however caused. No loss of or damage to any Equipment shall impair any obligation of the

Lessee under this Lease, which shall continue in full force and effect with respect to any lost or damaged Equipment.

(b) In the event of damage of any kind whatsoever to any Equipment (unless the same is determined by the Lessee to be damaged beyond repair), the Lessee, at its own cost and expense, shall place the same in good operating order, repair, condition and appearance. The Lessee's right to any proceeds paid under any insurance policy or policies required under Section 10 of this Lease with respect to any such damage to any Equipment which has been so placed by the Lessee in good operating order, repair, condition and appearance is governed by paragraph (f) of Section 10 hereof.

(c) If any Equipment is lost, stolen, destroyed, seized, confiscated, rendered unfit for use or damaged beyond repair (in the reasonable judgment of the Lessee), or if the use thereof by the Lessee in the ordinary course of business is prevented by the act of any third Person or Persons or governmental instrumentality for a period exceeding forty-five (45) days or if such Equipment is attached (other than on a claim against the Lessor as to which the Lessee is not obligated to indemnify the Lessor) and the attachment is not removed within forty-five (45) days, then in any such event, (i) the Lessee shall promptly notify the Lessor in writing of such event, (ii) on the Basic Rent Payment Date following such event the Lessee shall pay to the Lessor an amount equal to the Adjusted Acquisition Cost of such Equipment, minus the amount of any insurance proceeds, if any, theretofore actually received by the Lessor in respect of such Equipment, (iii) the Lease Term or Renewal Term of such Equipment shall continue until the Basic Rent Payment Date on which the Lessor receives payment from the Lessee of the amount payable pursuant to this paragraph (c) and of Basic Rent payable, the Variable Component of Basic Rent accrued with respect to such Equipment and any Additional Rent and other amounts owing hereunder, and shall thereupon terminate and (iv) the Lessor shall on such Basic Rent Payment Date transfer title to such Equipment to the Lessee, and the Lessee shall be subrogated to the Lessor's rights resulting from such event. Insurance proceeds, if any, received by the Lessor in excess of the Adjusted Acquisition Cost of the affected Equipment, so long as no Event of Default or Potential Default has occurred and is continuing, shall be paid by the Lessor to the Lessee upon the payment by the Lessee of all amounts referred to in the preceding sentence. In the event that the Lessor receives insurance proceeds after the Lessee has paid to the Lessor all such amounts required to be paid to the Lessor pursuant to the second preceding sentence, the Lessor shall, so long as no Event of Default or Potential Default has occurred and is continuing, pay to the Lessee the excess of such insurance proceeds over the Adjusted Acquisition Cost of the affected Equipment.

SECTION 16. Surrender of Equipment.

(a) Subject to the provisions of Sections 12, 13, 14, 15, 18 and 19 hereof, upon termination of the lease of any Equipment hereunder, the Lessee shall surrender such

-40-

Equipment to the Lessor. Equipment shall be surrendered by delivering the same to the Lessor at such location as the Lessor and the Lessee may agree and, if they are unable to agree, at such location as the Lessor may reasonably direct. Such Equipment shall be surrendered in the condition required by Section 9(b) and, if applicable, Section 16(b) hereof. Any cost of removal and delivery of Equipment to the Lessor shall be paid by the Lessee.

(b) Subject to the provisions of Sections 12, 13, 14, 15, 19 and 20 hereof, upon termination of the lease of any Railcar or Barge, the Lessee will, at its own cost and expense, deliver possession of such Railcar or Barge to the Lessor at such location or locations in the continental United States as the Lessor may reasonably designate, or, in the absence of such designation, as the Lessee may select, or, at the request of the Lessor, permit the Lessor to store such Railcar on such storage tracks or wharf or fleeting area owned or controlled by the Lessee (provided the Lessee has space on such tracks or in such wharf or fleeting area) in respect to a Barge as the Lessee may select for a period not exceeding ninety (90) days and transport the same upon disposition of such Railcar or Barge, at any time within such ninety (90) day period, to any such location or locations, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Railcar or Barge to be at the expense and risk of the Lessee; provided, however, that the Railcars or Barges shall be returned to the Lessor, upon such termination, in not more than four groups of Railcars or Barges (the number of such groups and the number of Railcars or Barges in each such group to be designated by the Lessor). During any such storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Railcar or Barge, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of gross negligence or an intentional tortious act of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. Each Railcar or Barge returned to the Lessor pursuant to this paragraph (b) shall (i) be in the order, repair and condition as required by Section 9(b) of this Lease, (ii) meet the standards then in effect under the interchange rules of the Association of American Railroads or USCG, as the case may be, and/or the applicable rules of any governmental agency or other organization with jurisdiction and (iii) have attached or affixed thereto any special device considered the property of the Lessor and have removed therefrom any such device not so considered the property of the Lessor. During any such storage period, the Lessee shall maintain the Railcars or Barges in such manner as owners or lessees of similar units of railroad equipment or marine equipment normally maintain such units owned or leased by them in similar storage circumstances. The assembling, delivery, storage and transporting of the Railcars or Barges as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Railcars or Barges.

SECTION 17. Events of Default.

Any of the following events of default shall constitute an "Event of Default" and shall give rise to the rights on the part of the Lessor described in Section 18 hereof:

(a) Failure of the Lessee to pay amounts due to the Lessor at the time of any scheduled purchase or sale of any Unit of Equipment hereunder, failure of the Lessee to pay Basic Rent for more than five (5) days after such payment is due pursuant to Section 7 hereof, or failure of the Lessee to pay any other amount payable by the Lessee hereunder for more than ten (10) days after such payment is due; or

(b) Failure to maintain the insurance required by Section 10 hereof, or default in the performance of the covenant contained in paragraph (j) of Section 10 hereof; or

(c) Default in the performance of any other obligation or covenant of the Lessee pursuant to this Lease or any Consent and the continuance of such default for ten (10) days after written notice to the Lessee by the Lessor or any Assignee; or

(d) The entry of a decree or order for relief in respect of the Lessee by a court having jurisdiction in the premises in an involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Lessee or of any substantial part of the Lessee's property, or ordering the winding up or liquidation of the Lessee's affairs, and the continuance of any such decree or order unstayed and in effect for a period of thirty (30) consecutive days, or the commencement or filing of involuntary proceedings or an involuntary petition against the Lessee before a court having jurisdiction in the premises under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law and such proceedings or petition shall be unstayed or undismissed for a period of forty-five (45) consecutive days; or

(e) The suspension or discontinuance of the Lessee's business operations, its insolvency (however evidenced) or its admission of insolvency or bankruptcy, or the commencement by the Lessee of a voluntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, or the consent by it to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Lessee or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the failure of the Lessee generally to pay its debts as such debts become due, or the taking of corporate action by the Lessee in furtherance of any such action; or

-42-

(f) A default or event of default, the effect of which is to permit the holder or holders of any indebtedness (including, without limitation, lease obligations which are shown on the balance sheet of the Lessee or which relate to sale-leaseback transactions) in excess of \$20,000,000 of the Lessee or a trustee or agent on behalf of such holder or holders, to cause such indebtedness to become due prior to its stated maturity shall occur under the provisions of any agreement pursuant to which such indebtedness was created or any instrument evidencing such indebtedness or any obligation of the Lessee for the payment of such indebtedness shall become or be declared to be due and payable prior to its stated maturity, or shall not be paid when due; or

(g) Any representation or warranty made by the Lessee in this Lease, any Consent or any document contemplated hereby or thereby proves to be false or inaccurate in any material respect; or

(h) Final judgment for the payment of money in excess of \$20,000,000 shall be rendered against the Lessee by any U.S. Federal or state court and the same shall remain undischarged for a period of thirty (30) days during which execution of such judgment shall not be effectively stayed; or

(i) Any Barge shall have been arrested by the U.S. Marshal to enforce a maritime lien and such arrest shall not have been lifted (by an appropriate bond or letter of undertaking or otherwise) within ten (10) days of such arrest; or

(j) So long as Barges are subject to this Lease, the Lessee has ceased to be a U.S. Citizen as defined in the Shipping Act, 1916, as amended; or

(k) (i) the institution of any steps by the Lessee or any sponsor of a Pension Plan to terminate a Pension Plan, if as a result of such termination the Lessee could be required to make a contribution to such Pension Plan in excess of \$25,000,000, or (ii) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a lien under Section 302(f) of ERISA.

SECTION 18. Rights upon Default.

Upon the occurrence and continuation of any Event of Default, the Lessor may do any one or more of the following:

(a) Terminate the lease of any or all Equipment leased hereunder;

-43-

(b) Whether or not the lease of any Equipment is terminated, take immediate possession of and remove any or all Equipment and other equipment of the Lessor in the possession of the Lessee, wherever situated, and for such purpose, enter upon any premises without liability to the Lessee for so doing;

(c) Whether or not any action has been taken under paragraph (a) or (b) above, sell any Equipment (with or without the concurrence or request of the Lessee);

(d) Hold, use, occupy, operate, remove, lease or keep idle any or all Equipment as the Lessor in its sole discretion may determine, without any duty to account to the Lessee with respect to any such action or inaction or for any proceeds thereof; and

(e) Exercise any other right or remedy which may be available under applicable law and in general proceed by appropriate judicial proceedings, either at law or in equity, to enforce the terms hereof or to recover damages for the breach hereof.

Suit or suits for the recovery of any default in the payment of any sum due hereunder or for damages may be brought by the Lessor from time to time at the Lessor's election, and nothing herein contained shall be deemed to require the Lessor to await the date whereon this Lease or the term hereof would have expired by limitation had there been no such default by the Lessee or no such termination or cancellation.

The receipt of any payments under this Lease by the Lessor with knowledge of any breach of this Lease by the Lessee or of any default by the Lessee in the performance of any of the terms, covenants or conditions of this Lease, shall not be deemed to be a waiver of any provision of this Lease.

No receipt of moneys by the Lessor from the Lessee after the termination or cancellation hereof in any lawful manner shall reinstate, continue or extend the Lease Term or any Renewal Term, or affect any notice theretofore given to the Lessee, or operate as a waiver of the right of the Lessor to enforce the payment of Basic Rent or Additional Rent or other charges payable hereunder; it being agreed that, after the service of notice to terminate or cancel this Lease, and the expiration of the time therein specified, if the default has not been cured in the meantime, or after the commencement of any suit, action or summary proceedings or of any other remedy, the Lessor may demand, receive and collect any moneys payable hereunder, without in any manner affecting such notice, proceedings, suit, action, order, warrant or judgment; and any and all such moneys so collected shall be deemed to be payments on account of the Lessee's liability hereunder.

After any Event of Default, the Lessee shall be liable for, and the Lessor may recover from the Lessee, (i) all Basic Rent accrued to the date of payment, (ii) any Additional Rent owing with respect to all Equipment leased by the Lessee, (iii) all amounts

payable pursuant to Sections 11, 24 and 26 hereof and (iv) all losses, damages, costs and expenses (including, without limitation, attorneys' fees and expenses, commissions, filing fees and sales or transfer taxes) sustained by the Lessor by reason of such Event of Default and the exercise of the Lessor's remedies with respect thereto, including, in the event of a sale by the Lessor of any Equipment pursuant to this Section 18, all costs and expenses associated with such sale. The amounts payable in clauses (i) through (iv) above are hereinafter sometimes referred to as the "Accrued Default Obligations".

After an Event of Default, the Lessor may sell its interest in any Equipment upon any terms that the Lessor deems satisfactory, free of any rights of the Lessee or any Person claiming through or under the Lessee. In the event of any such sale, in addition to the Accrued Default Obligations, the Lessor shall be entitled to recover from the Lessee, as liquidated damages, and not as a penalty, an amount equal to the Adjusted Acquisition Cost of any Equipment so sold, minus the proceeds of such sale received by the Lessor. Proceeds of sale received by the Lessor in excess of the Adjusted Acquisition Cost of such Equipment sold shall be credited against the Accrued Default Obligations the Lessee is required to pay under this Section 18. If such proceeds exceed the Accrued Default Obligations, or, if the Lessee has paid all amounts required to be paid under this Section 18, such excess shall be paid by the Lessor to the Lessee. As an alternative to any such sale, or if the Lessee converts any Equipment after an Event of Default, or if such Equipment is lost or destroyed, in addition to the Accrued Default Obligations, the Lessor may cause the Lessee to pay to the Lessor, and the Lessee shall pay to the Lessor, as liquidated damages and not as a penalty, an amount equal to the Adjusted Acquisition Cost of such Equipment. In the event the Lessor receives payment pursuant to the previous sentence of this paragraph, the Lessor shall transfer all of the Lessor's right, title and interest in and to the Equipment to the Lessee.

In the event of a sale pursuant to this Section 18, upon receipt by the Lessor of the amounts payable hereunder, the Lessor shall transfer all of the Lessor's right, title and interest in and to the Equipment to the Lessee or purchaser other than the Lessee, as the case may be.

No remedy referred to in this Section 18 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to the Lessor at law or in equity, and the exercise in whole or in part by the Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by the Lessor of any or all such other remedies. No waiver by the Lessor of any Event of Default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default.

SECTION 19. Equipment to be Personal Property.

It is the intention and understanding of the Lessor and the Lessee that all Equipment shall be and at all times remain personal property. The Lessee shall obtain and record such instruments and take such steps as may be necessary to prevent any Person from acquiring any rights in Equipment paramount to the rights of the Lessor by reason of such Equipment being deemed to be real property. If, notwithstanding the intention of the parties and the provisions of this Section 19, any Person acquires or claims to have acquired any rights in any Equipment superior to the rights of the Lessor, by reason of such Equipment being deemed to be real property, the Lessee shall promptly notify the Lessor in writing of such fact and (unless the basis for such claim is waived or eliminated to the satisfaction of the Lessor within a period of thirty (30) days from the date it is asserted) the Lessee shall on the Basic Rent Payment Date following the expiration of the thirty (30) day period referred to above in this sentence pay to the Lessor an amount equal to the Adjusted Acquisition Cost of such Equipment at the time of payment. On such Basic Rent Payment Date, in addition to the payment of the Adjusted Acquisition Cost, the Lessee shall pay to the Lessor Basic Rent payable, the Variable Component of Basic Rent accrued with respect to such Equipment and any Additional Rent and other amounts owing hereunder and the lease of such Equipment shall thereupon terminate. The Lessor shall on such Basic Rent Payment Date transfer title to such Equipment to the Lessee, and the Lessee shall be subrogated to the Lessor's rights in the affected transaction.

SECTION 20. Sale or Assignment by Lessor.

(a) The Lessor shall have the right to obtain equity and debt financing for the acquisition and ownership of the Equipment by selling or assigning its right, title and interest in any or all amounts due from the Lessee or any third party under this Lease; provided, that any such sale or assignment shall be subject to the rights and interests of the Lessee under this Lease.

(b) Any Assignee shall, except as otherwise agreed by the Lessor and such Assignee, have all the rights, powers, privileges and remedies of the Lessor hereunder, and the Lessee's obligations as between itself and such Assignee hereunder shall not be subject to any claims or defense that the Lessee may have against the Lessor. Upon written notice to the Lessee of any such assignment, the Lessee shall thereafter make payments of Basic Rent, Additional Rent and other sums due hereunder to the Assignee, to the extent specified in such notice, and such payments shall discharge the obligation of the Lessee to the Lessor hereunder to the extent of such payments. Anything contained herein to the contrary notwithstanding, no Assignee shall be obligated to perform any duty, covenant or condition required to be performed by the Lessor hereunder, and any such duty, covenant or condition shall be and remain the sole obligation of the Lessor.

SECTION 21. Income Taxes.

(a) The Lessor agrees that it will not file any Federal, state or local income tax returns during the Lease Term or Renewal Term, if any, with respect to any Equipment that are inconsistent with the treatment of the Lessee as owner of such Equipment for Federal, state and local income tax purposes.

(b) Paragraph (a) of Section 21 above notwithstanding, the Lessor agrees that, at the written request of the Lessee, it will take all such action as may be required to be taken by a lessor to elect under any provision of the Code substantially similar to section 48(d) of the Internal Revenue Code of 1954, as amended prior to the enactment of the Tax Reform Act of 1986, permitting a pass-through of an investment tax credit to a lessee, to treat the Lessee as having acquired any Unit of Equipment that would qualify for such a credit (within the meaning of section 48(b) of the Code); provided, that such request is received by the Lessor reasonably in advance of the date on which the Lessor is required to take such action, and the Lessee provides the Lessor in a timely fashion with all information (other than identifying information pertaining to the Lessee) required to take such action. The Lessor does not represent or warrant to the Lessee that credits will be allowable with respect to any Unit of Equipment or other property under the Code or that any election will be effective to transfer any such credits that are allowable to the Lessee. The Lessor, Merrill, Merrill Lynch and Merrill Leasing shall have no liability to the Lessee resulting from the disallowance to the Lessee of credits under the Code with respect to any Unit of Equipment or other property unless such disallowance is directly and primarily attributable to the failure of the Lessor to comply with its obligations under the first sentence of this paragraph (b).

SECTION 22. Notices and Requests.

All notices, offers, acceptances, approvals, waivers, requests, demands and other communications hereunder or under any other instrument, certificate or other document delivered in connection with the transactions described herein shall be in writing, shall be addressed as provided below and shall be considered as properly given (a) if delivered in person, (b) if sent by express overnight courier service (including, without limitation, Federal Express, Emery, United Parcel Service, DHL, Airborne Express, and other similar express delivery services), (c) in the event overnight delivery services are not readily available, if mailed by international airmail, postage prepaid, registered or certified with return receipt requested, or (d) if sent by telecopy and confirmed; provided, that in the case of a notice by telecopy, the sender shall in addition confirm such notice by writing sent in the manner specified in clauses (a), (b) or (c) of this Section 22. All notices shall be effective upon receipt by the addressee; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon

-47-

such tender. For the purposes of notice, the addresses of the parties shall be as set forth below; provided, however, that any party shall have the right to change its address for notice hereunder to any other location by giving written notice to the other party in the manner set forth herein. The initial addresses of the parties hereto are as follows:

If to the Lessor:

Hero Leasing, Limited Partnership
c/o ML Leasing Equipment Corp.,
Project and Lease Finance Group
North Tower-27th Floor
World Financial Center
250 Vesey Street
New York, New York 10281-1327

Attention: Jean M. Tomaselli
Telephone: (212) 449-7925
Telecopy: (212) 449-2854

With a copy of all notices under this Section 22 to be simultaneously given, delivered or served to Gary Carlin at the following address:

ML Leasing Equipment Corp.
Controller's Office
World Financial Center
South Tower - 8th Floor
225 Liberty Street
New York, New York 10080-6108

If to the Lessee:

Commonwealth Edison Company
37th Floor - East
One First National Plaza
10 South Dearborn Street
Chicago, Illinois 60603

Attention: Treasurer
Telephone: (312) 394-3153
Telecopy: (312) 394-3110

-48-

With a copy of all notices under this Section 22 to any Assignee at such address as such Assignee may specify by written notice to the Lessor and the Lessee.

SECTION 23. Covenant of Quiet Enjoyment.

During the Lease Term or Renewal Term, if any, of any Equipment hereunder and so long as no Event of Default or Potential Default shall have occurred and be continuing, the Lessor recognizes the Lessee's right to quiet enjoyment of the Equipment on the terms and conditions provided in this Lease without any interference from the Lessor or anyone claiming through or under the Lessor.

SECTION 24. Right to Perform for Lessee.

(a) If the Lessee fails to perform or comply with any of its covenants or agreements contained in this Lease, the Lessor may, upon notice to the Lessee but without waiving or releasing any obligations or default, itself perform or comply with such covenant or agreement, and the amount of the reasonable expenses of the Lessor incurred in connection with such performance or compliance, shall be payable by the Lessee, not later than ten (10) days after written notice by the Lessor.

(b) Without in any way limiting the obligations of the Lessee hereunder, the Lessee hereby irrevocably appoints the Lessor as its agent and attorney at the time at which the Lessee is obligated to deliver possession of any Unit of Equipment to the Lessor, to demand and take possession of such Unit of Equipment in the name and on behalf of the Lessee from whomsoever shall be at the time in possession thereof.

SECTION 25. Merger, Consolidation or Sale of Assets.

The Lessee may not consolidate with or merge into any other corporation or sell all or substantially all of its assets to any Person, except that the Lessee may consolidate with or merge into any other corporation which is an Affiliate of the Lessee, or sell all or substantially all of its assets to any Person which is an Affiliate of the Lessee; provided, that the surviving corporation or transferee Person, if other than the Lessee, shall assume, by execution and delivery of instruments satisfactory to the Lessor, the obligations of the Lessee hereunder and become successor to the Lessee, but the Lessee shall not thereby be released, without the consent of the Lessor, from its obligations hereunder and; provided, further, that such surviving corporation or transferee Person will, on a pro forma basis, immediately after such consolidation, merger or sale, possess a consolidated net worth and credit rating substantially equivalent to or greater than that of the Lessee immediately prior to such consolidation, merger or sale. The terms and provisions of this Lease shall be binding upon and inure to the benefit of the Lessee and its respective successors and assigns.

SECTION 26. Expenses.

The Lessee shall pay all of the out-of-pocket costs and expenses incurred by the Lessor, and any Assignee in connection with this Lease including, without limitation, the reasonable fees and disbursements of counsel to the Lessor and counsel to any Assignee.

SECTION 27. Permitted Contests.

(a) The Lessee shall not be required, nor shall the Lessor have the right, to pay, discharge or remove any tax, assessment, levy, fee, rent, charge or Lien, or to comply or cause any Unit of Equipment to comply with any Legal Requirements applicable to any Unit of Equipment or the use or operation thereof, so long as no Event of Default exists under this Lease with respect to any Unit of Equipment, and, in the opinion of the Lessee's counsel, the Lessee shall have reasonable grounds to contest the existence, amount, applicability or validity thereof by appropriate proceedings, which proceedings in the reasonable judgment of the Lessor or any Assignee, (i) shall not involve any material danger that any Unit of Equipment or any Basic Rent or any Additional Rent would be subject to sale, forfeiture or loss, as a result of failure to comply therewith, (ii) shall not affect the payment of any Basic Rent or any Additional Rent or other sums due and payable hereunder or result in such sums being payable to a Person other than the Lessor or any Assignee, (iii) will not place the Lessor or any Assignee in any danger of civil liability for which the Lessor is not adequately indemnified (the Lessee's obligations under Section 11 of this Lease shall be deemed to be adequate indemnification if no Event of Default or Potential Default exists and if such civil liability is reasonably likely to be less than \$1,000,000 per Unit and \$5,000,000 in the aggregate) or to any criminal liability, (iv) if involving taxes, shall suspend the collection of taxes, and (v) shall be permitted under and be conducted in accordance with the provisions of any other instrument to which the Lessee or the Unit of Equipment is subject and shall not constitute a default thereunder (the "Permitted Contest"). The Lessee shall conduct all Permitted Contests in good faith and with due diligence and shall promptly after the final determination (including appeals) of any Permitted Contest, pay and discharge all amounts which shall be determined to be payable therein. The Lessor shall cooperate in good faith with the Lessee with respect to all Permitted Contests conducted by the Lessee pursuant to this Section 27.

(b) In the event the Lessor deems, in its sole discretion, that its interests under this Lease or in any Unit of Equipment are not adequately protected in connection with a Permitted Contest brought by the Lessee under this Section 27, the Lessee shall give such security, as may be reasonably demanded by the Lessor to insure payment of such tax, assessment, levy, fee, rent, charge or Lien and compliance with Legal Requirements and to prevent any sale or forfeiture of any Unit of Equipment, any Basic Rent or any Additional Rent by reason of such nonpayment or noncompliance. The Lessee hereby agrees that the Lessor may assign such security provided by the Lessee to any Assignee.

-50-

(c) At least ten (10) days prior to the commencement of any Permitted Contest, the Lessee shall notify the Lessor in writing thereof if the amount in contest exceeds \$100,000, and shall describe such proceeding in reasonable detail. In the event that a taxing authority or subdivision thereof proposes an additional assessment or levy of any tax for which the Lessee is obligated to reimburse the Lessor under this Lease, or in the event that the Lessor is notified of the commencement of an audit or similar proceeding which could result in such an additional assessment, then the Lessor shall in a timely manner notify the Lessee in writing of such proposed levy or proceeding.

SECTION 28. Miscellaneous.

(a) All agreements, indemnities, representations and warranties, and the obligation to pay Additional Rent contained in this Lease shall survive the expiration or other termination hereof.

(b) This Lease, the Unit Leasing Records covering Equipment leased pursuant hereto and the instruments, documents or agreements referred to herein constitute the entire agreement between the parties and no representations, warranties, promises, guarantees or agreements, oral or written, express or implied, have been made by any party hereto with respect to this Lease or the Equipment, except as provided herein or therein.

(c) This Lease may not be amended, modified or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination or waiver shall be effective for any purpose unless it is in writing, signed by the party against whom enforcement thereof is sought. A waiver on one occasion shall not be construed to be a waiver with respect to any other occasion.

(d) The captions in this Lease are for convenience of reference only and shall not be deemed to affect the meaning or construction of any of the provisions hereof. Any provision of this Lease which is prohibited by law or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and the parties hereto shall negotiate in good faith appropriate modifications to reflect such changes as may be required by law, and, as nearly as possible, to produce the same economic, financial and tax effects as the provision which is prohibited or unenforceable; and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Lessee and the Lessor hereby waive any provision of law which renders any provision hereof prohibited or unenforceable in any respect. **THIS LEASE HAS BEEN DELIVERED IN THE STATE OF NEW YORK AND SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE; PROVIDED,**

-51-

HOWEVER, THAT THE PARTIES HERETO SHALL BE ENTITLED TO ALL RIGHTS CONFERRED BY 49 U.S.C. § 11303 AND THE GENERAL MARITIME LAW OF THE UNITED STATES OF AMERICA. THE LESSEE HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND ANY COURT IN THE STATE OF NEW YORK LOCATED IN THE CITY AND COUNTY OF NEW YORK IN ANY ACTION, SUIT OR PROCEEDING BROUGHT AGAINST IT AND RELATED TO OR IN CONNECTION WITH THIS LEASE OR THE TRANSACTIONS CONTEMPLATED HEREBY, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LESSEE HEREBY WAIVES AND AGREES NOT TO ASSERT BY WAY OF MOTION, AS A DEFENSE OR OTHERWISE IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURTS, THAT THE SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM, THAT THE VENUE OF THE SUIT, ACTION OR PROCEEDING IS IMPROPER, OR THAT THIS LEASE OR ANY DOCUMENT OR ANY INSTRUMENT REFERRED TO HEREIN OR THE SUBJECT MATTER HEREOF MAY NOT BE LITIGATED IN OR BY SUCH COURTS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LESSEE AGREES NOT TO SEEK AND HEREBY WAIVES THE RIGHT TO ANY REVIEW OF THE JUDGMENT OF ANY SUCH COURT BY ANY COURT OF ANY OTHER NATION OR JURISDICTION WHICH MAY BE CALLED UPON TO GRANT AN ENFORCEMENT OF SUCH JUDGMENT. THE LESSEE AGREES THAT SERVICE OF PROCESS MAY BE MADE UPON IT BY CERTIFIED OR REGISTERED MAIL TO THE ADDRESS FOR NOTICES SET FORTH IN THIS LEASE OR ANY METHOD AUTHORIZED BY THE LAWS OF NEW YORK. THE LESSEE EXPRESSLY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM RELATED TO THIS LEASE OR THE TRANSACTIONS CONTEMPLATED HEREBY. THE LESSEE ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION 28(d) HAVE BEEN BARGAINED FOR AND THAT IT HAS BEEN REPRESENTED BY COUNSEL IN CONNECTION THEREWITH.

(e) In connection with any sale of Equipment pursuant to Sections 12, 13, 14, 15, 18 or 19 of this Lease, when the Lessor transfers title, such transfer shall be on an as-is, non-installment sale basis, without warranty by, or recourse to, the Lessor.

(f) In connection with the sale or purchase of any Unit of Equipment pursuant to Section 12, 13, 14, 15, 18 or 19, the Lessee shall pay or shall cause the purchaser of such Unit of Equipment to pay in addition to the purchase price, all transfer taxes, recording and filing fees and all other similar taxes, fees, expenses and closing costs (including reasonable attorneys' fees) in connection with the conveyance of such Unit of Equipment to the Lessee or any purchaser.

-52-

(g) When used in Section 12, 13, 14, 15 or 19 of this Lease, the phrase "the Variable Component of Basic Rent accrued" means the Variable Component of Basic Rent accrued through the date of termination of this Lease pursuant to such Section which has not been included in Basic Rent then payable or previously paid.

SECTION 29. No Recourse.

(a) The Lessor's obligations hereunder are intended to be the obligations of the limited partnership and of the corporation which is the general partner thereof only and no recourse for the payment of any amount due under this Lease or for any claim based thereon or otherwise in respect thereof shall be had against any limited partner of the Lessor or any incorporator, shareholder, officer, director or Affiliate, as such, past, present or future of such corporate general partner or of any corporate limited partner or of any successor corporation to such corporate general partner or any corporate limited partner of the Lessor, or against any direct or indirect parent corporation of such corporate general partner or of any limited partner of the Lessor or any other subsidiary or Affiliate of any such direct or indirect parent corporation or any incorporator, shareholder, officer or director, as such, past, present or future, of any such parent or other subsidiary or Affiliate, it being understood that the Lessor is a limited partnership formed for the purpose of the transactions involved in and relating to this Lease on the express understanding aforesaid. Nothing contained in this Section 29 shall be construed to limit the exercise or enforcement, in accordance with the terms of this Lease and any other documents referred to herein, of rights and remedies against the limited partnership or the corporate general partner of the Lessor or the assets of the limited partnership or the corporate general partner of the Lessor.

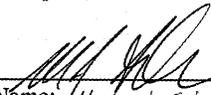
(b) The Lessee's obligations hereunder are intended to be the obligations of the corporation and no recourse for the payment of any amount due under this Lease, or for any claim based thereon or otherwise in respect thereof, shall be had against any incorporator, shareholder, officer, director or Affiliate, as such, past, present or future of the Lessee or of any successor corporation to the Lessee.

SECTION 30. No Personal Contract.

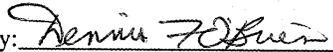
This Lease shall not be considered as a personal contract of either the Lessor or the Lessee. Both the Lessor and the Lessee reserve any and all rights which either is afforded under the Limitation of Liability Act, 46 U.S.C. §§ 181-189, as amended.

IN WITNESS WHEREOF, the Lessor and the Lessee have caused this Lease to be executed and delivered by their duly authorized officers as of the day and year first above written.

Hero Leasing, Limited Partnership by
Hero Capital, Inc., its General Partner

By: 
Name: Mark J. Schroeder
Title: Vice President & Assistant Secretary

Commonwealth Edison Company

By: 
Name: Dennis F. O'Brien
Title: Treasurer

State of New York)
) ss.:
County of New York)

On this 1st day of February, 1994 before me personally appeared *Mark J. Schroeder*, to me personally known, who being by me duly sworn, says that *he* is the *Vice President & Asst. Secretary* of Hero Capital, Inc., the general partner of Hero Leasing, Limited Partnership, that the seal affixed to the foregoing instrument is the corporate seal of said general partner, that said instrument was signed and sealed on behalf of Hero Leasing, Limited Partnership, by said general partner by the authority of said general partner's Board of Directors, and acknowledged that the execution of the foregoing instrument was the free act and deed of said general partner on behalf of Hero Leasing, Limited Partnership.

Maura Feeney

Notary Public

(SEAL)

My Commission Expires:

MOIRA FEENEY
Notary Public, State of N.Y.
No. 24-4991961
Qualified in Kings Co.
Commission Expires 2-18-94

EXHIBIT A

<u>Type of Equipment</u>	<u>Initial Term (in months)</u>	<u>Extended Term (in months)</u>	<u>Renewal Term (in months)</u>
Railcars (including the Initial Railcars)	36	324	120
Barges (including the Initial Barges)	36	84	60
Automobiles	12	12 - 60	36
Light trucks (<13,000 lbs)	12	12 - 84	36
Heavy trucks (\geq 13,000)	12	12 - 120	36
Telecommunications equipment	12	24 - 108	36
Computer peripherals and equipment	12	12 - 72	36
Radio communication systems (including the Initial Radio Communication System)	12	72 - 108	60
General office equipment	12	108	*
Furniture & fixtures	12	72 - 132	84

* To be determined by agreement of the Lessee and Lessor based upon the requirements of the Lessee.

EXHIBIT B

Description of Barges

A non-self propelled open hopper river barge of welded steel construction (either a rake bow type or box type). The barges shall be designed for the conveyance of coal for boiler fuel use and of the quality typically employed by electric utility companies.

EXHIBIT C

Description of Railcars

A gondola railcar suitable for the conveyance of coal for boiler fuel use of the kind and quality typically employed by electric utility companies, and equipped with an aluminum body and rotary dump coupler.

EXHIBIT D

UNIT LEASING RECORD to the
Lease Agreement, dated as
of February 1, 1994, between
Hero Leasing, Limited
Partnership, as lessor,
and Commonwealth Edison Company, as
lessee (the "Lease Agreement").

Lessor: Hero Leasing, Limited Partnership
Lessee: Commonwealth Edison Company

A. ULR No.: ____
Effective Date of this Unit
Leasing Record ("ULR") _____, 19__.

B. PLEASE COMPLETE THE FOLLOWING STATEMENTS, IF APPLICABLE:

1. This ULR relates to [Bill of Sale/Invoice] dated
_____, 19__.

EQUIPMENT DESCRIPTION AND RENTAL INFORMATION

C. Type of Equipment (use category specified in Exhibit A to the Lease Agreement):

D. Specific Description: (see Schedule A hereto if more space is needed)

E. Location of
Equipment:

State

County

City

F. Basic Cost Additional Charges Sale & Use Tax Acquisition Cost

\$_____ + \$_____ + \$_____ = \$_____

- G. If the Effective Date of this ULR is after the first day of the month and prior to the Lease Rate Date in such month, the partial first month's Basic Rent for Equipment placed under lease by this ULR will be paid from the date of this ULR until the end of the month on the Basic Rent Payment Date in such month. If the Effective Date of this ULR falls on or after the Lease Rate Date, the partial first month's Basic Rent will be paid from the date of this ULR until the end of the month on the next succeeding Basic Rent Payment Date.
- H. The Initial Term, Extended Term and Renewal Term for the Equipment placed under lease pursuant to this ULR will be in accordance with Exhibit A to the Lease Agreement.
- I. The Basic Rent is as defined in the Lease Agreement. The Monthly Rent Component will be in accordance with [Schedule B hereto] [the definition set forth in the Lease Agreement].
- J. The Equipment will be fully amortized as of the last day of the Lease Term on _____.
- K. The Basic Rent for the Renewal Term (after the Equipment is fully amortized) equals fair market rental value.
- L. Termination of the lease of the Equipment leased pursuant to this ULR will be in accordance with the Lease Agreement.
- M. ACKNOWLEDGEMENT AND EXECUTION

The undersigned Lessor hereby leases to the undersigned Lessee, and the Lessee acknowledges delivery to it in good condition of the Equipment described on this ULR. The Lessee agrees to pay the Basic Rent, Additional Rent and additional payments set forth in the Lease Agreement. The covenants, terms and conditions of this lease are those appearing in the Lease Agreement between the undersigned Lessor and the Lessee, which covenants, terms and conditions are hereby incorporated by reference. The terms used herein have the meaning assigned to them in the Lease Agreement.

Commonwealth Edison Company,
Lessee

Hero Leasing, Limited Partnership, Lessor
By Hero Capital, Inc., its General Partner

By: _____
Name:
Title:

By: _____
Name:
Title: