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RECORDATION NO. 19630
SEP 29 1995 1 02 PM
INTERSTATE COMMERCE COMMISSION
OF COUNSEL
URBAN A. LESTER

September 29, 1995

Mr. Vernon A. Williams
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two (2) copies each of the following documents, all dated as of September 1, 1995 (unless otherwise indicated): a Lease Agreement, a primary document as defined in the Commission's Rules for the Recordation of Documents under 49 C.F.R. Section 1177; and the following secondary documents related thereto: Security Agreement-Trust Deed, Lease Supplement No. 1 (dated September 29, 1995), Security Agreement Supplement No. 1 (dated September 29, 1995), Memoranda of Coal Supply Service Agreement, Coal Supply Service Agreement Supplement No. 1, Assignment of Coal Supply Service Agreement.

The names and addresses of the parties to the enclosed documents are:

Lease Agreement and Lease Supplement No. 1

Lessor: Wilmington Trust Company, Owner Trustee
Rodney Square North
1100 North Market Street
Wilmington, Delaware 19890

Lessee: Comerica Bank
101 North Washington Square, 9th Floor
Lansing, Michigan 48933

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Mr. Vernon A. Williams
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Security Agreement-Trust Deed and Security Agreement Supplement No. 1

Debtor: Wilmington Trust Company, Owner Trustee
Rodney Square North
1100 North Market Street
Wilmington, Delaware 19890

Secured Party: First Security Bank of Utah, National Association
79 South Main Street, 3rd Floor
Salt Lake City, Utah 84111

Memoranda of Coal Supply Service Agreement
and Coal Supply Service Agreement Supplement No. 1

Contractor: Comerica Bank
101 North Washington Square, 9th Floor
Lansing, Michigan 48933

Customer: Consumers Power Company
212 West Michigan Avenue
Jackson, Michigan 49201

Memorandum of Assignment of Coal Supply Service Agreement

Assignor: Comerica Bank
101 North Washington Square, 9th Floor
Lansing, Michigan 48933

Assignee: Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, Delaware 19890

A description of the railroad equipment covered by the enclosed documents is:

135 railcars bearing FSTX reporting marks and road numbers as set forth
on Schedule I to Lease Supplement No. 1.

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Also enclosed is a check in the amount of \$147.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return stamped copies of the enclosed documents to the undersigned.

Very truly yours,

Robert W. Alvord

RWA/bg
Enclosures

LEASE AGREEMENT

Dated as of September 1, 1995

Between

WILMINGTON TRUST COMPANY,
not in its individual capacity but solely as Owner Trustee,
as Lessor

and

COMERICA BANK,
individually only as expressly provided in Sections 8(b) and 16 hereof
and otherwise solely as Trustee under the Lessee Trust Agreement

as Lessee

663 HIGH SIDE ALUMINUM BODIED RAILCARS

CERTAIN RIGHTS, TITLE AND INTEREST IN AND TO THIS LEASE AGREEMENT AND TO THE UNITS COVERED HEREBY ON THE PART OF THE LESSOR HAVE BEEN ASSIGNED TO AND ARE SUBJECT TO A LIEN AND SECURITY INTEREST IN FAVOR OF A SECURED PARTY, AS ASSIGNEE, UNDER A SECURITY DOCUMENT. TO THE EXTENT, IF ANY, THAT THIS LEASE AGREEMENT 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 AGREEMENT MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART THAT CONTAINS THE RECEIPT THEREFOR EXECUTED BY SUCH SECURED PARTY, AS ASSIGNEE, ON OR IMMEDIATELY FOLLOWING THE SIGNATURE PAGE THEREOF AND IS LABELED COUNTERPART NO. 1 ON THE FACE THEREOF.

FILED WITH THE INTERSTATE COMMERCE COMMISSION
PURSUANT TO 49 U.S.C. §11303
ON _____, 1995 AT _____ P.M. E.D.T.,
RECORDATION NUMBER _____

RECORDATION NO. 19630 FILED 1425
SEP 29 1995 - 1 55 PM
INTERSTATE COMMERCE COMMISSION

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LEASE AGREEMENT dated as of September 1, 1995 between WILMINGTON TRUST COMPANY, a Delaware banking corporation, not in its individual capacity but solely as Owner Trustee (the "*Lessor*"), and COMERICA BANK, a Michigan banking corporation, individually only as expressly provided in Sections 8(b) and 16 hereof and otherwise solely as Trustee under the Lessee Trust Agreement (the "*Lessee*").

WITNESSETH:

WHEREAS, the Lessor will purchase the Units from the applicable Manufacturer; and

WHEREAS, the Lessee desires to lease the Units from the Lessor and the Lessor is willing to lease the Units to the Lessee on the terms and conditions set forth herein; and

WHEREAS, the Lessee intends to furnish use of the Units to the Permitted Designee;

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the Lessor and the Lessee agree as follows:

SECTION 1. DEFINITIONS.

Unless otherwise expressly provided, all references herein to Sections or other subdivisions refer to the corresponding Sections and other subdivisions of this Lease. The terms "hereof," "herein," "hereby," "hereto," "hereunder," "hereinafter" and "herewith" refer to this Lease. The following terms shall have the following meanings for all purposes of this Lease:

"*AAR Rules*" shall mean the Interchange Rules and Supplements thereto of the Mechanical Division, Operations and Maintenance Department, Association of American Railroads, or any successor entity, as the same may be in effect from time to time, including, without limitation, Rule 107 thereof.

"*Affiliate*" shall mean any Person which, directly or indirectly, through one or more intermediaries controls, or is controlled by, or is under common control with, another Person; *provided, however*, that Wilmington Trust Company and the Owner Participant shall not be Affiliates of each other and Comerica Bank and the Lessee Participant shall not be Affiliates of each other. The term "*control*" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person whether through the ownership of voting securities, by contract or otherwise.

"*After-Tax Basis*", when referring to an amount, shall mean an amount which, after deduction of all United States Federal taxes, and state and local taxes, that are required to be paid by the recipient in respect of the receipt or accrual of such amount, based upon the maximum statutory tax rates in effect from time to time, is (after giving effect to all current

deductions and credits available to the recipient with respect to the item being indemnified) equal to the amount required to be indemnified against on an "After-Tax Basis".

"Applicable Law" shall mean all applicable laws (foreign or domestic), treaties, judgments, decrees, injunctions, writs and orders of any court, governmental agency or authority and rules, regulations, orders, directives, licenses and permits of any governmental body, instrumentality, agency or authority, including, without limitation, all rules and regulations of the United States Department of Transportation, the Federal Railroad Administration and the ICC, or any successor entities, and the AAR Rules, in each case as the same may be in effect from time to time.

"Appraisal Procedure" shall mean the procedure specified in the succeeding sentences for determining an amount or value. If either party shall give written notice to the other requesting determination of such amount or value by appraisal, such amount or value shall be determined by averaging the determinations (disregarding the one that differs the most from the other two) of three qualified Appraisers, one appointed by the Lessor, the second by the Lessee (in consultation with the Permitted Designee) and the third by the first two Appraisers. The qualified Appraisers shall be instructed to determine such amount or value within 45 days after their appointment pursuant hereto, and such determination shall be final and binding upon the parties. Each party shall bear (A) its respective fees and expenses with respect to any Appraisal Procedure, including those of any Appraiser selected by it pursuant to the Appraisal Procedure and (B) one-half of the fees and expenses of any Appraiser chosen jointly and participating in any Appraisal Procedure; provided, however, if the Lessee shall have requested that a determination be made of the Fair Market Renewal Rent of any Unit pursuant to Section 2(b) hereof or of the Fair Market Sale Value of any Unit pursuant to Section 2(f) hereof and the Lessee shall not have elected to extend the Lease with respect to such Unit pursuant to Section 2(b) hereof or to purchase such Unit pursuant to Section 2(f) hereof, as the case may be, all costs and expenses with respect to any Appraisal Procedure shall be borne by the Lessee.

"Appraiser" shall mean a Person of recognized professional standing engaged in the business of appraising property, who shall be Independent.

"Assignment of Coal Supply Service Agreement" shall mean the Assignment of Coal Supply Service Agreement dated as of September 1, 1995 between the Lessee and the Lessor.

"Basic Rent" shall mean the rent payable throughout the Basic Term pursuant to, and computed in accordance with, Section 9(b) hereof.

"Basic Service Fee Payment" shall have the meaning set forth in the Coal Supply Service Agreement.

"Basic Term" with respect to any Unit shall mean the period beginning on the Basic Term Commencement Date and ending on December 30, 2015.

"Basic Term Commencement Date" shall mean January 2, 1996.

"Bill of Sale" shall mean each bill of sale of a Manufacturer, dated a Closing Date, for the Units being delivered on such Closing Date.

"Business Day" shall mean any day other than a Saturday or Sunday or other day on which the banks in the State of Michigan, New York, Delaware, Utah or Pennsylvania are authorized or obligated to remain closed.

"Casualty Event" shall mean with respect to any Unit any of the following events occurring during the Lease Term: (i) such Unit suffers destruction or damage beyond economic repair or such Unit is rendered permanently unfit for commercial use by the Lessee (at the direction of the Permitted Designee so long as there is a Permitted Designee) or the Permitted Designee or for the purpose for which it was designed, as determined in good faith by the Lessee (at the direction of the Permitted Designee so long as there is a Permitted Designee) or the Permitted Designee and evidenced by an Officer's Certificate of the Lessee or the Permitted Designee, as the case may be, to such effect, (ii) such Unit is taken, condemned or requisitioned for title by any governmental authority, (iii) such Unit is taken, condemned or requisitioned for use by any governmental authority for a continuous period of one year or, if shorter, the end of the Basic Term or any Renewal Term then in effect or (iv) such Unit is lost, stolen or otherwise disappears for a continuous period of six months and is not found or recovered within such six month period.

"Change in Tax Law" shall mean a change in the Code, any regulations thereunder (whether temporary or final) or any revenue rulings or revenue procedures issued by the Internal Revenue Service (including, without limitation, changes relating to investment tax credit or additional accelerated depreciation and regulations under Section 467 of the Code).

"Closing" with respect to any Unit shall mean the delivery of such Unit by the applicable Manufacturer to, and acceptance of the same by or on behalf of, the Lessor and the delivery of such Unit by the Lessor to, and acceptance of the same by, the Lessee pursuant to the Lease as provided in Section 2 hereof.

"Closing Date" shall mean each of the three dates, which shall be a Business Day, on which a Closing occurs, *provided* that (i) the first Closing shall occur on or about September 30, 1995, (ii) the second Closing shall occur on or about October 27, 1995 (iii) the third Closing shall occur on or about November 7, 1995 and (iv) in no event shall a Closing occur later than December 31, 1995 or such other date as the parties may agree.

"Coal Supply Service Agreement" shall mean that certain Coal Supply Service Agreement dated as of September 1, 1995 between Lessee and the Permitted Designee, as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof and of any other written agreement entered into in connection with the transactions contemplated thereby.

"Coal Supply Service Agreement Supplement" shall mean each Coal Supply Service Agreement Supplement between Lessee and the Permitted Designee and substantially in the form of Exhibit A to the Coal Supply Service Agreement, as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof and of any other written agreement entered into in connection with the transactions contemplated thereby.

"Code" shall mean the Internal Revenue Code of 1986, as amended (or any successor federal income tax statute).

"Default" shall mean an event or condition which, with the giving of notice or lapse of time, or both, would constitute an Event of Default.

"EBO Amount" with respect to any Unit shall mean the amount for such Unit determined by multiplying the Lessor's Cost for such Unit by the percentage set forth in Schedule 4 attached to the relevant Lease Supplement (as such percentage may be adjusted pursuant to Section 9(e) hereof).

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended, or any comparable successor law and the rules issued and regulations promulgated thereunder.

"Event of Default" shall mean any of the events referred to in Section 14 hereof.

"Fair Market Renewal" shall have the meaning set forth in Section 2(b)(iv) hereof.

"Fair Market Renewal Rent" shall mean the Fair Market Rent payable throughout the Fair Market Renewal Term pursuant to, and computed in accordance with, Section 9(b) hereof.

"Fair Market Renewal Term" shall have the meaning set forth in Section 2(b)(iv)(A) hereof.

"Fair Market Rent" for any Unit shall mean, for any period, the rent for such Unit for such period that would be obtained for the use or lease of such Unit, on terms substantially similar to those set out in the Lease, each as supplemented, in an arm's-length transaction between an informed and willing owner or Lessor under no compulsion to provide or lease such Unit and an informed and willing lessee or user (other than a lessee or user currently in possession or to which such Unit is currently provided) under no compulsion to lease, which determination shall be made (i) without deduction for any costs of removal of such Unit from the location of current use, (ii) on the assumption that such Unit is free and clear of all liens, claims, security interests and encumbrances (other than Owner Encumbrances) and is in the condition and repair in which it is required to be returned pursuant to Section 2 hereof and (iii) on the assumption that such informed and willing lessee or user would undertake the obligations of Lessee under this Lease; *provided, however*, that the determination of Fair Market Rent for purposes of Section 15 hereof shall be based on the

actual condition and location of such Unit at the time of such determination and shall take into account all removal costs and all liens, claims, security interests and encumbrances on such Unit (other than Owner Encumbrances and the lien of any Security Document).

"Fair Market Sale Value" for any Unit or any Optional Severable Improvement, as the case may be, shall mean the sale, value of such Unit or any Optional Severable Improvement, as the case may be, that would be obtained in an arm's-length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer (other than a buyer to which such Unit or such Optional Severable Improvement, as the case may be, is currently provided) under no compulsion to purchase, which determination shall be made (i) without deduction for any costs of removal of such Unit or such Optional Severable Improvement, as the case may be, from the location of current use and (ii) on the assumption that such Unit or such Optional Severable Improvement, as the case may be, is free and clear of all liens, claims, security interests and encumbrances (other than Owner Encumbrances) and is in the condition and repair in which it is required to be returned pursuant to Section 2 hereof; *provided, however*, that the determination of Fair Market Sale Value for purposes of Section 15 or Section 7(b) hereof shall be based on the actual condition and location of such Unit or such Optional Severable Improvement, as the case may be, at the time of such determination and shall take into account all removal costs and all liens, claims, security interests and encumbrances on such Unit or such Optional Severable Improvement, as the case may be (other than Owner Encumbrances and the lien of any Security Document).

"Fixed Rate Renewal" shall have the meaning set forth in Section 2(b)(iii) hereof.

"Fixed Rate Renewal Rent" shall mean the rent payable throughout the Fixed Rate Renewal Term pursuant to, and determined in accordance with, Section 9(b) hereof.

"Fixed Rate Renewal Term" shall have the meaning set forth in Section 2(b)(iii)(A) hereof.

"Hazardous Materials" means any hazardous substances, pollutants or contaminants (including, without limitation, petroleum wastes, radioactive material, hazardous wastes, toxic substances, asbestos or any materials containing asbestos) or any other waste substance or material as so defined pursuant to any laws or regulations relating to the environment, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Section 9601 *et seq.*), the Solid Waste Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Solid and Hazardous Waste Amendments of 1984 (42 U.S.C. Sections 6901 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. Sections 19-1 *et seq.*) the state analogs thereto, and the regulations promulgated and guidance issued pursuant thereto, all as amended from time to time, and the Toxic Substances Control Act (15 U.S.C. Sections 2601 *et seq.*) and the regulations promulgated and guidance issued pursuant thereto, all as amended from time to time; *provided, however*, Hazardous Materials shall not include tires, ash or coal.

"Home Jurisdiction" shall mean the jurisdiction in which a Person has a principal place of business or, in the case of an individual, its principal residence.

"ICC" shall mean the Interstate Commerce Commission and any agency or instrumentality of the United States government succeeding to its functions.

"Impositions" shall have the meaning set forth in Section 12(b) hereof.

"Improvement" shall mean an improvement, structural change, modification or addition to any Unit made after the Closing Date with respect to such Unit.

"Income Tax Laws" shall mean the Code and the tax laws of the applicable Home Jurisdiction.

"Indemnitee" shall have the meaning set forth in Section 12(a) hereof.

"Independent" shall mean, when used with respect to any specified Person, such a Person who (1) is in fact independent, (2) does not have any direct financial interest or any material indirect financial interest in any Lessor Assignee, the Lessor, the Owner Participant, the Lessee, the Lessee Participant or the Permitted Designee (or any assignee or successor of any of the foregoing) or in any Affiliate of any of them and (3) is not connected with any Lessor Assignee, the Lessor, the Owner Participant, the Lessee Participant, the Lessee or the Permitted Designee (or any assignee or successor of any of the foregoing) or any Affiliate of any of them as an officer, employee, promoter, underwriter, trustee, partner, director or Person performing similar functions or in any other way whatsoever. Whenever it is provided that any Independent Person's opinion or certificate shall be furnished such opinion or certificate shall state that the signer has read this definition and that the signer is Independent within the meaning thereof.

"Institutional Investor" shall mean any of the following Persons existing under the laws of the United States or any state thereof or of Canada or any province thereof: (a) any bank, savings institution, trust company or national banking association, (b) any insurance company or fraternal benefits society, (c) any pension, retirement or profit sharing trust or fund for which any bank, trust company, national banking association or investment advisor registered under the Investment Advisors Act of 1940, as amended, is acting as trustee or agent, (d) any finance company or leasing company, or (e) any Affiliate of any of the foregoing.

"Interim Rent" shall mean the rent payable on the Basic Term Commencement Date pursuant to and computed in accordance with Section 9(a) hereof.

"Interim Term" shall mean for any Unit the period beginning on the Closing Date for such Unit and ending on the Basic Term Commencement Date.

"Lease" shall mean this Lease Agreement dated as of September 1, 1995 between the Lessee and the Lessor, as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof.

"Lease Supplement" shall mean each Lease Supplement between the Lessor and the Lessee and substantially in the form of Exhibit A to the Lease, as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof.

"Lease Term" shall mean the Interim Term, the Basic Term and any Renewal Terms.

"Lessee" shall mean Comerica Bank, a Michigan banking corporation, individually only as expressly provided in Sections 8(b) and 16 hereof and otherwise solely as Trustee under the Lessee Trust Agreement, and its permitted successors and assigns.

"Lessee Consent to Assignment of Lease and Agreement" shall mean that certain Consent to Assignment of Lease and Agreement dated the first Closing Date entered into by the Lessee, as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof.

"Lessee Documents" shall mean this Lease, each Lease Supplement, the Coal Supply Service Agreement, each Coal Supply Service Agreement Supplement, the Lessee Trust Agreement, the Lessee Tax Indemnity Agreement, the Assignment of Coal Supply Service Agreement, the Lessee Purchase Order Assignment, the Lessee Consent to Assignment of Lease and Agreement, the Permitted Designee Purchase Order Assignment, the Paying Agency Agreement, the Servicing Agreement and the Revolving Credit Agreement.

"Lessee Participant" shall mean Mellon Financial Services Corporation #4, a Pennsylvania corporation and its permitted successors and assigns.

"Lessee Participant Certificate and Agreement" shall mean that certain Lessee Participant Certificate and Agreement dated the first Closing Date entered into by the Lessee Participant.

"Lessee Participant Documents" shall mean the Lessee Trust Agreement, the Lessee Participant Certificate and Agreement and any other written agreement entered into by Lessee Participant in connection with the transactions contemplated hereby, as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof.

"Lessee Purchase Order Assignment" shall mean the Purchase Order Assignment dated as of September 1, 1995 from the Lessee to the Lessor.

"Lessee Tax Indemnity Agreement" shall mean that certain Tax Indemnity Agreement dated as of September 1, 1995 between the Owner Participant and the Lessee, as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof.

"Lessee Trust Agreement" shall mean that certain Trust Agreement dated as of September 1, 1995 between the Lessee, in its individual capacity, and the Lessee Participant, as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof.

"Lessee Trust Estate" shall have the meaning assigned to the term "Trust Estate" in Section 1 of the Lessee Trust Agreement.

"Lessor" shall mean the Owner Trustee, and its permitted successors and assigns.

"Lessor Assignee" shall mean any person or persons to whom the Lease and the rights of the Lessor thereunder have been assigned, whether any such Person has accepted such assignment currently or as collateral and whether directly in its capacity as an Institutional Investor or in trust for the benefit of any Institutional Investors and any Person claiming by, through or under such trust, including all of such Institutional Investors and includes, without limitation, the Secured Party. Any reference in the Lease to the successors and assigns of the Lessor shall be deemed to include any such Lessor Assignee to the extent of the applicable assignment.

"Lessor's Cost" for a Unit shall be that amount set forth as such in Schedule 1 to the relevant Lease Supplement, as such Lessor's Cost may be adjusted pursuant to Section 9(e) hereof.

"Liabilities" shall have the meaning set forth in Section 12(a) hereof.

"Manufacturer" shall mean Johnstown America Corporation or Thrall Car Manufacturing Company, as the case may be.

"Material Default" shall mean (i) a Default under clauses (a), (b), (d), (g) or (h) of Section 14 hereof or (ii) a default under clauses (i), (ii) (other than with respect to the nonpayment of any Service Fee Payment which does not constitute a Basic Service Fee Payment or with respect to any amount constituting a Lessee Excepted Right in Collateral (as defined in the Assignment of Coal Supply Service Agreement)), (vi) or (vii) of Section 10(a) of the Coal Supply Service Agreement.

"Maximum Fixed Rate Renewal Term" shall have the meaning set forth in Section 2(b)(iii)(A) of the Lease.

"Net Economic Return" shall mean the Owner Participant's anticipated after-tax yield and after-tax cash flow utilizing the multiple investment sinking fund method of analysis, without considering cost of capital or any other factor.

"Nonseverable Improvement" shall mean, at any time, an Improvement that shall not be "readily removable without causing material damage to the leased property" within the meaning of Revenue Procedure 75-21 promulgated by the Internal Revenue Service or other

similar law, regulation or procedure then in effect or any Improvement required by Applicable Law.

"Notice" shall have the meaning specified in Section 18.

"Officer's Certificate" shall mean, with respect to any Person, a certificate signed by a Responsible Officer of such Person and, in the case of any such certificate signed by an authorized designee who qualifies as a Responsible Officer, such certificate shall be countersigned by or accompanied by a certificate of an officer who shall certify as to the authority and capacity of such authorized designee.

"Opinion of Counsel" shall mean a written opinion of counsel, who shall be acceptable to the Lessor Assignee (or such other Person to whom such opinion is to be addressed).

"Optional Severable Improvements" shall mean all Severable Improvements other than Required Severable Improvements.

"Overdue Rate" shall mean, with respect to any amount, a rate per annum equal to the greater of (i) 9.86% or (ii) the Prime Rate.

"Owner Encumbrances" shall mean any liens, claims, security interests or encumbrances (other than Permitted Encumbrances) against any part of the Units, the Lease, the Coal Supply Service Agreement or any other part of the Owner Trust Estate or the Collateral (as such term is defined in any Security Document) that result from acts of, or any failure to act by, or as a result of claims (including any taxes) against Wilmington Trust Company, the Lessor or the Owner Participant excluding liens, claims, security interests and encumbrances arising from any tax for which the Lessee is obligated to indemnify under the Lease or the Lessee Tax Indemnity Agreement, other than any such tax for which the Lessee has already made full indemnification pursuant to such agreements.

"Owner Participant" shall mean Citicorp USA, Inc., a Delaware corporation, and its permitted successors and assigns.

"Owner Trustee" shall mean Wilmington Trust Company, a Delaware banking corporation, in its capacity as trustee under the Owner Trust Agreement, together with its successors and permitted assigns as Owner Trustee under the Owner Trust Agreement.

"Owner Trust Agreement" shall mean that certain Trust Agreement dated as of September 1, 1995 between Wilmington Trust Company and the Owner Participant, as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof and of the other written agreements entered into in connection therewith.

"Owner Trust Estate" shall have the meaning assigned to the term "Trust Estate" in Section 2 of the Owner Trust Agreement.

"Paying Agency Agreement" shall mean that certain Paying Agency Agreement dated as of September 1, 1995 between the Lessee and the Paying Agent as the same may be amended, modified or supplemented in accordance with the provisions thereof.

"Paying Agent" shall mean Comerica Bank, a Michigan banking corporation in its capacity as paying agent under the Paying Agency Agreement, and its permitted successors and assigns.

"Payment Date" shall mean the thirtieth day of each June and December of each year occurring during the Basic Term and any Renewal Term, *provided* that if any such date shall not be a Business Day, then **"Payment Date"** shall mean the next succeeding Business Day.

"Permitted Contest" shall be permitted only so long as no Event of Default (in the case of a contest by the Lessee, in its individual or trust capacity, or the Lessee Participant) or event of default under Section 10(a) of the Coal Supply Service Agreement (in the case of a contest by the Permitted Designee) or an event of default under any Security Document (in the case of a contest by the Lessor or the Owner Participant) shall have occurred and be continuing, and shall mean a contest in good faith by appropriate proceedings diligently prosecuted or appealed in a manner which will not, in the good faith opinion of Lessor, Owner Participant and/or any Lessor Assignee, as the case may be, either entail a significant risk to Lessor, Owner Participant or such Lessor Assignee of material civil liability or any criminal liability or any loss or forfeiture of or material lien on any Unit, or materially and adversely affect its respective title, interest or rights under this Lease and in respect of any Unit and which shall have effectively stayed any enforcement proceedings.

"Permitted Designee" shall mean Consumers Power Company, a Michigan corporation and its successors and assigns.

"Permitted Designee Consent to Assignment of Coal Supply Service Agreement and Agreement" shall mean that certain Consent to Assignment of Coal Supply Service Agreement and Agreement dated the first Closing Date entered into by the Permitted Designee, as the same may be amended, modified or supplemented in accordance with the provisions thereof.

"Permitted Designee Purchase Order Assignment" shall mean the Purchase Order Assignment dated as of September 1, 1995 from the Permitted Designee to the Lessee.

"Permitted Encumbrances" shall mean (a) the rights of the Secured Party under the Security Document, (b) the rights of the Lessee under the Lease, (c) the rights of the Lessee Participant under any Lessee Participant Document, (d) the rights of the Permitted Designee under the terms of the Coal Supply Service Agreement and the rights of its permitted assignees pursuant to Section 13(a) thereof (including, but not limited to, the rights of the Permitted Designee and its permitted assignees with respect to Permitted Encumbrances (as defined therein)), (e) liens for taxes, assessments, levies, fees or other governmental and similar charges either not yet due or being contested by the Lessee, in its individual or trust

capacity, the Lessee Participant or the Permitted Designee by a Permitted Contest, and (f) undetermined or inchoate materialmen's, mechanic's, workmen's, repairmen's or employees liens or other like liens arising in the ordinary course of business which are not delinquent or which shall have been adequately bonded in the reasonable opinion of the Lessor or the enforcement of which shall have been suspended or which are being contested by the Lessee, in its individual or trust capacity, the Lessee Participant or the Permitted Designee by a Permitted Contest.

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

"Pricing Assumptions" shall mean the assumptions set forth on Schedule 1 hereto.

"Prime Rate" shall mean the rate of interest publicly announced from time to time by Citibank, N.A. in New York as its "base rate".

"Purchase Orders" shall mean each Purchase Order from the Permitted Designee to the applicable Manufacturer relating to the Units.

"Redelivery Locations" shall have the meaning set forth in Section 2(c) of the Lease.

"Renewal Term" shall mean a Fair Market Renewal Term and/or a Fixed Rate Renewal Term, as the context may require.

"Renewal Term Commencement Date" shall have the meaning set forth in Section 2(b) of the Lease.

"Renewals" shall mean the Fixed Rate Renewals and the Fair Market Renewals.

"Rent" shall mean the Interim Rent, Basic Rent, Fixed Rate Renewal Rent, Fair Market Renewal Rent and Supplemental Rent, collectively.

"Replacement Unit" shall mean a railcar of the same or improved model as, and of the same or newer age than, the Unit with respect to which a Casualty Event has occurred and which is being replaced pursuant to Section 11(b)(iv) hereof.

"Required Severable Improvements" shall mean any Severable Improvement necessary to meet the requirements of Applicable Law or Section 5 hereof.

"Responsible Officer" shall mean the President, any Vice President, any Assistant Vice President, the Treasurer, any Assistant Treasurer or any other officer or authorized designee of any of the foregoing who in the normal performance of his or her operational responsibility would have knowledge of the matters in respect of which such officer is delivering a certificate.

"Revolving Credit Agreement" shall mean that certain Revolving Credit Agreement dated as of September 1, 1995 between Mellon Financial Services Corporation #3 and the Lessee, as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof.

"Secured Party" shall mean the secured party under the Security Document.

"Securities" shall mean any debt instruments issued under and pursuant to a Security Document.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Security Document" shall mean any indenture, security agreement or similar agreement entered into by the Lessor with a Lessor Assignee in connection with the financing of any portion of Lessor's Cost of the Units which does not grant rights that are incompatible with the rights granted under the Lease to the Lessee.

"Service Fee Payment" shall have the meaning set forth in the Coal Supply Service Agreement.

"Servicer" shall mean Mellon Financial Services Corporation #4, in its capacity as servicer under the Servicing Agreement and its successors and assigns in such capacity.

"Servicing Agreement" shall mean that certain Servicing Agreement dated as of September 1, 1995 between the Lessee and the Servicer, as the same may be amended, modified or supplemented from time to time in accordance with the terms thereof.

"Severable Improvements" shall mean Improvements other than Nonseverable Improvements.

"Supplemental Rent" shall mean any and all amounts (other than Interim Rent, Basic Rent, Fixed Rate Renewal Rent and Fair Market Renewal Rent), that the Lessee, subject to the terms hereof, assumes the obligation to pay or agrees to pay hereunder or under any other Lessee Document to the Lessor or any Lessor Assignee, including, without limitation, amounts payable as indemnity payments, payments of Termination Value hereunder, payments of the EBO Amount hereunder and overdue interest.

"Tax Indemnatee" shall have the meaning as defined in Section 12(b) hereof.

"Termination Date" shall have the meaning assigned in Section 11(c) hereof.

"Termination Value" with respect to any Unit subjected to the terms of the Lease pursuant to a Lease Supplement as of any Termination Date or Payment Date shall mean the amount for such Unit determined by multiplying the Lessor's Cost for such Unit by the percentage set forth on Schedule 3 attached to the relevant Lease Supplement opposite such Termination Date or Payment Date (as such percentages may be adjusted pursuant to

Section 9(e) hereof), plus, in the event of an early termination or expiration of this Lease pursuant to Section 11(c) hereof, the amount of any premium payable pursuant to any Security Document.

"Train Set" shall mean a group of Units, comprised of (i) at least 80 but not more than 120 Units operated by the Lessee as a train set or (ii) the remainder of the Units then subject to this Lease, but only if less than 80 in number.

"Unit" shall mean each of the high side aluminum bodied rotary dump bethgon coal porter railcars and each of the high side aluminum bodied avalanche railcars purchased by Lessor pursuant to a Bill of Sale and leased to Lessee hereunder.

SECTION 2. PURCHASE AND LEASE; RENEWAL TERMS; RETURN; PURCHASE OPTIONS.

(a) *Purchase and Lease.* On each Closing Date (i) the Lessor shall purchase from the applicable Manufacturer the Units described in the Bill of Sale or Bills of Sale delivered on such Closing Date and listed on Schedule 1 to the relevant Lease Supplement, (ii) the Lessor shall tender delivery of such Units to the Lessee at the location specified in the relevant Lease Supplement and the Lessee shall accept delivery thereof, (iii) the Lessor shall lease such Units to the Lessee and the Lessee shall lease such Units from the Lessor under this Lease for the Rent and Lease Term hereinafter stipulated and upon the other terms and conditions herein set forth and (iv) the Lessor and the Lessee shall conclusively evidence that such Units have been delivered to the Lessee and made subject to this Lease by executing and delivering a Lease Supplement substantially in the form attached hereto as Exhibit A covering the Units so purchased and leased.

This Lease shall not be terminated or cancelled for any reason or under any circumstance prior to the expiration of the Basic Term except as specifically provided in Section 11 and Section 14 hereof.

(b) *Renewal Terms.* Provided that (i) no Material Default or Event of Default shall have occurred and then be continuing, (ii) the Coal Supply Service Agreement remains in full force and effect and (iii) the Owner Participant shall have obtained all approvals required for the renewal of this Lease, the Lessee shall be entitled to renew this Lease pursuant to the following, terms and conditions, at its option, with respect to a Train Set or Train Sets on the last day of the Basic Term or any Renewal Term then in effect for one or more Renewal Terms (as provided below) commencing on the day immediately succeeding the last day of the Basic Term or any Renewal Term then in effect (the *"Renewal Term Commencement Date"*):

(i) *Notice.* The Lessee may, by written request to the Lessor at any time at least 370 days but not more than 485 days prior to the expiration of the Basic Term, any Fixed Rate Renewal Term then in effect or any Fair Market Extension Term then in effect, require that a determination be made under clause (ii) of this paragraph (b) of the Fair Market Renewal Rent (in the case of a Fair Market Renewal Term option only) and Termination Value for the Units for the applicable Renewal Term. In the

case of a Fair Market Renewal Term option, such request shall specify the desired Fair Market Renewal Term which shall be determined in accordance with subclause (iv)(A) of this paragraph (b). No such request for a determination pursuant to this clause (i) shall be deemed an election by the Lessee for a renewal pursuant to the provisions of this paragraph (b). In the event the Lessee elects to renew this Lease, the Lessee shall provide the Lessor with a written notice irrevocably making such election and, subject to Section 2(h) hereof, identifying the Units comprising the Train Set or Train Sets subject to such election at least 180 days prior to the applicable Renewal Term Commencement Date. Notwithstanding anything in this Section 2(b) to the contrary, the Lessor may elect not to honor the Lessee's request for any Renewal Term if, and only if, in the good faith opinion of the Lessor, the amount of Basic Service Fee Payment (as defined in the Coal Supply Service Agreement) payable on any Payment Date during such Renewal Term is not equal to or greater than the amount of Fixed Rate Renewal Rent or Fair Market Renewal Rent, as the case may be, payable on such Payment Date.

(ii) *Determination.* Within 30 days of the receipt by Lessor of Lessee's request pursuant to clause (i) above, Lessor shall give Lessee and, so long as there is a Permitted Designee, such Permitted Designee written notice of its proposed Fair Market Renewal Rent (in the case of a Fair Market Renewal Term option only) and Termination Value for the proposed Renewal Term. If such proposal is unacceptable to Lessee, and if Lessor and Lessee are unable to reach agreement within 45 days after the receipt by Lessee and, so long as there is a Permitted Designee, such Permitted Designee of Lessor's proposal, a determination shall be made under subclause (v)(A) of this paragraph (b).

(iii) *Fixed Rate Renewals.* Any renewal pursuant to this clause (iii) shall be referred to as a "Fixed Rate Renewal" and shall be made on the following terms and conditions:

(A) The period of each Fixed Rate Renewal (each a "Fixed Rate Renewal Term") shall, subject to the two conditions set forth in the next succeeding sentence, be a period commencing on the Renewal Term Commencement Date therefor and ending on the first anniversary of such Renewal Term Commencement Date (the "Fixed Rate Renewal Term"). Notwithstanding the foregoing, the aggregate of the Fixed Rate Renewal Terms shall, when added to the Interim Term, the Basic Term and any prior Fixed Rate Renewal Term: (1) not exceed 80% of the estimated economic useful life of the Units, measured from the Closing Date for such Units (the determination of such useful life to be made pursuant to subclause (v)(A) below), and (2) be such that, upon the expiration of all of the Fixed Rate Renewal Terms, the estimated Fair Market Sale Value of the Units at such expiration (determined pursuant to subclause (v)(A) below as of the Renewal Term Commencement Date for the first Fixed Rate Renewal Term) would be at least equal to 20% of the Lessor's Cost therefor without taking into account inflation or deflation subsequent to the Closing Date for such Units.

(B) The semiannual rent for the Units during each Fixed Rate Renewal Term (hereinafter, the "*Fixed Rate Renewal Rent*") shall be an amount determined by multiplying the Basic Rent payable for such Units on the final Payment Date during the Basic Term (subject to a pro rata reduction upon the payment by Lessee of the Termination Value of a Unit subsequently suffering a Casualty Event or for which the Lease has been terminated pursuant to Section 11(c) hereof on any date after the final Payment Date and before the Renewal Term Commencement Date) by 55%, payable in arrears on each Payment Date during such Fixed Rate Renewal Term and on the last day of such Fixed Rate Renewal Term (which, however, shall in all events be a Payment Date which falls within the limitations specified in subclause (A) above) (subject to a pro rata reduction upon the payment by Lessee of the Termination Value of a Unit suffering a Casualty Event or for which the Lease has been terminated pursuant to Section 11(c) hereof). Payment Dates during any Fixed Rate Renewal Term shall be semiannual and shall be on the same day of the same month as those applicable during the Basic Term.

(C) Lessee shall have the right to elect not more than two Fixed Rate Renewals after which all Renewals shall be Fair Market Renewals. The first Renewal Term hereunder shall be a Fixed Rate Renewal Term and the Lessee may not elect a Fixed Rate Renewal Term after a Fair Market Renewal has been in effect.

(iv) *Fair Market Renewals.* Any renewal pursuant to this clause (iv) shall be referred to as a "*Fair Market Renewal*" and shall be made on the following terms and conditions:

(A) The period of any Fair Market Renewal shall, subject to the two conditions set forth in the next succeeding sentence, be the period commencing on the Renewal Term Commencement Date therefor and ending on the first anniversary of such Renewal Term Commencement Date (the "*Fair Market Renewal Term*"). Notwithstanding the foregoing, in no event shall any Fair Market Renewal Term extend beyond the earlier of the following dates: (1) the last date on which the period from the applicable Renewal Term Commencement Date to such date would be equal to 80% of the then remaining economic useful life of the Units and (2) the last date on which the then estimated Fair Market Sale Value of the Units (determined as of the applicable Renewal Term Commencement Date) would be at least equal to 20% of the Fair Market Sales Value therefor without taking into account inflation or deflation subsequent to the Renewal Term Commencement Date (all determined pursuant to the provisions of subclause (v)(A) below).

(B) The semiannual rent for the Units during the Fair Market Renewal Term (hereinafter the "*Fair Market Renewal Rent*") shall be determined pursuant to the provisions of subclause (v)(A) below and shall be payable in arrears on each Payment Date during the Fair Market Renewal Term and on the

last day of the Fair Market Renewal Term (which, however, shall in all events be a Payment Date which falls within the limitations specified in subclause (A) above). Payment Dates during any Fair Market Renewal Term shall be semiannual and shall be on the same day of the same months as those applicable during the Basic Term.

(C) Lessee shall have the right, subject to the conditions set forth in subclause (A) of this clause (iv), to elect up to such number of Fair Market Renewals as, together with the Fixed Rate Renewals elected, if any, pursuant to Section 2(b)(iii), shall equal seven.

(v) *General.* (A) In connection with any Renewal Term for the Units, a determination shall be made as of the Renewal Term Commencement Date for the first Fixed Rate Renewal or as of the applicable Renewal Term Commencement Date for any Fair Market Renewal by agreement of Lessor and the Lessee, as provided in clause (ii) of this Section 2(b) and, absent such agreement, pursuant to the Appraisal Procedure, of (w) the then estimated remaining economic useful life of the Units, (x) the last date on which the then estimated Fair Market Sale Value of the Units (without regard to inflation or deflation subsequent to the Closing Date with respect thereto, in the case of a Fixed Rate Renewal option, or applicable Renewal Term Commencement Date, in the case of a Fair Market Renewal option), is projected to be equal to 20% of the Lessor's Cost therefor, (y) the Fair Market Sale Value of the Units as of the Renewal Term Commencement Date for the first Fixed Rate Renewal or for any Fair Market Renewal, as the case may be, and as of the last day of the final Fixed Rate Renewal Term or of any Fair Market Renewal Term, as the case may be, and (z) in the case of a Fair Market Renewal only, the Fair Market Renewal Rent for the Units for the proposed Fair Market Renewal Term. Such determination shall be made within the time periods required pursuant to clause (ii) of this Section 2(b) or, if such determination is being made pursuant to the Appraisal Procedure, then within the time periods required pursuant to the Appraisal Procedure and in any event shall be completed at least 240 days prior to the applicable Renewal Term Commencement Date.

(B) All provisions of this Lease shall be applicable during any Renewal Term, except that the Basic Rent and Termination Values payable under this Lease during any such Renewal Term shall be those determined pursuant to this Section 2(b).

(C) Termination Value for each Unit for all Fixed Rate Renewals and Fair Market Renewals shall be calculated once on or before the beginning of the first Fixed Rate Renewal and shall be an amount equal to an amount which (I) on the Renewal Term Commencement Date for the first Fixed Rate Renewal shall be equal to the greater of the Termination Value of the Units as of the last day of the Basic Term or the Fair Market Sale Value of the Units as of such Renewal Term Commencement Date (as determined pursuant to subclause (v)(A) above), and (II) thereafter (over the first and each subsequent Renewal Term) be reduced semiannually on each Payment Date on a straight-line basis from the initial Termination Value determined pursuant

to this clause (C) to 20% of the Lessor's Cost therefor at the Maximum Renewal Term Termination Date and shall be payable in the same manner contemplated during the Basic Term. For purposes of this clause (C), the term "*Maximum Renewal Term Termination Date*" shall mean the last day of the seventh and final Renewal Term which the Lessee is entitled to elect pursuant to Section 2(b)(iv)(C) hereof, whether or not Lessee has in fact elected such Renewal Term.

(c) *Redelivery* Subject to Section 2(e) hereof, upon the expiration of the Lease Term or, at Lessee's option within 60 days prior thereto, the Lessee shall cause each Unit to be assembled, and shall cause the delivery of possession thereof, in accordance with the terms of this Lease and, at the Lessee's own cost and expense, to up to three locations (including, but not limited to, any facility owned or operated by the Permitted Designee) designated by the Lessee (with the agreement of the Permitted Designee) within 500 miles from Chicago, Illinois (the "*Designated Locations*"); *provided* that not less than one Train Set shall be delivered to any one location. Lessee shall provide not less than 5 Business Days prior notice to the Lessor of the time and place of redelivery of any Train Set to a Designated Location. Subject to the next succeeding paragraph, Interim Rent, Basic Rent, Fixed Rate Renewal Rent or Fair Market Renewal Rent, as the case may be, with respect to any Unit delivered to a Designated Location shall cease to accrue with respect thereto on the later to occur of (i) the expiration of the Lease Term, or (ii) the date on which such Unit shall have been delivered to any one such Designated Location pursuant to the first sentence of this paragraph.

Lessee shall or shall cause the Permitted Designee to store such Units at the Designated Locations for a period not exceeding the later to occur of (i) the 30th day following the date of delivery of such Train Set to a Designated Location or (ii) in the case of a nonconforming Unit, the date on which such nonconforming Unit is restored to the condition required by Section 2(d) hereof. The Lessee will upon the expiration of such period transport the Units one time from such Designated Locations to up to three interchange points within 500 miles from Chicago, Illinois, all as directed by the Lessor upon not less than five Business Days prior written notice to the Lessee. Storage of each such Unit at a Designated Location is to be at the risk and expense of the Lessee, and the Lessee agrees to maintain the insurance on such Unit required by Section 10 hereof for such period, after which time storage of each such Unit is to be at the risk and expense of the Lessor. Any movement of a Unit from such Unit's Designated Location to the interchange selected by the Lessor will be at the risk and expense of the Lessee. During any such storage period at a Designated Location 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 Unit, upon reasonable prior written notice and during normal business hours, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of gross negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any Person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. If the Lessor or its agent shall inspect any Unit pursuant to this paragraph and shall conclude in good faith that such Unit is not in the condition required by Section 2(d), the Lessor may, at its option, (i) elect to cause the repair of any such Unit, but at the sole expense and risk of Lessor or (ii) cause the Lessee, within 30 days thereafter, at its sole

expense and risk, to cause such repairs to be made and such work to be performed as shall be necessary to place such Units in the condition required by Section 2(d). In the case of clause (ii) above, the Lessee will cause the Lessor to be provided with notice when such Unit has been repaired so as to be in the condition required by Section 2(d) and is ready to be reinspected by the Lessor or its agent. Upon such reinspection, the Lessor or its agent shall inform the Lessee if such Unit is still not in the condition required by Section 2(d) (in which case the provisions of this paragraph shall continue to control). The Lessee agrees to pay, upon invoice from the Lessor, the following: (x) all costs and expenses reasonably incurred by the Lessor and its agent in connection with the inspection and reinspection of each Unit (other than any first time inspection costs relating to any Unit determined by Lessor or its agent to have been delivered in the condition required by Section 2(d)), (y) all costs and expenses, if any, reasonably incurred by the Lessor or its agent in connection with the repair of any non-conforming Unit and (z) the daily equivalent of Basic Rent, Fixed Rate Renewal Rent or Fair Market Renewal Rent (depending upon whichever shall have been in effect immediately prior to the expiration of the Lease Term) on each Unit not redelivered to a Designated Location in the condition required by Section 2(d), from and including the day immediately succeeding the last day on which the Lessee paid Basic Rent, Fixed Rate Renewal Rent or Fair Market Renewal Rent, as the case may be, with respect to such Unit to and including the last date on which such Unit is made available to the Lessor or its agent for inspection and is in fact in the condition required by Section 2(d), as determined by such inspection.

The Lessee hereby acknowledges and agrees that the assembling, delivery, and transportation of the Units is of the essence of this Lease and upon application to any court having jurisdiction, the Lessor shall be entitled to a judgment, order or decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, and transport the Units.

(d) *Return Condition.* At the time of any return, the Units so being returned shall be free and clear of all liens, security interests, charges and encumbrances and rights of others (except any Owner Encumbrances) and shall be in the condition required by Section 5 hereof. Each Unit shall be free and clear of all special insignia and/or special paint markings (other than any markings or insignias required by Applicable Law or with respect to any security interest in such Unit) and shall be suitable for immediate commercial use and acceptable for interchange by the Lessor or its designee in accordance with AAR Rules.

(e) *Extension of Lease Term.* Upon the expiration of the Basic Term or any Renewal Term, as the case may be, the Lease Term for any Unit shall be extended for any period necessary for the delivery of such Unit to the Designated Locations referenced in Section 2(c); *provided*, that all deliveries shall in any event be made within 30 days after the expiration of the Lease Term, except for any Unit deemed a "wrecked car" by the Permitted Designee (or if there is no Permitted Designee, the Lessee) and certified as such to Lessor in writing by the Permitted Designee (or if there is no Permitted Designee, the Lessee), which shall in any event be delivered within 180 days after the expiration of the Lease Term. The Lessee shall pay the daily equivalent of Basic Rent, Fixed Rate Renewal

Rent or Fair Market Renewal Rent (depending upon whichever shall have been in effect immediately prior to such delivery) on each Unit delivered to a Designated Location subsequent to the expiration of the Basic Term or any Renewal Term, as the case may be, from and including the day immediately succeeding the final Payment Date to and including the date of redelivery hereunder. Any Basic Rent, Fixed Rate Renewal Rent or Fair Market Renewal Rent payable pursuant to this paragraph (e) shall be paid upon the date of such delivery. Notwithstanding anything in the foregoing to the contrary, any Unit not delivered to a Designated Location within 180 days after the expiration or termination of this Lease shall be purchased by the Lessee for an amount equal to (i) in the event the Lessee has failed to deliver ten or fewer Units by such 180th day, the greater of (A) the Termination Value for such Unit (determined as of the last day of the Lease Term then ended) or (B) the amount which would be paid pursuant to Rule 107 of the AAR Rules with respect to such Unit had such Unit suffered a Casualty Event or (ii) in all other cases, the greater of (A) the Termination Value for such Unit (determined as of the last day of the Lease Term then ended) or (B) the Fair Market Sale Value of such Unit determined as of such date.

(f) *Purchase at Expiration of Lease Term.* The Lessee shall, at its option, be entitled at the expiration of the Basic Term or any Renewal Term then in effect to purchase or cause to be purchased pursuant to the following terms and conditions, a Train Set or Train Sets as follows:

(i) *Notice.* The Lessee may, by written request to the Lessor at any time not less than 380 days but not more than 485 days prior to the expiration of the Basic Term or any Renewal Term, require that a determination be made under clause (ii) of this paragraph (f) of the Fair Market Sale Value of the Units. No such request for a determination pursuant to this clause (i) shall be deemed an election by the Lessee for a purchase pursuant to the provisions of this Section 2(f). In the event that the Lessee elects to purchase or cause to be purchased a Train Set or Train Sets, the Lessee shall cause the Lessor to be provided with a notice irrevocably making such election under the option specified as provided above and, subject to Section 2(h) hereof, identifying the Units subject to such Train Set or Train Sets at least 180 days prior to the expiration of the Lease Term.

(ii) *Determination.* Within 30 days of the receipt by Lessor of Lessee's request pursuant to clause (i) above, Lessor shall give Lessee and the Permitted Designee written notice of its proposed Fair Market Sale Value for the Units. If such proposal is unacceptable to Lessee, and if Lessor and Lessee are unable to reach agreement within 55 days after the receipt by Lessee and, so long as there is a Permitted Designee, such Permitted Designee of Lessor's proposal, a determination of the Fair Market Sale Value of the Units shall be made pursuant to the Appraisal Procedure (which shall be made within the time periods required by the Appraisal Procedure) and shall be completed at least 240 days prior to the expiration of the Lease Term.

(iii) The Lessee shall pay or cause to be paid to the Lessor, on the expiration of the Lease Term, an amount equal to the Fair Market Sale Value for Units to be

purchased pursuant to this Section 2(f) and upon such payment and the payment by the Lessee of all Rent payable on or before such expiration date with respect to such Units (including, without limitation, the Basic Rent, Fixed Rate Renewal Rent or Fair Market Renewal Rent, as the case may be, becoming due and payable on such expiration date), the Lessor shall transfer all its right, title and interest in and to such Units to the Lessee or the Permitted Designee, as the case may be, without any representation, recourse or warranty on the part of the Lessor except that the Lessor shall warrant that such Units are free and clear of all Owner Encumbrances.

(g) *Purchase Prior to Expiration of Lease Term.* So long as no Material Default or Event of Default shall have occurred and be continuing, the Lessee shall have the option to purchase or cause to be purchased on December 30, 2014 a Train Set or Train Sets at a price equal to the sum of (i) the EBO Amount for each Unit constituting such Train Set or Train Sets, (ii) all accrued and unpaid Rent hereunder and (iii) the amount of any premium payable pursuant to any Security Document. In the event that the Lessee elects to purchase or cause to be purchased a Train Set or Train Sets, the Lessee shall, on or before September 30, 2014 provide the Lessor with a notice irrevocably making such election and identifying the Units constituting such Train Set or Train Sets. Upon payment of the EBO Amount plus all Rent payable on or before December 30, 2014 (including, without limitation, the Basic Rent becoming due and payable on such date), the Lessor shall transfer all right, title and interest in and to such Units to the Lessee or the Permitted Designee, as the case may be, without any representation, recourse or warranty on the part of the Lessor, except that the Lessor shall warrant that such Units are free and clear of all Owner Encumbrances.

(h) *Identification of Train Sets.* In identifying Units as a Train Set for purposes of Sections 2(b), (f) and (g) and Section 11(c), Lessee agrees (i) that a majority of such Units shall in fact have been operated as a Train Set for some period prior to Lessee's exercise of the rights set forth in such sections (the length of such period of operation being subject to Lessee's operational needs), and (ii) Lessee will not intentionally discriminate among Units such as to include predominately Units in the best condition in a Train Set for exercise of its rights under such sections while excluding Units that may be in inferior condition.

SECTION 3. DISCLAIMER OF WARRANTIES.

(a) *No Representation or Warranty.* THE LESSEE ACKNOWLEDGES THAT (i) EACH UNIT IS OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY AND ACCEPTABLE TO THE LESSEE, AND THAT THE LESSEE HAS EXAMINED AND APPROVED ALL PURCHASE ORDERS RELATING TO ANY UNIT, (ii) EACH UNIT IS LEASED HEREUNDER SUBJECT TO ALL APPLICABLE LAWS, (iii) THE UNITS ARE SUITABLE FOR THE LESSEE'S PURPOSES AND (iv) NEITHER THE LESSOR, THE OWNER PARTICIPANT NOR ANY LESSOR ASSIGNEE IS A MANUFACTURER OF OR DEALER IN SUCH UNITS. THE LESSOR LEASES AND THE LESSEE TAKES EACH UNIT "AS-IS", "WHERE-IS" AND "WITH ALL FAULTS", IN WHATEVER CONDITION IT MAY BE, AND THE LESSEE ACKNOWLEDGES THAT NEITHER THE LESSOR, THE OWNER PARTICIPANT NOR ANY LESSOR ASSIGNEE MAKES NOR SHALL BE DEEMED TO HAVE MADE, AND EACH EXPRESSLY DISCLAIMS, ANY REPRESENTATION OR WARRANTY, EXPRESS

OR IMPLIED, AS TO THE DESIGN, OPERATION OR CONDITION OF ANY UNIT OR AS TO THE VALUE, CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, DESIGN, OPERATION, MERCHANTABILITY, OR TITLE, OF ANY UNIT, THE QUALITY OF THE MATERIAL THEREIN OR WORKMANSHIP THEREOF OR CONFORMITY THERETO TO SPECIFICATIONS, FREEDOM FROM PATENT, COPYRIGHT OR TRADEMARK INFRINGEMENT, THE ABSENCE OF ANY LATENT OR OTHER DEFECT, WHETHER OR NOT DISCOVERABLE, OR AS TO THE ABSENCE OF ANY OBLIGATIONS BASED ON STRICT LIABILITY WHATSOEVER, OR, EXCEPT AS SET FORTH IN SECTION 3(b), ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT AND UNDER NO CIRCUMSTANCES WHATSOEVER SHALL THE LESSOR, THE OWNER PARTICIPANT OR ANY LESSOR ASSIGNEE BE LIABLE OR RESPONSIBLE TO THE LESSEE FOR ANY CONSEQUENTIAL DAMAGES.

NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS SECTION 3(a), THE LESSOR WARRANTS AND AGREES NOT TO WRONGFULLY INTERFERE WITH THE LESSEE'S QUIET ENJOYMENT OF THE UNITS, PROVIDED ONLY THAT NO EVENT OF DEFAULT SHALL HAVE OCCURRED AND BE CONTINUING UNDER THE TERMS OF THIS LEASE.

(b) *Title.* Notwithstanding the provisions of the foregoing paragraph (a), the Lessor represents and warrants that on each Closing Date it will have whatever title to the Units being delivered on such Closing Date as has been conveyed to it on such date by the applicable Manufacturer and that such Units will be subject to no Owner Encumbrances.

SECTION 4. USE AND OPERATION OF UNITS.

During the Lease Term, so long as no Event of Default has occurred and is continuing, the Lessee has the exclusive right to possession, control and full use of the Units leased hereunder and may use such Units in any lawful trade or commerce, provided that the Lessee shall use each Unit only in the manner for which it was designed and intended and that such Units shall not be used or operated in any manner contrary to any Applicable Law; *provided, however,* that the Lessee shall have the right to contest the applicability of any such Applicable Law by means of a Permitted Contest; *provided, further,* that the Units may not be used to carry or store any Hazardous Materials. Lessee intends to use the Units in interstate commerce. Lessee shall perform all of its obligations under the Lessee Documents and exercise its rights under the Lessee Documents in accordance with Applicable Law.

The Lessee hereby certifies to the Lessor that the Units will at all times during the Lease Term be used and operated in the continental United States and, at any time after January 2, 2003, Canada. If, at any time, any Unit is to be used or operated outside the limitations set forth above, the Lessee will obtain the consent of the Lessor and any Lessor Assignee prior to such proposed use or operation and will, at the request of Lessor or any such Lessor Assignee, cause all such filings to be duly made and recorded as may be reasonably requested by the Lessor or any such Lessor Assignee prior to such proposed use or operation.

SECTION 5. MAINTENANCE.

The Lessee, at its own expense and risk, shall, throughout the Lease Term, cause each Unit to be serviced and repaired (a) so as to maintain such Unit in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange in accordance with AAR Rules and otherwise in a condition consistent with the requirements of Applicable Law, (b) in a manner at least as favorable as the Lessee's or the Permitted Designee's standards for similar types and ages of equipment owned or leased by Lessee or Permitted Designee (it being understood that for purposes of this requirement, rolling stock capital rebuild programs shall not constitute ordinary maintenance) and (c) in accordance with (i) the requirements of the insurance policies maintained or caused to be maintained by the Lessee pursuant to Section 10 hereof and (ii) the applicable Manufacturer's recommendations and as required by the applicable Manufacturer as a condition to enforce warranties. Lessee agrees to maintain all records, logs and other materials required by the Association of American Railroads or the Department of Transportation, or any other governmental authority having jurisdiction over the Units or the Lessee, to be maintained in respect of each Unit.

SECTION 6. INSPECTION.

The Lessor, the Owner Participant, any Lessor Assignee or any authorized representatives of the foregoing may, upon reasonable notice and at their own risk and expense and at such reasonable times, inspect the Units and applicable maintenance and use records relating thereto, and all other records (financial or otherwise) of the Lessee and may make copies thereof, and the Lessee shall cause the foregoing to be made available to them, but neither the Lessor, the Owner Participant nor any Lessor Assignee shall have any duty to do so; *provided, however*, that any such inspection shall in no way interfere with any repairs or maintenance or the use and operation of the Units and shall be subject always to Lessee's and Permitted Designee's customary security and safety procedures. Additionally, during the 180 day period immediately preceding the expiration of the Lease Term, the Lessee shall permit any prospective purchaser, lessee or user of any Unit, upon reasonable notice, at their own risk and expense and at such reasonable times, to inspect such Unit; *provided, however*, that any such inspection shall in no way interfere with any repairs or maintenance or the use and operation of the Units and shall be subject always to Lessee's and Permitted Designee's customary security and safety procedures.

SECTION 7. IMPROVEMENTS.

(a) *Improvements.* The Lessee shall cause such Improvements to be made to the Units as shall be required by Applicable Law or in order to comply with Section 5 hereof. In addition, the Lessee may cause such other Improvements to the Units as the Lessee or the Permitted Designee may deem desirable but only to the extent that such Improvements do not diminish the Fair Market Rent, Fair Market Sale Value, residual value, utility, or remaining economic useful life of such Unit below the Fair Market Rent, Fair Market Sale Value, residual value, utility, or remaining economic useful life thereof immediately prior

to such Improvements, assuming such Unit was then in at least the condition required to be maintained by the terms of this Lease.

(b) *Title; Removal of Severable Improvements.* Title to each Nonseverable Improvement and Required Severable Improvement shall, without further act, vest in the Lessor and become subject to any Security Document. Title to each Optional Severable Improvement shall, without further act, vest or remain in the Lessee and, subject to the immediately succeeding sentence, the Lessee, at its own expense and risk shall have the right to remove any Optional Severable Improvement to which the Lessee has title from the Units at any time during or at the expiration of the Lease Term. The Lessee shall provide the Lessor with written notice (the "*Lessee Notice*") at least 30 days prior to the expiration of the Lease Term identifying any and all Optional Severable Improvements which the Lessee intends to remove on or prior to the expiration of the Lease Term and from the date of the Lessee Notice to the date of the expiration of the Lease Term the Lessee shall not be entitled to remove any Optional Severable Improvement identified in the Lessee Notice. Upon the expiration of this Lease, the Lessor shall have the option to purchase from the Lessee any Optional Severable Improvement identified in the Lessee Notice at the Fair Market Sales Value of such Optional Severable Improvement. If the Lessor elects not to purchase any Optional Severable Improvement identified in the Lessee Notice, the Lessee shall, at its option, remove such Optional Severable Improvement or return the Unit with such Optional Severable Improvement intact.

(c) *Removal of Property; Replacements.* The Lessee may, in the ordinary course of maintenance or repair of any Unit, cause any item of property constituting a part of such Unit to be removed, and unless the removal of such item is required by the terms hereof, the Lessee shall cause such item to be replaced as promptly as possible by an item of property that is free and clear of all liens, encumbrances and rights of others (other than Permitted Encumbrances) and in as good operating condition as, and with a residual value, Fair Market Sale Value, utility and remaining economic useful life at least equal to, the item of property being replaced assuming such item was at least in the condition required to be maintained by the terms hereof. Any item of property removed from such Unit as provided in the preceding sentence shall remain the property of the Lessor until replaced in accordance with the terms of said sentence, but shall then, without further act, become the property of the Lessee or the third party performing maintenance services, as the case may be. Any such replacement property shall, without further act, become the property of the Lessor and be deemed part of such Unit for all purposes hereof, subject to the lien of any Security Document.

(d) *Identification Marks.* The Lessee will (i) cause, as soon as a given Unit becomes subject to the terms of this Lease, such Unit to be kept numbered with the identifying number set forth in the applicable Lease Supplement with respect thereto, as the case may be, and (ii) keep and maintain plainly, distinctly, permanently and conspicuously marked on both sides of such Unit in letters not less than one inch in height as follows:

"Leased from a Bank or Trust Company, as Trustee, and
subject to a Security Interest recorded with the I.C.C."

with appropriate changes therein and additions thereto as from time to time may be required by Applicable Law in order to protect the title of the Lessor and the rights of the Lessor and any Lessor Assignee. The Lessee will cause to be replaced promptly any such markings which may be removed, defaced, obliterated or destroyed. The Lessee will not permit the identifying number of any Unit to be changed except in accordance with a Lease Supplement, which Lease Supplement shall have been previously filed, recorded or deposited in all public offices where this Lease will have been filed, recorded and deposited. The Lessee shall have the right at its expense to cause to be displayed indicia of operation of any Unit by the Lessee and to cause such Unit to be identified with the name of Lessee. Lessee shall not permit any other markings on the Units which indicate any other ownership or security interest.

(e) *Limited Use Property.* Notwithstanding any provision of this Section 7 to the contrary, the Lessee shall make no modification, alteration, change, substitution or other Improvement to any Unit, or any part thereof, that would cause such Unit to become "limited use property" within the meaning of Rev. Proc. 76-30.

SECTION 8. LIENS.

Liens. (a) Neither the Lessee nor any other Person shall directly or indirectly create, assume, incur or permit to exist any lien, claim, security interest or encumbrance on or with respect to any Unit, other than Permitted Encumbrances. The Lessee shall notify the Lessor promptly of the imposition of any such lien, claim, security interest or encumbrance and the Lessee agrees that it will (except with respect to Owner Encumbrances) cause the same to be discharged, dismissed or removed; *provided*, that notwithstanding the foregoing, the Lessee shall have the right to contest or to cause the contest of any such lien, claim, security interest or encumbrance by means of a Permitted Contest.

(b) The Lessee, in its individual capacity, shall not directly or indirectly create, assume, incur or permit to exist any lien, claim, security interest or encumbrance on or with respect to any Unit which results from any act of or claim against the Lessee in its individual capacity not related to or in connection with the transactions contemplated by the Lessee Documents and the Lessee, in its individual capacity, agrees that it will cause the same to be discharged, dismissed or removed; *provided*, that notwithstanding the foregoing, the Lessee, in its individual capacity, shall have the right to contest or cause the contest of any such lien, claim, security interest or encumbrance by means of a Permitted Contest.

SECTION 9. RENT.

(a) *Interim Rent.* The Lessee agrees to pay, to the extent not paid by the Lessor pursuant to the provisions of any Security Document, Interim Rent for the Units in one installment due on the Basic Term Commencement Date, in an amount equal to the amount set forth as such in the Lessee Supplement therefor. The Lessor agrees to give written notice to the Lessee and the Lessor Assignee at least five Business Days prior to the Basic Term Commencement Date if the funds for the payment required to be made by the Lessor

on the Basic Term Commencement Date will not be paid by the Lessor to the Lessor Assignee in an amount equal to the amount set forth as such in the relevant Lease Supplement. If and to the extent that the Lessor shall not have paid to the Lessor Assignee on the Basic Term Commencement Date an amount equal to the Interim Rent, the Lessee shall pay on such date all or such portion of the Interim Rent as shall remain unpaid. The Lessor agrees to reimburse the Lessee for (A) the amounts, if any, of Interim Rent paid by the Lessee pursuant hereto, *plus* (B) accrued interest on the unreimbursed portion thereof at the Overdue Rate from the date such amount is payable by the Lessor to but not including the dates such reimbursement is made (such amount to be reimbursed, the "*Reimbursement Amount*"). Provided no Event of Default shall have occurred and be continuing, the Lessee shall be entitled to offset, without limitation of any other right the Lessee may have against any other Person, against any Rent due from the Lessee to the Lessor or the Owner Participant, until the Lessee has been fully reimbursed for the Reimbursement Amount. No such offset or aggregate combined effect of separate offsets shall be made if the effect would be to reduce the amount of any installment of Interim Rent or Basic Rent to any amount insufficient to pay in full the payments then required to be made on account of any amounts then due and owing under any Security Document.

(b) *Basic Rent; Fixed Rate Renewal Rent; Fair Market Renewal Rent.* Subject to the immediately following sentence, the Lessee hereby agrees to pay to the Lessor (i) on each Payment Date during the Basic Term, Basic Rent for the Units, payable in arrears in consecutive semi-annual installments, in an amount equal to the product obtained by multiplying (i) the Lessor's Cost of such Unit by (ii) the applicable percentages set forth on Schedule 2 attached to the relevant Lease Supplement (as such percentages may be adjusted pursuant to Section 9(e) hereof), (ii) for any Fixed Rate Renewal Term, Fixed Rate Renewal Rent, payable on such dates and in such amounts as are determined pursuant to Section 2(b), (iii) for any Fair Market Renewal Term, Fair Market Renewal Rent, payable on such dates and in such amounts as are determined pursuant to Section 2(b) and (iv) for any extension of the Lease Term contemplated by Section 2(c) or 2(e), Basic Rent, Fixed Rate Renewal Rent or Fair Market Renewal Rent, as the case may be, payable on such dates and in such amounts as provided in such Section 2(c) or 2(e).

(c) *Supplemental Rent.* In addition to its obligation to pay Interim Rent, if any, Basic Rent, Fixed Rate Renewal Rent, if any, and Fair Market Renewal Rent, if any, hereunder, the Lessee shall pay to the Lessor or such other Person entitled thereto on demand any and all Supplemental Rent, including, without limitation, interest, to the extent permitted by Applicable Law, at a rate per annum equal to the Overdue Rate on any part of any installment of Interim Rent, Basic Rent, Fixed Rate Renewal Rent, Fair Market Renewal Rent or Supplemental Rent not paid when due for any period for which the same shall be overdue.

(d) *Manner of Payment; Unconditional Payment.* Except as otherwise provided in any Security Document or in any other written agreement entered into with the Secured Party in connection with the transactions contemplated hereby, all Rent shall be paid by the Lessee to the Lessor. All Rent shall be payable by wire transfer of Federal or other funds current and immediately available to the Person to whom such payment is required to be

made prior to 11:00 a.m., New York, New York time on the day when each such payment shall be due. Any payments not made available prior to 11:00 a.m., New York, New York time on the date when each such payment is due shall bear interest at the Overdue Rate from and including such date to but excluding the Business Day on which payment is so made available. If any date for the payment of any Rent is not a Business Day, the payment otherwise payable on such date shall be payable on the next succeeding Business Day, and no interest shall accrue. The Lessee's obligation to pay Rent payable hereunder shall be absolute and unconditional under any and all circumstances and shall not be affected by any circumstances of any character whatsoever including, without limitation and, except as otherwise expressly provided in the last two sentences of Section 9(a), (i) any set-off, abatement, counterclaim, suspension, recoupment, reduction, rescission, defense or other right that the Lessee may have against the Lessor, the Permitted Designee, the Owner Participant, the Lessor Assignee, any vendor or manufacturer of any Unit, or any other Person for any reason whatsoever, (ii) any defect in or failure of title, merchantability, condition, design, compliance with specifications, operation or fitness for use of all or any part of any Unit, (iii) any damage to, or removal, abandonment, requisition, taking, condemnation, loss, theft or destruction of all or any part of any Unit or any interference, interruption, restriction, curtailment or cessation in the use or possession of any Unit by the Lessee or any other Person for any reason whatsoever or of whatever duration, (iv) to the maximum extent permitted by law, any insolvency, bankruptcy, reorganization or similar proceeding by or against the Lessee, the Lessee Participant, the Lessor, the Owner Participant, the Lessor Assignee, the Permitted Designee or any other Person, (v) the invalidity, illegality, rejection or unenforceability of this Lease, any other Lessee Document, or any other agreement, document or instrument referred to herein or therein or any other infirmity herein or therein or any lack of right, power or authority or authorization of the Lessee, the Lessee Participant, the Lessor, the Owner Participant, the Lessor Assignee, the Permitted Designee or any other Person to enter into this Lease, any other Lessee Document or any Lessee Participant Document or to perform the obligations hereunder or thereunder or consummate the transactions contemplated hereby or thereby or any doctrine of force majeure, impossibility, frustration or failure of consideration, (vi) the breach of any other Lessee Document or any Lessee Participant Document by the Lessee, the Lessee Participant, the Lessor, the Owner Participant, the Lessor Assignee or the Permitted Designee, whether or not similar to any of the foregoing, any present or future law notwithstanding, it being the intention of the parties thereto that all Rent being payable by the Lessee shall continue to be payable in all events in the manner and at the times provided herein. 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 or surrender this Lease except in accordance with the express terms hereof. If for any reason whatsoever this Lease shall be terminated in whole or in part by operation of law or otherwise except as specifically provided herein, the Lessee nonetheless agrees to pay to the Lessor an amount equal to the liquidated damages set forth in Section 15(b) or (c) hereof, as Lessor shall elect, plus all other amounts referenced therein. The obligations of the Lessee in the immediately preceding sentence shall survive the expiration or termination of this Lease. Except to the extent of any payment in excess of that required to be made hereunder, each payment of Rent made by the Lessee shall be final, and the Lessee will not seek to recover any part of such payment from any Lessor Assignee,

the Lessor or the Owner Participant for any reason whatsoever. Nothing contained in this Lease, including, without limitation, this Section 9(d), shall prevent Lessee from exercising such other legal rights and remedies as it may have against the Lessor, the Owner Participant or any Lessor Assignee for damages suffered by Lessee as a result of a violation of its rights under this Lease by such party.

(e) *Adjustment of Rent.* The Lessee and the Lessor agree that the percentages used in calculating Basic Rent, Termination Values and EBO Amounts will be adjusted on or prior to March 31, 1996, in the event that (i) the Pricing Assumptions prove to be inaccurate or incorrect or (ii) a Change in Tax Law shall occur on or prior to the third Closing Date; *provided, however,* that any such adjustments shall be made in accordance with the provisions of any Security Document. Any such adjustment, upwards or downwards, as the case may be, shall be made by the Owner Participant on the basis of the same methodology and assumptions used by the Owner Participant in the determination of the percentages used in calculating Basic Rent, Termination Values and EBO Amounts on the first Closing Date and in such manner as (i) will result, in the Owner Participant's reasonable judgment, in maintaining for the Owner Participant the same Net Economic Return that would have been realized by the Owner Participant over the entire Interim Term and Basic Term had no changes in the percentages used in calculating Basic Rent, Termination Values and EBO Amounts been made pursuant to this Section 9(e) (assuming that such percentages were calculated using the same methodology and assumptions used by the Owner Participant in connection with its original determination thereof), and, to the extent consistent therewith, minimizing the net present value (computed utilizing a discount rate equal to 8.36% and compounded semi-annually) of the Basic Rent, with appropriate adjustments to the percentages used in calculating Termination Values based upon the adjusted schedule of Basic Rent, (ii) will not cause the application of Section 467(b)(2) of the Code and any temporary or final regulations promulgated thereunder, (iii) will comply with each other applicable provision of the Code or any successor thereto and any temporary or final regulations thereunder, (iv) will not reduce the amounts payable as installments of Basic Rent, or as payments of Termination Value or EBO Amounts hereunder, with respect to any Units below (A) the amounts, if any, required by and Security Document or (B) an amount which would cause the Owner Participant to lose the ability to account for this Lease and its investment in the Units using leveraged lease accounting in accordance with Financial Accounting Standards Board Statement No. 13, and (v) will be consistent with any published or announced position of the Internal Revenue Service concerning true leases.

The Lessee and the Lessor hereby agree that, in connection with any adjustment pursuant to this clause (e), the Lessor's Cost for each Unit of each type shall be adjusted so that such Lessor's Cost represents the average of the Lessor's Cost for all Units of such type.

Any adjustment of the percentages used in calculating Basic Rent, Termination Value, EBO Amount and Lessor's Cost shall be evidenced by the execution and delivery of a supplement to this Lease between Lessor and Lessee which supplement shall be in form and substance satisfactory to Lessee, Lessor, Owner Participant, Permitted Designee and Lessee Participant, and so long as the lien of any Security Document remains outstanding, copies of the adjustments and the supplement shall be forwarded to the Secured Party.

SECTION 10. INSURANCE.

(a) The Lessee shall at all times during the Lease Term, at its own expense, carry and maintain or cause to be carried and maintained by the Permitted Designee (i) physical damage insurance insuring against all risks of physical loss or damage to the Units, in an amount not less than the Termination Value of the Units and (ii) insurance against liability for bodily injury, death and property damage resulting from the use and operation of the Units in an amount not less than \$25,000,000 per occurrence, in each such case, with customary exclusions and deductibles no greater than those applicable to insurance on similar equipment owned or operated by utilities of similar size and with comparable operations to the Permitted Designee and with insurance companies of recognized responsibility.

(b) Each policy of insurance shall: (i) with respect to public liability insurance, name each of Lessor in its individual capacity and as Owner Trustee, Owner Participant, Lessee, Lessee Participant and any Lessor Assignee as additional insureds as their interests may appear, (ii) with respect to property damage insurance, name each Lessor Assignee as loss payees, (iii) provide that Lessor, Owner Participant, any Lessor Assignee and, in the case of insurance maintained by Permitted Designee, Lessee and Lessee Participant shall not be responsible for the representations and warranties made therein by Lessee, Lessee Participant or the Permitted Designee, as the case may be, (iv) provide for at least 30 days' prior written notice to each of Lessor, Lessee, Lessee Participant and any Lessor Assignee of the expiration, cancellation or material alteration thereof, (v) provide for prompt written notification to each of Lessor, Lessee, Lessee Participant and any Lessor Assignee of a failure to pay premium or of a decision not to renew upon expiration thereof, (vi) provide for a waiver of the insurer's right of subrogation (including in the case of self-insurance) against Lessor, Owner Participant, any Lessor Assignee and, in the case of insurance maintained by a Permitted Designee, Lessee and Lessee Participant and (vii) with respect to public liability insurance, be primary without right of contribution from any other insurance policies.

(c) The proceeds of any insurance (including any self-insurance) for damage to any Unit not constituting a Casualty Event shall be applied in payment for the repair of such damage to the extent required to maintain such Unit in accordance with the terms hereof and of any other Lessee Document, if such repair shall not have already been paid for by the Lessee or the Permitted Designee, or, if already paid by the Lessee or the Permitted Designee, and upon proof satisfactory to the Lessor, to reimburse the Lessee or the Permitted Designee, as the case may be, for its payment of such repair and any balance remaining after compliance with said terms shall be paid over to, or retained by, the Lessee or the Permitted Designee, as the case may be.

(d) The Lessee agrees that it will not do any act or voluntarily suffer or permit any act to be done whereby any insurance required to be maintained hereunder shall or may be suspended or impaired and will not suffer or permit any Unit to be used in a manner not permitted under the insurance policies, if any, maintained hereunder without first covering such Unit for such use.

(e) The Lessor, Owner Participant or any Lessor Assignee may at its own expense provide insurance on or with respect to the Units or the operation thereof unless such insurance would conflict with or otherwise limit any insurance maintained or caused to be maintained by the Lessee hereunder.

(f) The Lessee shall, annually within thirty (30) days following the anniversary of the first Closing Date, cause to be furnished to the Lessor and each Lessor Assignee an Officer's Certificate stating that the insurance required to be maintained pursuant to this Section 10 is in full force and effect and complies with all of the provisions of this Section 10. The Lessor and any Lessor Assignee may, but not more than once in any twelve month period, request that the Lessee deliver or cause to be delivered to Lessor and each Lessor Assignee copies of all certificates evidencing any such insurance carried on the Units.

SECTION 11. LOSS, REQUISITION OR SEIZURE; CASUALTY EVENT; EARLY TERMINATION.

(a) *Loss, Requisition or Seizure.* The Lessee shall bear all risk of loss of the Units. A taking of any Unit for use by any governmental entity shall not terminate this Lease with respect to such Unit, but the Lessee shall remain liable for all its obligations hereunder with respect to such Unit, including, without limitation, its liability for payment of Rent, unless and until such taking becomes a Casualty Event hereunder, at which time the provisions of Section 11(b) shall apply. So long as such taking shall not have become a Casualty Event hereunder, all payments received by the Lessor or the Lessee for use of such Unit as a result of such taking during the Lease Term shall be paid over to, or retained by, the Lessee, except if a Material Default or an Event of Default shall have occurred and be continuing in which event such payments shall be payable to the Lessor, subject to an accounting between the Lessor and the Lessee, at the Lessee's expense, at the termination of this Lease. Provided no Material Default or Event of Default shall have occurred and be continuing, after a Casualty Event with respect to a Unit, all payments received by the Lessor or the Lessee for use of such Unit under this paragraph (a) shall be paid over to, or retained by, the Lessee to the extent necessary to reimburse the Lessee for all amounts of Termination Value actually paid by it to the Lessor with respect to such Unit; otherwise and, in any event, once the Lessee has been reimbursed in full, all such payments shall be shared equally by Lessee and Lessor.

(b) *Casualty Event.* (i) On each Payment Date or, if such Payment Date shall fall on or prior to the forty-fifth day following the date of such Casualty Event, then on the next succeeding Payment Date (but in no event later than the final Payment Date or, in the case of any Unit whose Lease Term has been extended pursuant to Section 2, the redelivery of such Unit to the Lessor hereunder), the Lessee shall pay to the Lessor, or to whomever shall be entitled to receive the same, the Termination Value for any Unit in respect of which a Casualty Event shall have occurred and for which the Termination Value has not theretofore been paid, computed as of such Payment Date, plus (y) if the date of the payment of the Termination Value shall be after the final Payment Date, an amount equal to interest at the Prime Rate computed for the period from such final Payment Date to the date such Termination Value shall be paid, plus (z) the Basic Rent, Fixed Rate Renewal Rent or Fair

Market Renewal Rent, as the case may be, payable on such Payment Date and all other unpaid Rent due hereunder accrued to the date such payment of the Termination Value is made. It is understood and agreed that, in the case of a Casualty Event where payment of Termination Value is to be made after the first Payment Date following the Casualty Event in accordance with the terms of this paragraph (b), Basic Rent, Fixed Rate Renewal Rent or Fair Market Renewal Rent, as the case may be, shall nevertheless be paid by Lessee on every Payment Date through and including the Payment Date on which Termination Value is paid. After the payment in full of the Termination Value and such other amounts as are due hereunder, the Lessee's obligation to pay further Basic Rent, Fixed Rate Renewal Rent or Fair Market Renewal Rent, as the case may be, with respect to such Unit shall terminate.

(ii) Unless a Material Default or an Event of Default shall have occurred and be continuing, all payments received by the Lessor or the Lessee from any governmental authority, railroad or otherwise as compensation for a Casualty Event with respect to any Unit, in the case of any payments received by the Lessee, shall be paid over to the Lessor and, in each such case, shall be applied first in reduction of the Lessee's obligation to pay the Termination Value of such Unit, if such Termination Value has not already paid by the Lessee or if already paid by the Lessee, shall be applied to reimburse the Lessee for its payment of the Termination Value, and the balance, if any, of such payments shall be shared equally by the Lessee and the Lessor.

(iii) In the event that the Lessee shall make payment as provided above, including payment by application of compensation or insurance proceeds and shall pay all other Rent then owing, this Lease shall terminate with respect to such Unit, whereupon the Lessor will transfer to the Lessee or such other Person as may be required by Rule 107 of the AAR Rules, as the case may be, all of its right, title and interest in and to such Units free and clear of any Owner Encumbrances.

(iv) Provided no Material Default or Event of Default shall have occurred and be continuing, in lieu of payment of the Termination Value for any Unit due and owing as provided in clause (i) above, the Lessee may, within one year from the date on which such Casualty Event occurred, convey or cause to be conveyed to Lessor, as replacement for any such Unit with respect to which a Casualty Event occurred, good and marketable title to a Replacement Unit (A) free and clear of all liens, claims, security interests and encumbrances other than Permitted Encumbrances, (B) having a value, utility and remaining useful life at least equal to, and being in as good operating condition as, such Unit with respect to which a Casualty Event occurred assuming such Unit was in the condition and repair required by the terms hereof immediately prior to the occurrence of such Casualty Event (as evidenced by an appraisal in form and substance satisfactory to the Lessor, conducted by an Appraiser selected by the Lessee (in consultation with the Permitted Designee) and acceptable to the Lessor) and (C) which is in conformity with all Applicable Laws. Prior to or at the time of any such conveyance, the Lessee, at its own expense, will (A) furnish or cause to be furnished to the Lessor (I) a bill of sale, in form and substance satisfactory to Lessor, with respect to such Replacement Unit and (II) the appraisal described in the immediately preceding sentence and (B) file, or cause to be filed, a supplement hereto and to the Security Document identifying such Replacement Unit as subject to this Lease and to the Security

Document in accordance with the requirements of Section 22 hereof. Upon full compliance by the Lessee with the terms of this clause (iv) and of Section 13(d) hereof, the Lessor will transfer to the Lessee or to the Permitted Designee, as the case may be, without recourse or warranty (except as to the Owner Encumbrances) and subject to a disclaimer satisfactory to the Lessor of all liabilities, including tort and negligence with respect to such Unit, all of the Lessor's right, title and interest, if any, in and to such replaced Unit with respect to which a Casualty Event occurred. For all purposes hereof, each such Replacement Unit shall, after such conveyance, be deemed part of the property leased hereunder and shall be deemed a "Unit" as defined herein and in the Security Document. No Casualty Event with respect to a Unit under the circumstances contemplated by the terms of this Section 11(b)(iv) shall result in any reduction in Rent.

(v) Any payments to which Lessee is otherwise entitled under this Section 11 shall not be paid to Lessee if a Material Default or an Event of Default shall have occurred and be continuing and shall be held by Lessor as collateral for Lessee's obligations under the Lessee Documents and shall be applied to such obligations.

(c) *Early Termination.* (i) In the event that, at any time on or after January 2, 2001, so long as no Event of Default shall have occurred and be continuing, a Responsible Officer of the Permitted Designee or, if there is no Permitted Designee, the Lessee, shall in his good faith judgment make a determination that the Units (or any Train Set) have become economically obsolete or surplus to the needs of the Permitted Designee or, if there is no Permitted Designee, the Lessee, and shall have delivered to the Lessee (in the case of a determination by the Permitted Designee), the Lessor and any Lessor Assignee an Officer's Certificate to such effect; then, in any such case, the Lessee shall have the right, at its option, on at least 180 days' prior irrevocable written notice to the Lessor and to any Lessor Assignee, to terminate this Lease on any Payment Date (for the purpose of this Section 11(c) called the "*Termination Date*") specified in such notice, with respect to one or more Train Sets which notice shall, subject to Section 2(h), identify the Units constituting to such Train Set or Train Sets; *provided* that this Lease may not be terminated pursuant to this Section 11(c) unless the Permitted Designee is terminating the Coal Supply Service Agreement on the same date pursuant to Section 12(d) of the Coal Supply Service Agreement. In the event of an early termination of this Lease as a result of a determination by the Lessee or the Permitted Designee, as the case may be, that the Units or any Train Set are economically obsolete or surplus to the needs of Lessee or Permitted Designee, as the case may be, neither Lessee nor Permitted Designee shall thereafter, for a period of one year, purchase, lease or otherwise acquire any additional aluminum bodied railcars of the same or similar type, size, and capacity as the Units subject to such termination, and this obligation shall survive the termination of this Lease. On the Termination Date, each Unit shall be in the same condition and shall have been delivered to the same location as if being returned pursuant to Sections 2(c) and 2(d) free and clear of all liens, claims, security interests and encumbrances (other than Owner Encumbrances).

(ii) During the period from the giving of such notice until the Termination Date, the Lessee, as agent for the Lessor, shall use its best efforts to obtain cash bids for the purchase of such Units, and the Lessee shall certify to the Lessor the amount of such bid and

the name and address of the party submitting the same. On the Termination Date (or such later date as the Lessor and the Lessee or the Permitted Designee may mutually agree) the Lessor shall sell such Units for cash to the bidder who shall have submitted the highest bid prior to the Termination Date, *provided, however*, that the purchaser of such Units shall be a Person other than the Lessee, the Lessee Participant, the Permitted Designee, any Affiliate of any such Person or any of its or their successors or assigns. The sales price (net of costs and expenses of the Lessor reasonably incurred in such sale) realized at such sale shall be paid to the Lessor, and, in addition, on the Termination Date the Lessee shall pay to the Lessor, or to whomever shall be entitled to receive the same, the amount, if any, by which (A) the Termination Value for such Units, computed as of such Termination Date, exceeds (B) the sales price of such Units net of such reasonable costs and expenses referred to above. In addition, the Lessee shall pay to the Lessor on the date of such sale, (i) the amount of the Basic Rent payable on such Termination Date, (ii) all other Rent then due and (iii) the amount of any premium payable under any Security Document. If no sale shall occur on the date scheduled therefor as above provided or if such sale shall have occurred but the Lessee shall not have paid the amounts set forth in the two immediately preceding sentences, this Lease will continue in full force and effect. The Lessor shall not have a duty to solicit bids (but shall have the right to do so), to inquire into the efforts of the Lessee or the Permitted Designee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale pursuant to this Section 11(c) other than to transfer or to cause to be transferred to the purchaser named in the highest bid certified by the Lessee to the Lessor as above provided all the Lessor's right, title and interest in and to such Units. Any sale pursuant to this Section 11(c) shall be free and clear of the Lessee's and the Permitted Designee's rights to such Units, and any Owner Encumbrances and Permitted Encumbrances but otherwise shall be made without any representation, recourse or warranty whatsoever on the part of the Lessor except that the Lessor shall warrant to the purchaser that such Units are free and clear of all Owner Encumbrances.

(iii) Notwithstanding the provisions of paragraphs (i) and (ii) of this Section 11(c), the Lessor may elect, no later than five (5) Business Days prior to the Termination Date, not to sell the Units subject to such termination to the highest bidder, if any, on the Termination Date, whereupon the Lessee shall deliver such Units to the Lessor in the condition required by this Lease, treating the Termination Date as the termination date of the Lease Term with respect to such Units; *provided* that the Lessor's rights to possession of such Units is subject to the condition precedent that the Lessor has paid the entire principal, accrued interest and premium, if any, due under any Security Document with respect to such Units; *provided further* that upon such election by the Lessor, such delivery of such Units and payment by the Lessee of all Rent due and unpaid with respect to such Units to and including the Termination Date, the Lessee shall have no obligation to pay any Termination Value with respect to such Units or any premium.

SECTION 12. INDEMNIFICATION BY LESSEE.

(a) *General Indemnity.* (i) The Lessee hereby assumes liability for and shall indemnify, protect, defend, save and keep harmless Wilmington Trust Company, the Lessor, the Owner Participant, the Owner Trust Estate, any Lessor Assignee and their respective

successors, assigns, directors, officers, employees, servants and agents (each an "Indemnitee") on an After-Tax Basis from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including, without limitation, legal fees and expenses of whatsoever kind and nature (herein collectively called "*Liabilities*"), imposed on, incurred by or asserted against any Indemnitee or any Unit in any way relating to or arising out of (A) this Lease, the other Lessee Documents or any other written agreement entered into in connection with the transactions contemplated hereby or thereby or any amendment, waiver or modification of any of the foregoing consented to by the Permitted Designee or the enforcement of any of the terms hereof or of any of the foregoing or (B) the construction, manufacture, modification, acquisition, purchase, testing, acceptance, rejection, ownership, documenting, mortgaging, delivery, redelivery, nondelivery, lease, sublease, substitution, possession, use, operation, maintenance, inspection, condition, sale, return or other disposition of or any other matter relating to any Unit or any part or portion of any thereof (including, in each case and without limitation, latent or other defects, whether or not discoverable, and any claim for patent, trademark or copyright infringement and all liabilities, obligations, losses, damages and claims in any way relating to or arising out of injury to Persons, properties or the environment or strict liability in tort or violations of any regulatory law or requirement, including, but not limited to securities laws), *provided* that the foregoing indemnity with regard to any particular Indemnitee shall not extend to (i) Liabilities to the extent resulting directly from the willful misconduct or gross negligence of, or willful breach of this Lease or any other agreement entered into in connection with the transactions contemplated hereby by, such Indemnitee or any directors, officers, employees, servants or Affiliates thereof, (ii) so long as no Event of Default shall have occurred and be continuing, Liabilities to the extent attributable to acts or events that occur after such Unit is no longer leased under the Lease or if such Unit remains part of the Owner Trust Estate after the expiration of the Lease Term (including any extensions thereof), from acts or events that occur after possession of such Unit has been delivered to the Lessor in accordance with Section 2 hereof, (iii) except to the extent caused by an Event of Default or the exercise of any purchase or termination option pursuant hereto, Liabilities resulting solely from any violation by such Indemnitee or any directors, officers, employees, servants or Affiliates thereof of Section 5 of the Securities Act (or any successor thereto) or any other Applicable Law as a result of any transfer by such Indemnitee of any Security or the beneficial interest in the Owner Trust Estate, (iv) Liabilities which are taxes (including any fees, liens, assessments or other like charges associated therewith), it being the intention of the parties that indemnity for taxes shall be covered in the Lessee Tax Indemnity Agreement and Section 12(b) hereof, (v) Liabilities resulting solely from the inaccuracy of any material representation or warranty or breach of any covenant made by any such Indemnitee in this Lease or in any other agreement entered into in connection with the transactions contemplated hereby to which such Indemnitee is a party, (vi) Liabilities resulting solely from any voluntary transfer or disposition (other than (a) those occurring while an Event of Default has occurred and is continuing or (b) if required pursuant to any other written agreement entered into in connection herewith) by such Indemnitee or any directors, officers, employees, servants or Affiliates thereof of its interests in the Owner Trust Estate or any Security, and (vii) judgments against such Indemnitee to the extent arising as a result of a willful breach by such Indemnitee of its obligations under this Agreement or any other

agreement entered into in connection with the transactions contemplated hereby and any reasonable legal fees or expenses incurred by such Indemnitee or any directors, officers, employees, servants or Affiliates thereof in connection with the same. If any Indemnitee has knowledge of any Liability hereby indemnified against, it shall give prompt written notice thereof to the Lessee or, if the Lessee has knowledge of any Liability hereby indemnified against, it shall give prompt written notice thereof to the party entitled to be indemnified; *provided, however*, that the failure of such Indemnitee to give such notice to the Lessee shall not release the Lessee from any obligations under this Section 12(a).

(ii) The Lessee, at its sole cost and expense and in its own name, may contest or cause to be contested by Permitted Contest any Liability indemnified against under this Section 12(a) with legal counsel reasonably satisfactory to the Indemnitees and may assume or cause to be assumed responsibility for and control of any judicial proceeding relating thereto; *provided*, that Lessee shall have first acknowledged and agreed in writing to its liability in respect of such Liability (without any applicable set-off, exclusion or defense) if such contest is decided adversely; *provided further* the Lessee may not control any such contest if (A) an Event of Default shall have occurred and is continuing, (B) such liability constitutes a criminal liability to any Indemnitee, (C) such Liability involves a material risk of loss or sale of the Units, (D) the contest involves claims not indemnified by Lessee which have not been severed from such contest or (E) such control would be inappropriate under applicable standards of professional conduct due to actual or potential conflicting interests.

(iii) In the event the Lessee assumes or causes to be assumed the defense of any such contest, any Indemnitee shall have the right to employ separate counsel in such contest and participate therein, and the reasonable fees and expenses of such counsel shall be at the expense of such Indemnitee, except that such fees and expenses shall be for the account of the Lessee if (x) the employment of such counsel has been specifically authorized by the Lessee, or (y) the named parties to such action (including any impleaded parties) include both such Indemnitee and the Lessee or the party which has assumed such defense and representation of such Indemnitee and the Lessee or such party by the same counsel would be inappropriate under applicable standards of professional conduct due to actual or potential conflicting interests between them or (z) Lessee cannot control the contest pursuant to Section 12(a)(ii). The Indemnitee shall, at Lessee's expense, supply the Lessee with such information requested by the Lessee as in the reasonable opinion of counsel to the Lessee is necessary or advisable for the Lessee to control or participate in any proceeding to the extent permitted by this Section 12(a). Unless either an Event of Default has occurred and is continuing or the Lessee and its designee are excluded from control of a judicial proceeding involving an Indemnitee, such Indemnitee shall not enter into a settlement or other compromise with respect to any Liability without the prior written consent of the Lessee, unless such Indemnitee waives its right to be indemnified with respect to such Liability under this Section 12(a).

(iv) When and to the extent that an Indemnitee actually receives complete and full indemnification payments from the Lessee under the provisions of this Section 12(a), the Lessee shall be subrogated to such Indemnitee's rights with respect to the transaction or event requiring or giving rise to such indemnification (other than under insurance policies

paid for by an Indemnitee); *provided, however*, that such subrogation rights shall not permit the Lessee to avail itself against any other Indemnitee of exclusions to its general indemnity obligations set forth in this Section 12(a) other than such exclusions expressly stated in such Section.

(v) If an Indemnitee shall obtain a repayment of any Liabilities paid by the Lessee pursuant to this Section 12(a), such Indemnitee shall promptly pay to the Lessee (A) the amount of such repayment, together with any interest (other than interest for the period, if any, after such Liability was paid by such Indemnitee until such Liability was paid or reimbursed by the Lessee) received by such Indemnitee on account of such repayment net of reasonable expenses (and net of taxes incurred as a result of the receipt or accrual of such repayment and interest) and (B) the net amount of any Federal, state or local income taxes saved by the Indemnitee in respect of its payment to the Lessee of amounts referred to in clause (A) above and its payment to the Lessee of any amounts pursuant to this clause (B). In no event shall an Indemnitee be obligated to pay to the Lessee more than the amount received by such Indemnitee.

(b) *General Tax Indemnity.*

(i) *Indemnity.* Whether or not any of the transactions contemplated hereby or by the other documents entered into in connection herewith are consummated, the Lessee agrees to pay, and to indemnify on an after-tax basis the Owner Participant, the Lessor (in its individual capacity and as trustee) and any Lessor Assignee and their respective officers, directors, Affiliates, successors and assigns (each, a "Tax Indemnitee") upon demand for, all license, documentation registration and similar fees of any nature whatsoever, and all taxes, impositions, duties, levies, charges or withholdings of any nature whatsoever, including, without limitation, sales or use, property, income, gross receipts, excise, stamp, rental or value-added taxes, interest, withholdings, penalties, fines, additions to tax and interest thereon, (all of the foregoing being hereinafter called "*Impositions*"), now or hereafter existing, howsoever levied or imposed or asserted, whether levied or imposed or asserted against such Tax Indemnitee, the Lessee, the Lessee Participant, any other user of a Unit or any part thereof, the Owner Participant, a Unit or any part thereof or otherwise by any Federal, state or local government or other taxing authority in the United States, including any possession or territory of the United States, or by any foreign government or any governmental subdivision or taxing authority thereof or therein or any international or taxing authority upon or with respect to or as a result (in whole or in part) of any of the following (including, without limitation, pursuant to the application or apportionment rules which take into account matters unrelated to this Lease and the other documents entered into in connection herewith): (i) any Unit or any part thereof or interest therein, (ii) the purchase, acquisition, acceptance, repair, abandonment, storage, importation, exportation, rejection, rebuilding, construction, ownership, delivery, nondelivery, insurance, manufacture, modification, documentation, mortgaging, maintenance, storage, location, financing, refinancing, leasing, subleasing, rebuilding, redelivery, possession, sale, use, repossession, operation, transfer of title, registration, re-registration, transfer of registration, return or other disposition of any Unit or any part thereof on such Unit or any part

thereof or interest therein, (iii) the rental, receipts, income or earnings arising from such Unit or any part thereof or interest therein, (iv) this Lease, the other documents entered into in connection herewith or any security or the issuance, modification, re-issuance or acquisition thereof, any payment made pursuant to any such agreement or instrument or upon or with respect to the property, or the income or other proceeds received with respect to the property, held by the Owner Participant or any Lessor Assignee or (v) otherwise with respect to or in connection with the transactions contemplated hereby and by the other documents entered into in connection herewith; *excluding, however,*

(1) Impositions based on, or measured by, the net or gross income of such Tax Indemnitee (other than foreign taxes to the extent triggered solely by location of any Unit or the nexus of the Lessee or any user of a Unit to the foreign jurisdiction or payment therefrom and excluding taxes in the nature of sales, use, license, property, rental or value-added taxes) or items of tax preference or any minimum tax imposed (i) by the United States of America, including any possession or territory of the United States, (ii) in the case of a Tax Indemnitee other than a Lessor Assignee, by any foreign government or any governmental subdivision or taxing authority thereof or therein or any international taxing authority or by any state or local government or taxing authority in the United States, or (iii) in the case of a Tax Indemnitee that is a Lessor Assignee, by the taxing authority of any jurisdiction referred to in clause (ii) which Impositions are the result of such Tax Indemnitee's being incorporated in such jurisdiction or maintaining an office or having a place of business therein, it being understood for this purpose that such Tax Indemnitee shall not be deemed to maintain an office or have a place of business in a jurisdiction because a Unit is located in such jurisdiction or because such Tax Indemnitee is required to qualify to do business in such jurisdiction as a result of the transactions contemplated hereby and by the other documents entered into in connection herewith;

(2) Impositions in the nature of state, city and local income taxes, excess profits taxes and franchise taxes to the extent measured by gross receipts (in each case, other than gross receipts taxes in the nature of sales, use, property, rental or license taxes) imposed by (i) in the case of a Tax Indemnitee other than a Lessor Assignee, any state, local or city jurisdiction, or (ii) in the case of a Tax Indemnitee that is a Lessor Assignee, any state, city or local jurisdiction the Impositions of which, if based on the net income of such Tax Indemnitee, would be subject to indemnification under paragraph (1) above, except that any such Impositions covered by this Paragraph 2 shall not be excluded if such impositions are incurred solely by reason of the nexus of the Lessee or any user of a Unit to the state, city or local jurisdiction;

(3) in the case of a Tax Indemnitee that is the Owner Participant, any Impositions imposed as a result of a transfer or other disposition by the Owner Participant or such Tax Indemnitee including any transfer or disposition by the

Owner Participant or such Tax Indemnitee resulting from the bankruptcy or other proceedings for the relief of creditors in which the Owner Participant or such Tax Indemnitee is the debtor, whether voluntary or involuntary, of any interest in any Unit or any interest in rentals under this Lease, *provided, however*, that this exception shall not apply if any such transfer shall occur in connection with an Event of Default and *provided further* that this exception shall not apply with respect to sales or transfer taxes imposed by reason of a transfer or disposition by any Tax Indemnitee of any interest of such Tax Indemnitee in any Unit pursuant to Lessee's exercise of any of its purchase options provided under this Lease;

(4) Impositions included in Lessor's Cost for a Unit;

(5) in the case of a Tax Indemnitee that is the Owner Participant, Impositions which are the subject of indemnification or adjustment elsewhere under the Tax Indemnity Agreement;

(6) in the case of a Tax Indemnitee that is a Lessor Assignee, any Impositions to the extent of the excess of such Impositions over the amount of such Impositions that would have been imposed had there not been a transfer by such Tax Indemnitee of any interest in any Security or the Collateral (as defined in any Security Document) or any Security Document; *provided, however*, that this exception shall not apply if any such transfer shall occur as a result of or pursuant to: (i) the exercise of remedies in connection with an event of default under any Security Document or (ii) the replacement of a Unit pursuant to Section 11 hereof (relating to a Casualty Event) or the substitution or replacement of a portion or portions of a Unit pursuant to Section 7 hereof;

(7) in the case of any Lessor Assignee, any United States federal income taxes imposed by way of withholding;

(8) taxes (other than taxes in the nature of property, sales, use, value added, luxury or rental taxes) in the nature of franchise taxes, capital stock taxes or taxes on doing business imposed by any state, city or local jurisdiction, except that any such Impositions covered by this Paragraph 8 shall not be excluded if such impositions are incurred solely by reason of the nexus of the Lessee or any user of a Unit to the state, city or local jurisdiction;

(9) taxes imposed by the Michigan Single Business Tax;

(10) in the case of a Tax Indemnitee that is the Owner Participant, taxes imposed by any jurisdiction that would not have been imposed on a Tax Indemnitee but for activities in such jurisdiction unrelated to the transactions contemplated hereby; other than to the extent such taxes are imposed solely or increased in a determinable amount by reason of (x) the location, registration, or actual use by Lessee of any Unit or any part thereof within such jurisdiction,

or (y) the activities of Lessee or any other user of any Unit or any part thereof within such jurisdiction and other than taxes in the nature of sales, rental, use, property, value added or license taxes;

(11) Impositions imposed on a Tax Indemnitee to the extent such Impositions reduce dollar for dollar such Tax Indemnitee's liability for net income taxes for which the Lessee is not obligated to indemnify such Tax Indemnitee under clause (1);

(12) Impositions on, based on, or measured by any fees or compensation received by the Paying Agent;

(13) Impositions imposed on a Tax Indemnitee resulting from the willful misconduct or gross negligence of such Tax Indemnitee; or

(14) Impositions imposed upon the Owner Participant, the Owner Trust Estate or the Lessor by reason of a determination that a taxable entity exists as a result of (x) the existence of the Owner Trust Estate or (y) the relationship between the Owner Participant and the Lessor unless such determination is the result of an act or omission of the Lessee.

None of the foregoing exclusions of this Section 12(b)(i) shall relieve the Lessee of its obligation under Section 12(b)(i) to make all payments net of any withholding taxes.

Notwithstanding the foregoing exclusions of this Section 12(b)(i) there shall not be excluded from this indemnity any Impositions imposed by any jurisdiction on, based on, or measured by, or as a result of any indemnification payments.

To the extent any Impositions are attributable to the location of any Unit or of a substantial portion thereof (including without limitation, with respect to repairs, maintenance, testing or similar functions), the exclusions set forth in Sections 12(b)(i)(2) and 12(b)(i)(10) shall not limit Lessee's indemnification obligation hereunder.

(ii) *Amount of Indemnity.* The Lessee further agrees that, with respect to any payment or indemnity under this Section 12(b) to a Tax Indemnitee, such payment or indemnity shall be in an amount which, after deduction of all taxes required to be paid by such Tax Indemnitee with respect to the receipt or accrual of such payment or indemnity under the laws of all federal, state and local governments and taxing authorities in the United States and under the laws of all taxing authorities or governmental subdivisions of foreign countries, shall equal: (i) the Impositions required to be indemnified against reduced by (ii) the amount of any net tax savings in the current taxable period available to such Tax Indemnitee resulting from the permitted deduction or credit of such Imposition. Any reduction in tax liability or other tax benefit or savings of a Tax Indemnity that is taken into account in computing

the amount of the Lessee's indemnity obligation under this Section 12(b)(ii) or a Tax Indemnitee's reverse indemnity obligation under subsection (iii) or a Tax Indemnitee's refund obligation under subsection (viii) and that such Tax Indemnitee is required to repay or that is disallowed shall constitute an Imposition indemnifiable under this Section 12(b) without regard to the exclusions of Section 12(b)(i).

(iii) *Reverse Indemnity.* If (i) an indemnified Imposition has the effect of reducing the tax liability of the Tax Indemnitee for the current or any subsequent taxable year and (ii) such reduction was not taken into account in determining any previous amounts payable to the Tax Indemnitee under this Section 12(b), then the Tax Indemnitee shall pay to the Lessee an amount equal to the lesser of (a) the amount not theretofore taken into account by which the Tax Indemnitee's tax liability is reduced as a result of the Indemnified Imposition together with any interest thereon received by or credited to the Tax Indemnitee by the applicable taxing authority, (reduced or increased as a result of the reduction or increase, respectively, in the Tax Indemnitee's tax liability attributable to the receipt of said amount from the taxing authority and the deduction, if any, of the amounts payable to the Lessee hereunder); and (b) the amount of the payment by Lessee to, or for the account of, the Tax Indemnitee and all other payments by the Lessee to, or for the account of, the Tax Indemnitee theretofore made pursuant to this Section 12(b) (less any amounts previously paid by the Tax Indemnitee pursuant to this Section 12(b)) with respect to such Imposition *provided, however,* that a Tax Indemnitee shall not be obligated to make any payment to Lessee pursuant to this sentence if at the time such payment shall be due an Event of Default shall have occurred and be continuing. The excess, if any, of the amount described in clause (a) over the amount described in clause (b) shall be carried forward and applied to reduce pro tanto any subsequent obligations of Lessee to make payments pursuant to this Section 12(b)(ii).

(iv) *Contests.* The Lessee need not pay any Imposition as long as the Lessee is contesting in good faith in accordance with this Section 12(b)(iv) and by any appropriate proceedings such Imposition and the nonpayment thereof and such proceedings do not, in the opinion of counsel for such Tax Indemnitee materially adversely affect the title, property, interest or rights of such Tax Indemnitee in and to any Unit.

If a Tax Indemnitee obtains actual knowledge that a written claim is made against any Tax Indemnitee for any Impositions referred to in this Section 12(b), such Tax Indemnitee shall, within 30 days, notify the Lessee and provide a copy of the written claim; *provided, however,* that the Lessee shall not be relieved of its obligation hereunder by reason of a failure by Tax Indemnitee to give such notice unless such failure prevents the Lessee from exercising its contest rights hereunder. If requested by the Lessee in writing within 30 days after receipt of such notice or, if shorter, the period within which the Tax Indemnitee is required to act, the Tax Indemnitee shall contest (or shall permit the Lessee, if desired by the Lessee, to contest) in good faith, at Lessee's expense as provided in (b) below, the validity, applicability or amount of such Impositions *provided that,* at such Tax Indemnitee's

option, such contest shall be conducted by the Lessee in the name of such Tax Indemnatee or, if permitted by law, in the name of the Lessee, and in no event shall Tax Indemnatee be required or the Lessee permitted to contest the Imposition for which the Lessee is obligated pursuant to this Section 12(b) unless (a) if such Imposition exceeds \$10,000, and, if Lessee shall so elect to contest such Imposition in a timely manner, Tax Indemnatee shall have received an opinion of independent tax counsel selected by the Lessee and reasonably approved by the Lessor that a reasonable basis exists for contesting such claim; (b) Lessee shall have agreed to pay such Indemnatee on demand all reasonable costs and expenses that such Indemnatee may incur in connection with contesting such claim (including, without limitation, all costs, expenses, losses, reasonable legal and accounting fees, disbursements, penalties, interest and additions to tax) on an after-tax basis; (c) the action to be taken will not, in the reasonable opinion of the Owner Participant, result in any material danger of sale, forfeiture or loss of a Unit or any interest therein; and (d) if such contest shall be conducted in a manner requiring the payment of the claim, the Lessee shall pay such claim or shall advance to the Tax Indemnatee on an interest-free basis and with no additional net after-tax cost to the Tax Indemnatee sufficient funds to pay the claim. Any contest shall be conducted by (x) resisting payment thereof, (y) not paying the same except under protest, if protest is necessary and proper, or (z) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. If such Tax Indemnatee shall obtain a refund of all or any part of any Impositions which the Lessee shall have paid for such Tax Indemnatee such Tax Indemnatee shall pay to the Lessee an amount equal to (w) such refunded Imposition, plus (x) from any amount representing interest on the refund received by such Indemnatee, that portion of interest which is fairly attributable to taxes paid by the Lessee prior to receipt of the refund; less (y) the amount of any taxes imposed on such Tax Indemnatee resulting from the receipt or accrual of such refunded Imposition or such portion of interest, plus (z) an amount equal to any tax savings realized by such Tax Indemnatee by reason of any payment pursuant to this sentence *provided* that (1) such amounts, if any, shall not be payable if the Lessee has not made all payments or indemnities theretofore due under this Section 12(b); and (2) the amount to be paid by such Tax Indemnatee to the Lessee under this paragraph (plus the amount of all prior payments pursuant to this paragraph) with respect to any such refund (other than an amount paid on account of interest), shall not exceed the amount of all prior payments by the Lessee to such Tax Indemnatee under this Section 12(b) with respect to the claim giving rise to such refund. Except in the case of a Lessee Controlled Contest, the contest shall be conducted in the manner determined, in its sole discretion (except as otherwise provided herein), by the Tax Indemnatee. A Lessee Controlled Contest shall mean a contest in the name of the Lessee (i) involving only taxes for which the Lessee is liable, (ii) with respect to which no participation by the Tax Indemnatee is required and (iii) with respect to which no tax return of the Tax Indemnatee is held open for taxes not indemnified against by the Lessee for which the Tax Indemnatee may reasonably be viewed as having an actual or potential liability. In the case of contests other than Lessee Controlled Contests, the Lessee shall have the right to reasonably participate in the contest and shall have the right (a) to consult with the Tax Indemnatee with respect to

the audit on all issues for which indemnification has been requested, (b) to exercise reasonable approval rights regarding all written submissions to the applicable taxing authority or court, (c) to reasonably participate in conferences and meetings with the applicable taxing authority, and (d) to approve any settlement, which approval shall not be unreasonably withheld.

(v) *Tax Indemnatee*. For purposes of this Section 12(b), the term "*Tax Indemnatee*" shall mean and include, in addition to the Tax Indemnatee, any affiliated group of corporations (and each member thereof) of which the Tax Indemnatee is a member that files any consolidated or combined return in respect of the applicable Impositions, and their respective successors and assigns.

(vi) *Returns, Reports, Etc.* The Lessee will provide such information (in form and substance reasonably satisfactory to the Tax Indemnatee) as may be reasonably requested by a Tax Indemnatee to enable such Tax Indemnatee to fulfill its tax filing requirements with respect to the transactions contemplated hereby so long as the information requested by the Tax Indemnatee is of a type ordinarily maintained by the Lessee for similar equipment owned by the Lessee. In the event that any return, statement or report is required to be made or filed by a Tax Indemnatee with respect to any Imposition imposed on or indemnified against by the Lessee under this Section 12(b), the Lessee timely shall notify the Owner Participant and such Tax Indemnatee (if other than the Owner Participant) of such requirement and (i) to the extent permitted by law (and unless the Owner Participant or Tax Indemnatee shall otherwise promptly elect in writing) or required by law, make and file in its own name such return, statement or report in such manner as will show the ownership of the Unit in the Owner Participant and furnish the Owner Participant and the Tax Indemnatee (if other than the Owner Participant) with a copy of such return, statement or report, or (ii) where such return, statement or report is required to be in the name of or filed by such Tax Indemnatee, prepare and furnish such return, statement or report for filing by the Tax Indemnatee in such manner as shall be reasonably satisfactory to such Tax Indemnatee and send the same to the Tax Indemnatee for filing no later than 15 days prior to the due date thereof.

(vii) *Payments*. Prior to the date any Imposition relating to any return, statement or report specified herein is required to be paid by a Tax Indemnatee the Lessee will pay such Tax Indemnatee sufficient funds timely to pay such Imposition or, where the Lessee makes and files such return in its own name pursuant hereto, the Lessee timely will pay the entire amount of such Imposition directly to the appropriate taxing authority. The Owner Participant or Tax Indemnatee shall promptly send to the Lessee any returns, correspondence or other information received by the Owner Participant or Tax Indemnatee that is relevant to such Impositions and the calculation thereof.

Any other amount payable to or on behalf of a Tax Indemnatee pursuant to this Section 12(b) shall be paid within 30 days after receipt of a written demand therefor from such Tax Indemnatee accompanied by a written statement describing in

reasonable detail the basis for such indemnity and the computation of the amount so payable, but not prior to the date on which such payment is due to the relevant taxing authority.

In the event that the Lessee shall pay any Impositions subject to indemnification as provided in this Section 12(b) directly to a taxing authority by payment, deduction, withholding or otherwise, the Lessee shall furnish to the appropriate Tax Indemnitee, within thirty (30) days after the date of such payment, the original or a certified copy of a receipt for, or other satisfactory evidence of, its payment of such taxes.

(viii) *Refund.* Upon receipt by any Tax Indemnitee of a refund or credit of all or part of any Impositions which the Lessee shall have paid for such Tax Indemnitee or for which the Lessee shall have reimbursed or indemnified such Tax Indemnitee, such Tax Indemnitee shall pay to the Lessee an amount equal to the lesser of (a) the sum of (x) the amount of such refund together with any interest thereon received by or credited to the Tax Indemnitee, and (y) the reduction or increase, respectively, in the Tax Indemnitee's tax liability attributable to the receipt of the amount described in clause (x) from the taxing authority and the deduction, if any, of the amounts payable to the Lessee hereunder; and (b) the amount of the payment by Lessee to, or for the account of, the Tax Indemnitee and all other payments by the Lessee to, or for the account of, the Tax Indemnitee theretofore made pursuant to this Section 12(b) (less any amounts previously paid by the Tax Indemnitee pursuant to this Section 12(b)) with respect to such Imposition *provided, however*, that a Tax Indemnitee shall not be obligated to make any payment to Lessee pursuant to this sentence if at the time such payment shall be due an Event of Default shall have occurred and be continuing. The excess, if any, of the amount described in clause (a) over the amount described in clause (b) shall be carried forward and applied to reduce pro tanto any subsequent obligations of Lessee to make payments pursuant to Section 12(b)(ii).

(ix) *Withholding on Lease and Security Payments; Inadvertent Payments.* The Lessee agrees that each payment of Rent, the payment of purchase price (in the event the Lessee elects to purchase any Unit), and any payment in respect of any security (in each case a "Payment") shall be free of all withholdings of any nature whatsoever, and in the event any withholding is required, the Lessee shall pay at the same time that any such Payment is due and payable hereunder or under the other documents entered into in connection herewith an amount as additional Rent such that the net amount actually received by the Person entitled to such Payment, free of U.S. Federal withholding, will equal the amount of such Payment then due absent such withholding, *provided however* that the obligation of the Lessee hereunder to pay to such Person free of U.S. Federal income tax withholding shall not apply if such withholding is required as a result of the transfer, disposition or assignment of a security to a Person who is either a nonresident alien or a foreign corporation for U.S. Federal income tax purposes and interest income from such security is not effectively connected with the conduct of a trade or business within the United States by such Person. If, for any reason, the Lessee (or any Person) is required to make any payment with respect to, or as a result of, any withholding imposed with respect to any Payment which withholding is not the

responsibility of the Lessee under this Section 12(b) (other than this subsection (ix)), then the applicable Tax Indemnitee shall, within ten days of notice from the Lessee, pay to the Lessee an amount which equals such additional amount paid by the Lessee with respect to, or as a result of, such withholding, plus interest at the Prime Rate for the period from the date of payment by the Lessee of such additional amount to the date the Lessee actually receives such amount.

Each Tax Indemnitee agrees to use reasonable efforts to investigate alternatives for reducing any withholding taxes that are indemnified against hereunder, including, without limitation, in the case of any Lessor Assignee, by transferring its security to another lending office or Affiliate, but such Tax Indemnitee shall not be obligated to take any such action as it determines in its reasonable good faith discretion will be materially adverse to its business or financial or commercial interest.

(x) *Verification.* The Lessee agrees that it will have no right to inspect the tax returns, books, records or any other documents of the Tax Indemnitee or any affiliate thereof in order to verify the basis or the accuracy of the computations made pursuant to this Section 12(b) hereof; *provided, however,* that within 15 days following the Lessee's receipt of such computations, the Lessee may request that a nationally recognized accounting firm reasonably acceptable to the Tax Indemnitee and selected by the Lessee (but not including the accounting firm that regularly prepares the Tax Indemnitee's or the Lessee's certified financial statements) determine whether such computations of the Tax Indemnitee are correct. Such accounting firm shall be requested to make its determination within 30 days. The Tax Indemnitee shall deliver to the Lessee a statement from such firm, after affording the Lessee the opportunity to consult in good faith with such firm consistent with this Section 12(b), either confirming that the calculations supporting the amount or adjustment set forth in such statement have been verified as above provided and that the calculations are accurate and in conformity with the provisions of this Lease, or setting out such amount or adjustment as has been found to be accurate in conformity with the provisions of this Lease (together with reasonable details thereof). The Tax Indemnitee and the Lessee agree that the determinations verified or adjusted by such accounting firm in conformity with the provisions of this Lease shall be conclusive and binding on the Tax Indemnitee and the Lessee. The Lessee shall bear the expense of verification unless the amount proposed by the Tax Indemnitee is incorrect in favor of the Indemnitee by more than 10%, in which event such expenses will be borne entirely by the Tax Indemnitee.

(xi) *No Interrelationship with Section 3 of the Lessee Tax Indemnity Agreement.* The interpretation and application of this Section 12(b) shall not take into consideration any of the terms of Section 3 of the Lessee Tax Indemnity Agreement, except as expressly provided in this Section 12(b).

(c) *Survival.* The representations, warranties, indemnities, agreements and rights of the Lessee provided for in this Section 12, the Lessee's obligations under any and all provisions thereof and the obligation of the Lessor hereunder, shall survive the delivery of

the Units and the expiration or other termination of this Lease and the other agreements entered into in connection herewith.

(d) *Effect of Other Indemnities.* The Lessee's obligations under the indemnities provided for in this Section 12 shall be those of a primary obligor whether or not the Indemnatee or the Tax Indemnatee, as the case may be, shall also be indemnified or insured with respect to the same matter under the terms of any other document or instrument, and the Indemnatee or the Tax Indemnatee, as the case may be, seeking indemnification from the Lessee, pursuant to any provisions of this Lease may proceed directly against the Lessee without first seeking to enforce any other right of indemnification.

(e) *No Guarantee; No Consequential Damages.* Nothing contained herein shall be deemed to be an indemnification or guarantee by the Lessee or any Affiliate of the Lessee of a residual, sale, rental or other value of any Units or of any payment of principal, interest or premium, if any, due under any Security Document nor shall the Lessee be responsible to the Lessor, the Owner Participant or any Lessor Assignee for any consequential damages, *provided* that an obligation to pay any premium under any Security Document or under this Lease shall not constitute consequential damages.

SECTION 13. ASSIGNMENT AND SUBLEASE.

(a) *Assignment and Sublease by the Lessee.* EXCEPT PURSUANT TO THE COAL SUPPLY SERVICE AGREEMENT, THE LESSEE SHALL NOT HAVE THE RIGHT TO ASSIGN ANY OF ITS RIGHTS AND OBLIGATIONS UNDER THIS LEASE AND ANY OTHER LESSEE DOCUMENT, NOR HAVE THE RIGHT TO ENTER INTO A SUBLEASE OF OR INTERCHANGE ARRANGEMENT FOR ANY UNIT IN EACH CASE, WITHOUT THE PRIOR WRITTEN CONSENT OF THE LESSOR AND THE PERMITTED DESIGNEE.

(b) *Assignment (other than Collateral Assignments) by the Lessor.* Except as otherwise provided in Section 8.6 of the Owner Trust Agreement (which may not be amended without the prior written consent of the Lessee), the Lessor agrees that it will not transfer its right, title and interest in and to this Lease or any Unit.

(c) *Collateral Assignments by the Lessor.* The Lessor agrees that it will not mortgage, pledge, assign or transfer its right, title and interest in and to this Lease or any Unit, except to a Lessor Assignee pursuant to a Security Document. Prior to executing any such Security Document, the Lessor shall notify the Lessee and the Permitted Designee thereof. The Lessee agrees to deliver any acknowledgments and consents to any such mortgage, pledge or assignment as the Lessor or any Lessor Assignee may reasonably request.

SECTION 14. EVENTS OF DEFAULT.

Each of the following events shall constitute an "*Event of Default*" (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or

pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) the Lessee shall fail to make any payment of Interim Rent, Basic Rent, Fixed Rate Renewal Rent or Fair Market Renewal Rent on the date the same shall become due and such failure shall be continuing at the end of the 5th Business Day after such payment shall become due; or

(b) the Lessee shall fail to make any payment of Supplemental Rent (or any other payment required hereunder other than Interim Rent, Basic Rent, Fixed Rate Renewal Rent and Fair Market Renewal Rent) before the end of the 10th Business Day after the Lessee shall have received written demand for such payment from the Lessor or such Lessor Assignee; or

(c) (i) an Event of Default (as defined in Section 10(a) of the Coal Supply Service Agreement) shall have occurred and be continuing (other than an Event of Default (as defined in Section 10(a) of the Coal Supply Service Agreement) with respect to (A) the nonpayment of any amount which constitutes a Service Fee Payment but not a Basic Service Fee Payment and (B) any other of the Lessee's Excepted Rights in Collateral) or (ii) the Coal Supply Service Agreement shall have been terminated for any reason whatsoever and the Permitted Designee shall not have assumed the obligations of the Lessee hereunder pursuant to and in accordance with the provisions of the Permitted Designee Consent to Assignment of Coal Supply Service Agreement and Agreement; or

(d) Lessee shall fail to (i) maintain or cause to be maintained the insurance required by Section 10 or (ii) observe the covenants and agreements contained in Section 13(a) and such failure shall continue for a period of thirty (30) days after the earlier to occur of (x) actual knowledge of such failure by a Responsible Officer of Lessee or (y) receipt by Lessee of a written demand specifying such failure and requiring it to be remedied; or

(e) the Lessee shall fail to perform or observe any other covenant or agreement to be performed or observed by the Lessee hereunder or under any other Lessee Document (other than any such covenant or agreement set forth in the Lessee Tax Indemnity Agreement) or the Lessee Participant shall fail to perform or observe any covenant or agreement to be performed or observed by it under any Lessee Participant Document and, in either such case, such failure shall continue (i) for a period of thirty (30) days after the Lessee or the Lessee Participant, as the case may be, shall have received notice of such failure from the Lessor or any Lessor Assignee and (ii) for an additional period of sixty (60) days after the expiration of such thirty (30) day period if (A) such failure cannot be cured during such thirty (30) day period, (B) Lessee or the Lessee Participant, as the case may be, is diligently proceeding to cure such failure and (C) such failure is reasonably curable within such additional 60-day period; or

(f) any representation or warranty made by (i) the Lessee herein, in any other Lessee Document (other than any such representation or warranty set forth in the Lessee Tax Indemnity Agreement) or in any other document or certificate furnished by the Lessee to the Lessor, the Owner Participant or any Lessor Assignee in connection with the transactions contemplated hereby or (ii) the Lessee Participant in any Lessee Participant Document or any other document or certificate furnished by the Lessee Participant to the Lessor or the Owner Participant or any Lessor Assignee in connection with the transactions contemplated hereby, in either such case, shall prove to be incorrect in any material respect as of the date made and, if such representation or warranty is capable of being corrected or remedied, shall not have been corrected or remedied on or prior to the 30th day after the Lessee or the Lessee Participant, as the case may be, shall have received written notice thereof from the Lessor, the Owner Participant or from such Lessor Assignee; or

(g) the Lessee or the Lessee Participant shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency law (as now or hereafter in effect) or an answer admitting the material allegations of a petition filed against the Lessee or the Lessee Participant in any such proceeding, or the Lessee or the Lessee Participant shall by voluntary petition, answer or consent, seek relief under the provisions of any now existing or future bankruptcy, insolvency or other similar law providing for the liquidation, reorganization or winding-up of corporations, or providing for an agreement, composition, extension or adjustment with its creditors; or

(h) a receiver, trustee, liquidator or custodian of the Lessee or the Lessee Participant or of a substantial part of its property shall be appointed by court order and such order shall remain in effect for more than 60 days; or the Lessee or the Lessee Participant shall be adjudicated bankrupt or insolvent or any of its properties shall be sequestered by court order and such order shall remain in effect for more than 60 days; or a petition shall be filed against the Lessee or the Lessee Participant under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and shall not be dismissed within 60 days after such filing.

SECTION 15. ACTION FOLLOWING AN EVENT OF DEFAULT.

Subject to the rights of the Permitted Designee (i) contained in the final paragraph of this Section 15 and (ii) under the Coal Supply Service Agreement, upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, the Lessor may, at its option, declare this Lease to be in default (except that no such declaration shall be required in the case of an Event of Default set forth in paragraph (g) or (h) of Section 14) and at any time thereafter, so long as the Lessee shall not have remedied all outstanding Events of Default, the Lessor may do, and the Lessee shall comply with, any one or more of the following, as the Lessor in its sole discretion shall so elect, to the extent

permitted by and subject to compliance with any mandatory requirements of Applicable Law then in effect:

(a) *Redelivery and Retaking.* Upon written demand, the Lessor may demand that the Lessee, at the Lessee's expense, and the Lessee hereby agrees that it will, promptly redeliver the Units, or cause the Units to be redelivered, to the Lessor with all reasonable dispatch and in the same manner and in the same condition as if the Units were being redelivered in accordance with all the provisions of Section 2(c) and (d) and all obligations of the Lessee under said Section shall apply to such redelivery (except that the redelivery shall be any location within 500 miles of Chicago, Illinois as selected by the Lessor or, at Lessor's expense, any other location in the continental United States, all expenses described in Section 2(c) and (d) shall be paid by the Lessee, all Units shall be free and clear of Permitted Encumbrances, all Units shall be in the condition required by Sections 5 and 7 and the Lessee shall, at its risk and expense, at Lessor's request, provide or cause to be provided storage of the Units for a period not in excess of 180 days at the return location); or the Lessor or its agent, at the Lessor's option, without further notice, may, but shall be under no obligation to, retake the Units wherever found, and irrespective of whether the Lessee or any other Person is in possession of the Units or any of them, all without prior demand and without legal process, and for that purpose the Lessor or its agent may enter upon any premises, where any such Unit is and may take possession thereof, without the Lessor or its agent incurring any liability by reason of such retaking, whether for the restoration of damage to property caused by such retaking or for damages of any kind to any Person for or with respect to any cargo carried, or to be carried by such Unit or for any other reason. The exercise by the Lessor of its remedies under this paragraph (a) shall be without prejudice, and in addition, to any of the Lessor's other remedies referred to below in this Section 15.

(b) *Liquidated Damages.* Provided the Lessor shall not have exercised any remedies under paragraph (c) of this Section 15, the Lessor, by written notice to the Lessee specifying a payment date, may require the Lessee to pay to the Lessor, and the Lessee hereby agrees that it will pay to the Lessor on the payment date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty, and in lieu of any further Basic Rent, Fixed Rate Renewal Rent or Fair Market Renewal Rent payments hereunder with respect to any Unit, all unpaid Basic Rent, Fixed Rate Renewal Rent or Fair Market Renewal Rent for such Unit, payable on or before the payment date specified in such notice, plus any Supplemental Rent then due (including, without limitation, interest at the Overdue Rate on any payments of Basic Rent, Fixed Rate Renewal Rent and Fair Market Renewal Rent not paid when due in accordance with the terms of this Lease for the period from and including the Payment Date as of which such Basic Rent, Fixed Rate Renewal Rent or Fair Market Renewal Rent was due to and including the date of actual payment), plus an amount equal to the Termination Value for such Unit computed as of the Payment Date immediately preceding the payment date specified in such notice (or as of such payment date if such payment date is a Payment Date), together with interest on such amount at the Overdue Rate for the period, if any, from the Payment Date as of which such

Termination Value shall be computed to and including the date of actual payment, and, provided, that if the Lessee shall have made the foregoing payments in full, the Lessor shall thereafter pay over to the Lessee, as and when from time to time received, the net proceeds of any sale, lease or other disposition of such Unit (after deducting all costs and expenses whatsoever incurred by the Lessor and any Lessor Assignee in connection therewith and all other amounts which may become payable to the Lessor with respect thereto) up to the amount of such Termination Value actually paid.

(c) *Alternate Liquidated Damages.* Whether or not the Lessor shall have exercised, or shall thereafter at any time exercise, any options, rights or remedies under paragraph (a) or (d) of this Section 15, the Lessor, in lieu of exercising its rights under paragraph (b) of this Section 15, may, by notice to the Lessee specifying a Payment Date, demand that the Lessee pay to the Lessor and the Lessee shall pay to the Lessor, on such Payment Date, as liquidated damages for loss of a bargain and not as a penalty, and in lieu of any further Basic Rent, Fixed Rate Renewal Rent or Fair Market Renewal Rent for any Unit due after such Payment Date, all unpaid Basic Rent, Fixed Rate Renewal Rent and Fair Market Renewal Rent, if any, for such Unit payable on each Payment Date occurring on or prior to such Payment Date, plus any Supplemental Rent then due (including, without limitation, interest at the Overdue Rate on any payments of Basic Rent, Fixed Rate Renewal Rent and Fair Market Renewal Rent not paid when due in accordance with the terms of this Lease for the period from and including the Payment Date as of which such Basic Rent, Fixed Rate Renewal Rent or Fair Market Renewal Rent was due to and including the date of actual payment), plus whichever of the following amounts the Lessor, in its sole discretion, shall specify in such notice (together with interest on such amount at the Overdue Rate for the period from the Payment Date specified in such notice to the date of actual payment):

(i) an amount equal to the excess, if any, of the Termination Value of such Unit computed as of the Payment Date specified in such notice, over the Fair Market Rent thereof, determined by an Appraiser selected by the Lessor, for the remainder of the Lease Term after discounting semiannually such Fair Market Rent to present worth as of such Payment Date at a rate of 7.59% per annum, or

(ii) an amount equal to the excess, if any, of the Termination Value of such Unit computed as of the Payment Date specified in such notice, over the Fair Market Sale Value thereof as of such Payment Date, determined by an Appraiser selected by the Lessor;

provided, however, that if such Unit cannot be repossessed the Fair Market Rent and the Fair Market Sale Value of such Unit for purposes of this Section 15(c) shall be deemed to be equal to zero.

(d) *Sale; Use.* The Lessor or its agent may sell any Unit at a public or private sale, by such advertisement or publication as the Lessor may determine (with a

copy of such advertisement, publication or notice to the Permitted Designee), or otherwise may dispose of, hold, use, operate, lease (whether for a period greater or less than the balance of what would have been the Lease Term in the absence of the termination of the Lessee's rights to such Unit) to others or keep idle such Unit, all on such terms and conditions and at such place or places as Lessor may determine and all free and clear of any rights of the Lessee and of any claim of the Lessee in equity, at law or by statute, whether for loss or damage or otherwise, and without any duty to account to the Lessee except to the extent specifically provided in paragraph (b) above. Notwithstanding anything in the foregoing to the contrary, if the Lessor shall elect to sell, lease or otherwise dispose of the Units, the Lessor shall use reasonable efforts to conduct any such sale, lease or other disposition in a commercially reasonable manner.

(e) *Coal Supply.* If the Event of Default arises under Section 14(c), the Lessor may exercise any of the remedies under Section 10(b) of the Coal Supply Service Agreement.

(f) *Other Remedies.* Subject to and without prejudice to any right or claim of any Lessor Assignee under any Security Document, the Lessor may exercise any other right or remedy that may be available to it under Applicable Law or in equity or proceed by appropriate court action to enforce the terms of this Lease or to recover damages for the breach hereof or to rescind or terminate this Lease.

In addition, the Lessee shall be liable, on an After-Tax Basis, for any and all Supplemental Rent payable hereunder before, during or after the exercise of any of the foregoing remedies, which Supplemental Rent shall include all reasonable legal fees and other costs and expenses incurred by the Lessor and any Lessor Assignee by reason of the occurrence of any Event of Default or by reason of the exercise by the Lessor or any Lessor Assignee of any remedy hereunder, including, without limitation, any costs and expenses incurred by the Lessor or any Lessor Assignee in connection with any retaking of any Unit, any amounts payable by the Lessee in respect of late redelivery of the Units or, upon the redelivery or retaking of such Unit in accordance with this Section 15, the placing of such Unit in the condition required by the terms of Section 2(d).

Except as specifically provided herein, no remedy referred to in this Section 15 is intended to be exclusive, but each shall be cumulative and is in addition to, and may be exercised concurrently with, any other remedy which is referred to in this Section 15 or which may otherwise be available at law or in equity; *provided, however*, that liquidated damages having been agreed to by the parties hereto pursuant to paragraphs (b) and (c), above, in the event that Lessor exercises the remedy set forth in either such paragraph, the Lessor shall not be entitled to recover from the Lessee as damages for loss of Basic Rent, Fixed Rate Renewal Rent or Fair Market Renewal Rent upon the occurrence of one or more Events of Default an amount in excess of such liquidated damages plus any other Rent owing pursuant to the terms of this Lease. To the extent not required to reimburse Lessor and any Lessor Assignee for all damages suffered as a result of such Event of Default, there shall be deducted from the aggregate amount so recoverable by the Lessor the net balance, if any,

remaining of any moneys held by the Lessor which would have been required by the terms hereof or any other written agreement entered into in connection with the transactions contemplated hereby to have been paid to the Lessee but for the occurrence of an Event of Default. To the extent permitted by Applicable Law, the rights of the Lessor and the obligations of the Lessee under this Section 15 shall be effective and enforceable regardless of the pendency of any proceeding which has or might have the effect of preventing the Lessor and the Lessee from complying with the terms of this Lease. No express or implied waiver by the Lessor of any Event of Default shall in any way be, or be construed to be, a waiver of any further or subsequent Event of Default.

In the event of the occurrence of an Event of Default as a result of the failure of the Lessee or the Lessee Participant, as the case may be, to perform or observe any covenant, condition or agreement to be performed or observed by the Lessee or the Lessee Participant, as the case may be, under this Lease, any other Lessee Document (other than any covenant or agreement to pay Rent or to maintain insurance) or Lessee Participant Document, the Permitted Designee may, during the ten day period (as such period may be extended pursuant to the following proviso, the "*Cure Period*") following the giving of written notice by the Lessor or any Lessor Assignee, as the case may be, to the Permitted Designee (which notice the Lessor agrees to give promptly upon such failure to perform becoming an Event of Default), cure such Event of Default by making such payment as is necessary to accomplish the observance of performance of the defaulted covenant, condition or agreement to the party entitled to receive the same or by observing or performing such defaulted covenant, condition or agreement on behalf of the Lessee or the Lessee Participant, as the case may be, and such payment or performance or observance, as the case may be, by the Permitted Designee shall be deemed to cure such Event of Default arising on account of the failure to perform or observe hereunder and any event of default under any Security Document arising therefrom; *provided, however*, in the event such Event of Default cannot be cured by the payment of money within such ten day period, the Lessee or the Lessee Participant shall have an additional ten day period to cure such Event of Default by observing or performing such defaulted covenant or agreement on behalf of the Lessee or the Lessee Participant, as the case may be. The Lessor shall not take any action to exercise remedies hereunder in respect of any such Event of Default prior to the expiry of the Cure Period.

SECTION 16. REPRESENTATIONS AND WARRANTIES OF THE LESSEE.

The Lessee represents and warrants in its individual capacity with respect to clauses (a), (b), (d), (e), (f), (g) and (h) below and in its trust capacity with respect to clauses (c), (d), (f) and (i) below that:

- (a) the Lessee is a banking corporation duly organized and validly existing in good standing under the laws of the State of Michigan, and has the full corporate power and authority in its individual capacity to enter into, and carry out the terms and provisions of the Lessee Trust Agreement;

(b) the Lessee Trust Agreement has been duly authorized executed and delivered by the Lessee in its individual capacity, and constitutes the legal, valid and binding obligations of the Lessee in its individual capacity, enforceable in accordance with its terms, except as enforceability thereof may be limited by bankruptcy, insolvency, moratorium reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (regardless of whether the issue of enforceability is considered in equity or at law);

(c) assuming the due authorization, execution and delivery of the Lessee Trust Agreement by the Lessee Participant, the other Lessee Documents have been or, when entered into, will be duly authorized, executed and delivered by the Lessee and, assuming the due authorization, execution and delivery of each thereof by the other parties thereto, will upon execution and delivery thereof by the Lessee, constitute the legal, valid and binding obligations of the Lessee, enforceable against the Lessee in accordance with their respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights and remedies generally and by general equitable principles (regardless of whether the issue of enforceability is considered in a proceeding in equity or at law);

(d) the execution and delivery by the Lessee in its individual or trust capacities of any Lessee Document and the consummation of any of the transactions by the Lessee in its individual or trust capacities contemplated hereby or thereby do not (i) contravene any provision of the Articles of Incorporation or by-laws of the Lessee or of any indenture, mortgage, contract or other agreement to which it is a party or by which it is bound or (ii) violate any law, government rule or regulation of the United States or the State of Michigan (or any governmental subdivision thereof) or any other order, permit or judgment binding on it;

(e) there are no actions, suits or proceedings pending, or to the knowledge of the Lessee in its individual capacity threatened, against the Lessee in its individual capacity, before any court, administrative agency, arbitrator or governmental body which, if adversely determined, might materially and adversely affect the ability of the Lessee in its individual or trust capacities to enter into and perform the Lessee Documents;

(f) neither the Lessee nor any Person acting on behalf of the Lessee has directly or indirectly offered any Securities or any beneficial interest in the Owner Trust Estate or the Lessee Trust Estate for sale to, or solicited offers to buy any of the same from any prospective purchasers; and the Lessee agrees that neither the Lessee nor anyone acting on its behalf will take or has taken any action which would subject the issuance or sale of any Securities or any interest in the Owner Trust Estate or the Lessee Trust Estate to the registration requirements of Section 5 of the Securities Act;

(g) the Lessee is not a "party in interest" to any "employee benefit plan" within the meaning of ERISA;

(h) the chief executive office and principal place of business of the Lessee is in Detroit, Michigan; and

(i) the Lessee has not engaged in any activities or incurred any liabilities other than in connection with this Agreement and the other Lessee Documents.

SECTION 17. SINGLE PURPOSE COVENANT OF LESSEE.

The Lessee will not engage, directly or indirectly, in any business or other activity other than as contemplated hereby and by the other Lessee Documents.

SECTION 18. NOTICES.

All notices, demands, declarations and other communications required under the terms and provisions hereof (herein, collectively referred to as "*Notices*") shall be in writing and shall be given in person or by means of telex, telecopy or other wire transmission or mailed by registered or certified mail, and shall be addressed (i) if to the Lessee, at its address at 101 North Washington Square, 9th Floor, Lansing, Michigan 48933, Attention: Corporate Trust Administrator, Telecopy: (517) 342-5716 (with a copy to (A) the Lessee Participant at its address at One Mellon Bank Center #4444, Pittsburgh, Pennsylvania 15258, Attention: President (Telecopy: (412) 234-5062)) and (B) the Permitted Designee at its address at 212 West Michigan Avenue, Jackson, Michigan 49201, Attention: Director of Fossil Fuel Supply and Director of Finance (Telecopy: (517) 788-2997)); (ii) if to the Lessor at its address at Wilmington Trust Company, Rodney Square North, 1100 N. Market Street, Wilmington, Delaware 19890-0001, Attention: Corporate Trust Administration, Telecopy: (302) 651-8882 (with a copy to (A) the Permitted Designee at its address at 212 West Michigan Avenue, Jackson, Michigan 49201, Attention: Director of Fossil Fuel Supply and (B) the Owner Participant at its address at 450 Mamaroneck Avenue, 3rd Floor, Zone 8, Harrison, New York 10528, Attention: Rail Operations & Technology, (Telecopy: (914) 899-7389)); (iii) if to any Lessor Assignee, at its respective address specified in writing to the Lessee; or (iv) if to any of the foregoing, at such other address as such Person may from time to time designate in writing to the other Persons referred to in this Section 18. All such Notices given in the manner provided above shall be effective as to the addressee thereof on the date of receipt by such addressee of such Notice upon receipt.

SECTION 19. FURTHER ASSURANCES; PERFECTION OF SECURITY INTERESTS.

The Lessee hereby agrees promptly and duly to execute and deliver to the Lessor or any Lessor Assignee such further documents and assurances and take such further action as the same may from time to time reasonably request in order more effectively to carry out the intent and purpose of this Lease and the other written agreements entered into in connection herewith and to establish and protect the rights and remedies created or intended to be created in favor of the Lessor and any Lessor Assignee hereunder and under any Security Document. The Lessee will at all times cause to be kept filed, and refiled any required financing and continuation statements and cause to be taken such other actions, as

are required by law in order fully to perfect, preserve and protect the first priority security interests granted by any Security Document. The Lessee will pay or cause to be paid all taxes, fees and other charges in connection with such filing and refiling.

SECTION 20. WARRANTY ENFORCEMENT.

For so long as no Event of Default has occurred and is continuing, the Lessor constitutes the Lessee and the Permitted Designee as the agent and attorney-in-fact of the Lessor for the purpose of exercising and enforcing, and with full right, power and authority to exercise and to enforce, to the exclusion of the Lessor and all Persons claiming through or under the Lessor, all of the right, title and interest of the Lessor in, under and to all manufacturer's warranties in respect of the Units. The Lessor shall execute and deliver any instruments necessary to enable the Lessee or the Permitted Designee to enforce such rights.

SECTION 21. LESSOR'S RIGHT TO PERFORM FOR THE LESSEE.

If the Lessee fails to make any payment of Rent required to be made by it hereunder or if the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may, on behalf of the Lessee and upon notice to the Lessee, itself make such payment or perform such agreement but such payment shall not be a cure in respect of any Event of Default which has occurred as a result of the Lessee's failure to pay such Rent or to perform or comply with such agreement, as the case may be. The amount of any such payment and the amount of the reasonable expenses of the Lessor incurred in connection with such payment or performance, together with interest thereon, to the extent permitted by Applicable Law, at the Overdue Rate, shall be deemed Supplemental Rent, payable by the Lessee upon demand. This Section 21 is not, however, intended in any way as between the Lessor, on the one hand, and any Lessor Assignee, on the other hand, to expand or otherwise vary the cure rights of the Lessor set forth in any Security Document, or the limitations on exercise thereof set forth.

SECTION 22. FILINGS.

Prior to the delivery and acceptance of any Unit, the Lessee will, at its sole expense, (i) cause this Lease, the relevant Lease Supplement, the Coal Supply Service Agreement (or a memorandum thereof), and the relevant Coal Supply Service Agreement Supplement (or a memorandum thereof), the Assignment of Coal Supply Service Agreement (or memorandum thereof) and any Security Document (including any supplement thereto) to be duly filed and recorded with the ICC in accordance with 49 U.S.C. §11303 of the Interstate Commerce Act, and (ii) cause financing statements under the Uniform Commercial Code to be filed against the Lessor, the Lessee and the Permitted Designee in all places reasonably specified by the Lessor or any Lessor Assignee as necessary or desirable to protect such party's interests hereunder and under the other documents entered into in connection herewith. Within twenty days after the delivery and acceptance of the Units, the Lessee will, at its sole cost and expense, cause this Lease, the relevant Lease Supplement, the Coal Supply Service Agreement (or memorandum thereof), the relevant Coal Supply Service Agreement

Supplement (or memorandum thereof), any Security Document (including any supplement thereto) and the Assignment of Coal Supply Service Agreement (or memorandum thereof) (if not heretofore so deposited) to be deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in *The Canada Gazette* pursuant to Section 90 of the Railway Act of Canada) and the Units may not be used in Canada until all such actions are duly taken. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or any Lessor Assignee for the purpose of protecting such party's interests hereunder and under any other written agreement entered into in connection with the transactions contemplated hereby, and in connection with any such action, will deliver to the Lessor and such Assignee proof of such filings. The Lessee will pay all costs, charges and expenses incident to any such filing, refile, recording and rerecording or depositing and repositing of any such instruments.

SECTION 23. MISCELLANEOUS.

(a) *Amendments.* The terms of this Lease shall not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by the party or parties to be charged, *provided* that no such waiver, alteration, modification, amendment, supplement or termination shall be effective without receipt of the prior written consent thereto of the Permitted Designee and (to the extent set forth in the Security Document) any Lessor Assignee.

(b) *Successors and Assigns.* This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(c) *Currency.* All amounts and moneys referred to in this Lease shall be construed to mean money which at the time is lawful money of the United States of America.

(d) *Descriptive Headings.* The descriptive headings of the several sections and paragraphs of this Lease are inserted for convenience of reference only and do not constitute a part of this Lease.

(e) *Counterparts.* This Lease may be executed by the parties hereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument.

(f) *Severability of Provisions.* Any provision of this Lease which may be determined by competent authority to be prohibited 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 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 hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

(g) *Permitted Designee's Right of Quiet Enjoyment.* Notwithstanding any other provision hereof, so long as no (i) Event of Default (as defined in the Coal Supply Service Agreement) under Section 10(a) of the Coal Supply Service Agreement has occurred and is continuing or (ii) Event of Default under this Lease has occurred and is continuing and, with respect to this clause (ii) only, the Permitted Designee has not either (A) assumed the obligations of the Lessee hereunder pursuant to and in accordance with Section 3(i) of the Permitted Designee Consent to Assignment of Coal Supply Service Agreement and Agreement or (B) cured all such Events of Default under this Lease pursuant to and in accordance with Section 15 hereof, the Lessor shall not interfere with the Permitted Designee's right of quiet enjoyment of the Units under the Coal Supply Service Agreement.

(h) *Ongoing Transaction Expenses.* If the transactions contemplated by this Lease are consummated, the Lessee agrees to pay (i) any and all Transaction Expenses (as such term is defined in any Security Document) not paid by the Lessor, (ii) the expenses of the Lessor, the Owner Participant and any Lessor Assignee, including fees and expenses of their counsel, in connection with any amendments, waivers or consents requested by the Lessee or the Permitted Designee in connection with any Lessee Document or any other written agreement entered into in connection herewith and all recording and filing fees, stamp taxes and other recording or filing taxes in connection with the recordation or filing of any such amendments, waivers and consents and in connection with any continuation statements or other documents filed to maintain and protect the rights of the parties hereunder and under any Security Document, (iii) the ongoing fees and expenses of the Lessor under the Owner Trust Agreement, (iv) the ongoing fees and expenses of the Secured Party under or pursuant to any Security Document and (v) the ongoing fees and expenses of the Paying Agent under the Paying Agency Agreement, all of which payments shall be, unless this Lease shall not be entered into, Supplemental Rent hereunder.

(i) *No Recourse to Comerica Bank.* It is expressly understood and agreed by and between the Lessee and the Lessor and their respective successors and assigns that, subject to the proviso contained in this Section 23(i), this Lease is executed by Comerica Bank not individually or personally but solely as trustee under the Lessee Trust Agreement in the exercise of the power and authority conferred and vested in it as such trustee, that each and all of the representations, warranties, undertakings and agreements herein made on the part of the Lessee are each and every one of them made and intended not as personal representations, warranties, undertakings and agreements by Comerica Bank or for the purpose or with the intention of binding Comerica Bank personally, but are made and intended for the purpose of binding only the Lessee Trust Estate, that this Lease is executed and delivered by Comerica Bank solely in the exercise of the powers expressly conferred upon Comerica Bank as trustee under the Lessee Trust Agreement, that actions to be taken by the Lessee pursuant to its obligations hereunder may, in certain instances, be taken by the Lessee only upon specific authority of the Lessee Participant, that, subject to the proviso in this Section 23(i), nothing herein contained shall be construed as creating any liability on Comerica Bank individually or personally, or any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of, Comerica Bank to perform any covenant either express or implied contained herein, all such liability, if any, being expressly waived by the Lessor and by each every person now or hereafter

claiming by, through or under the Lessor, and that so far as Comerica Bank individually or personally is concerned, the Lessor and any Person claiming by, through or under the Lessor shall look solely to the Lessee Trust Estate for the performance of any obligation of Lessee under this Agreement; *provided, however*, that nothing in this Section 23(i) shall be construed to limit in scope or substance those representations and warranties of Comerica Bank made expressly in its individual capacity set forth in Section 16 hereof or the obligations of Comerica Bank in its individual capacity under Section 8(b) hereof.

(j) *Delegation of Duties.* The Lessor, on behalf of itself, its successors and assigns, (i) acknowledges that the Lessee has contracted with the Servicer pursuant to the Servicing Agreement for the Servicer to perform its obligations hereunder, (ii) consents to such delegation and (iii) agrees that (A) any obligation of Lessee hereunder may be performed by the Servicer and (B) the Servicer shall not incur any liability in performing any such obligations unless, and then only to the extent that, the nature of such performance, if it had been provided by the Lessee, would have resulted in individual liability to Comerica Bank under the express terms of this Lease. Any such performance by Servicer shall not be construed as a revocation of the trust created by the Lessee Trust Agreement.

(k) *Governing Law.* This Lease shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Lessor and the Lessee have caused this Lease to be duly executed and delivered by their respective officers thereunto duly authorized.

Lessor/Owner Trustee

WILMINGTON TRUST COMPANY,
not in its individual capacity but solely as
Owner Trustee

By 
Title: Donald G. MacKelcan
Senior Financial Services Officer

Lessee

COMERICA BANK, individually only as
expressly provided in Sections 8(b) and 16
hereof and otherwise solely as Trustee under
the Lessee Trust Agreement

By 
Title: Trust Officer

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS.

On this 28th day of September, 1995 before me personally appeared Lorraine K. Grill to me personally known, who being by me duly sworn, says that she is a Trust Officer of COMERICA BANK, that the foregoing instrument was signed on behalf of said corporation, and she acknowledged that the execution of said instrument was her free act and deed.

Julia R. Browne
Notary Public

[SEAL]

Commission expires:

OFFICIAL SEAL JULIA R BROWNE NOTARY PUBLIC STATE OF ILLINOIS MY COMMISSION EXP. MAR. 4, 1997

PRICING ASSUMPTIONS

CLOSING DATE: First Closing Date: September 29, 1995 -- 135 Units
Second Closing Date: October 27, 1995 -- 477 Units
Third Closing Date: November 7, 1995 -- 51 Units

ASSETS: 663 new high side aluminum bodied railcars (241
Avalanche Cars, 422 BethGon Coalporter Cars)

PURCHASE PRICE OF ASSETS: \$ 7,482,270 on September 29, 1995
\$ 27,324,153 on October 27, 1995
\$ 3,105,798 on November 7, 1995
\$ 37,912,221 TOTAL

AVERAGE PRICE PER UNIT: Avalanche Car \$60,975.41
BethGon Coalporter Car \$55,016.94

**INTERIM TERM
COMMENCEMENT DATE:** First Closing: September 29, 1995
Second Closing: October 27, 1995
Third Closing: November 7, 1995

**BASIC TERM
COMMENCEMENT DATE:** January 2, 1996

INTERIM RENT: Interest only on the Notes, payable by the Lessor on the
Basic Term Commencement Date

**FIXED RENT DURING
THE BASIC TERM:** As set forth in Schedule 2 to Lease Supplement No. 1

INTEREST RATE ON NOTES: Series A Notes 7.42%
Series B Notes 7.86%

**PERCENTAGE OF PURCHASE
PRICE OF ASSETS
FUNDED BY NOTES:** 75.733413%

AMORTIZATION OF NOTES: As set forth in Schedule I to the Security Agreement

TAX ASSUMPTIONS: As set forth in Section 1 of the Tax Indemnification
Agreement

ASSUMED TRANSACTION COSTS: 2.0% of aggregate Lessor's Cost

SCHEDULE I
(to Lease Agreement)

AVERAGE LIFE OF THE NOTES:

Series A Notes 9.60 years
Series B Notes 18.79 years

METHOD OF DEPRECIATION:

7 year MACRS

INDEX RESET FORMULA:

Lessors pricing is based on an interpolated six year treasury yield of 6.03% (the "*Indexation Rate*"). Prior to March 31, 1996, and subject to Section 9(e) of the Lease, the Owner Participant shall recompute the Basic Rent, EBO Amounts and Termination Values (utilizing the same assumptions and methodology, including MISF methodology, as were previously utilized by the Owner Participant in calculating the Basic Rent, EBO Amounts and Termination Values originally set forth in Supplement 1 to the Lease) by adjusting its assumed nominal pre-tax yield by .01% for each .01% change in the Indexation Rate.

THIS LEASE SUPPLEMENT NO. _____, dated _____, 1995, between WILMINGTON TRUST COMPANY, a Delaware banking corporation, not in its individual capacity but solely as Owner Trustee ("*Lessor*"), and COMERICA BANK, a Michigan banking corporation, not in its individual capacity but solely as Trustee under the Lessee Trust Agreement ("*Lessee*").

WITNESSETH:

WHEREAS, Lessor and Lessee have heretofore entered into a Lease Agreement (the "*Lease*"), dated as of September 1, 1995 (capitalized terms used herein without definitions having the respective meanings set forth in the Lease);

WHEREAS, the Lease provides that on each Closing Date the applicable Manufacturer shall deliver to Lessor a Bill of Sale or Bills of Sale dated such Closing Date by which such Manufacturer bargains, conveys, assigns, sets over, sells and delivers to Lessor and Lessor purchases and accepts from such Manufacturer the Units listed on Schedule 1 hereto on such Closing Date and said Bill of Sale or Bills of Sale have been delivered by such Manufacturer and accepted by Lessor on this Closing Date;

WHEREAS, the Lease provides for the execution of a Lease Supplement substantially in the form hereof for the purposes of accepting and leasing the Units under the Lease as and when delivered by Lessor to Lessee in accordance with the terms thereof;

NOW, THEREFORE, in consideration of the premises and for good and sufficient consideration, Lessor and Lessee hereby agree as follows:

1. Lessor hereby delivers and leases to Lessee, and Lessee hereby accepts and leases from Lessor, under the Lease as hereby supplemented, the Units listed on Schedule 1 hereto.

2. Lessee hereby confirms to Lessor that Lessee has accepted such Units for all purposes hereof and of the Lease.

3. The aggregate Lessor's Cost of the Units leased hereunder is \$_____. The Interim Rent payable on the Basic Term Commencement Date with respect to the Units leased hereunder is _____ and the Basic Rent, Termination Values and the EBO Amounts payable with respect to the Units leased hereunder are set forth respectively, on Schedules 2, 3 and 4 hereto.

4. Lessee hereby confirms its agreement, in accordance with the Lease as supplemented by this Lease Supplement No. _____, to pay to Lessor Interim Rent, if any, on the Basic Term Commencement Date and to pay to Lessor Basic Rent, Fixed Rate Renewal Rent and Fair Market Renewal Rent, if any, on each Payment Date, in each such case, for each Unit leased hereunder as provided for in the Lease and to pay, as and when due, any and all Supplemental Rent as provided for in the Lease.

5. The Lessor and the Lessee hereby agree that the Lessor shall tender delivery of the Units leased hereunder to the Lessee at _____.

6. All of the provisions of the Lease are hereby incorporated by reference in this Lease Supplement No. ____ to the same extent as if fully set forth herein.

7. This Lease Supplement No. ____ may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

8. This Lease Supplement No. ____ 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.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease Supplement No. ___ to be duly executed on the date and year set forth in the opening paragraph hereof.

Lessor/Owner Trustee

WILMINGTON TRUST COMPANY,
not in its individual capacity but solely as
Owner Trustee

By _____
Title:

Lessee

COMERICA BANK, not in its individual
capacity but solely as Trustee under the
Lessee Trust Agreement

By _____
Title:

Receipt of this original counterpart
of this Lease is hereby acknowledged
this ____ day of _____, 1995.

FIRST SECURITY BANK OF UTAH,
NATIONAL ASSOCIATION, as Assignee

By _____
Title:

DESCRIPTION OF UNITS

**QUANTITY
OF UNITS**

**UNIT
NUMBERS**

**LESSOR'S COST
PER UNIT**

**SCHEDULE 1
(to Lease Supplement)**

BASIC RENT

[Schedule - expressed as a percentage of Lessor's Cost]

TERMINATION VALUE

**[Two Schedules - one for each type of Unit and to be
expressed as a percentage of Lessor's Cost]**

**SCHEDULE 3
(to Lease Supplement)**

EBO AMOUNTS

**[Two Amounts - one for each type of Unit and to be
expressed as a percentage of Lessor's Cost]**

**SCHEDULE 4
(to Lease Supplement)**

LEASE SUPPLEMENT NO. _____

Dated _____, 1995

Between

WILMINGTON TRUST COMPANY,
not in its individual capacity but solely as Owner Trustee,
as Lessor

and

COMERICA BANK,
not in its individual capacity but solely as Trustee under the Lessee Trust Agreement,
as Lessee

663 HIGH SIDE ALUMINUM BODIED RAILCARS

CERTAIN RIGHTS, TITLE AND INTEREST IN AND TO THIS LEASE SUPPLEMENT AND TO THE UNITS COVERED HEREBY ON THE PART OF THE LESSOR HAVE BEEN ASSIGNED TO AND ARE SUBJECT TO A LIEN AND SECURITY INTEREST IN FAVOR OF A SECURED PARTY, AS ASSIGNEE, UNDER A SECURITY DOCUMENT. TO THE EXTENT, IF ANY, THAT THIS LEASE SUPPLEMENT 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 SUPPLEMENT MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART THAT CONTAINS THE RECEIPT THEREFOR EXECUTED BY SUCH SECURED PARTY, AS ASSIGNEE, ON OR IMMEDIATELY FOLLOWING THE SIGNATURE PAGE THEREOF AND IS LABELED COUNTERPART NO. 1 ON THE FACE THEREOF.

FILED WITH THE INTERSTATE COMMERCE COMMISSION
PURSUANT TO 49 U.S.C. §11303
ON _____, 1995 AT _____,
RECORDATION NUMBER _____

EXHIBIT A
(to Lease Agreement)