

45.00

**DOHERTY  
RUMBLE  
& BUTLER**  
PROFESSIONAL ASSOCIATION

2800 Minnesota World Trade Center  
30 East Seventh Street  
Saint Paul, Minnesota 55101-4999  
Telephone (612) 291-9333  
FAX (612) 291-9313

3750 IDS Tower  
80 South Eighth Street  
Minneapolis, Minnesota 55402-2252  
Telephone (612) 340-5555  
FAX (612) 340-5584

Magruder Building  
1625 M Street, N.W.  
Washington, D.C. 20036-3203  
Telephone (202) 293-0555  
FAX (202) 659-0466

Attorneys at Law

Writer's direct dial number:

(612) 291-9411

Reply to Saint Paul office

RECORDATION NO

~~17093~~ A

NOV 30 1990 10 50 AM

NOV 30 1990 10 50 AM

INTERSTATE COMMERCE COMMISSION

0-334A012

November 29, 1990

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission  
12th Street and Constitution Avenue NW  
Washington, DC 20423

~~RECORDATION NO 17093~~ B

Attn: Room 2303/Recording Officer

NOV 30 1990 10 50 AM

Re: Documents for Recordation

INTERSTATE COMMERCE COMMISSION

Dear Sir or Madam:

Enclosed for filing with your office are the following documents (which need to be filed in the following order):

1. Agreement for leasing between Cargill Leasing Corporation and Western Fuels Association, Inc.
2. Coop Lease between Western Fuels Association, Inc. and Cargill Leasing Corporation; and
3. Loan and Security Agreement between Cargill Leasing Corporation and St. Paul Bank for Cooperatives.

Two fully executed and notarized copies of each document are enclosed. After completion of filing, it is my understanding that one original of each document will be returned to me.

The names and addresses of the parties to the documents are as follows:

Cargill Leasing Corporation *Lessee*  
15407 McGinty Road West  
Minnetonka, MN 55345

Western Fuels Association, Inc. *Lessee*  
Magruder Building  
1635 M Street NW  
Washington, DC 20036-3210

St. Paul Bank for Cooperatives *assignee*  
375 Jackson Street  
St. Paul, MN 55101

A general description of the property and/or equipment subject to the lease agreements and loan and security agreement is as follows:

*Counter parts*

NOV 30 10 44 AM '90  
MOTOR OPERATING UNIT

DOHERTY  
RUMBLE  
& BUTLER

PROFESSIONAL ASSOCIATION

Interstate Commerce Commission

November 29, 1990

Page 2

One Hundred Twenty (120) Aluminum BethGon Coalporter  
Cars, 110-ton nominal capacity, Numbered WFAX 90,000  
through WFAX 90,119, inclusive.

Our check in the amount of \$45.00 is enclosed to cover the filing  
fee.

Should you have any questions or require additional information,  
please contact the undersigned at the number listed herein.

Very truly yours,



Karen R. Kees  
Legal Assistant

KRK078.1tr/elo  
Enclosures

**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

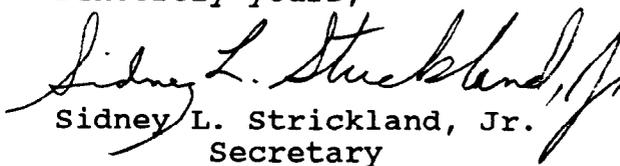
11/30/90

Karen R. Kees  
Legal Assistant  
Doherty Rumble & Butler  
2800 Minnesota World Trade Center  
30 East Seventh Street  
Saint Paul, Minnesota 55101-4999

Dear Sirs:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/30/90 at 10:50AM, and assigned recordation number(s) 17093.17093-A and 17093-B.

Sincerely yours,

  
Sidney L. Strickland, Jr.  
Secretary

17093  
RECEIVED

NOV 30 1990 10 50 AM

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17093  
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NOV 30 1990 10 50 AM  
INTERSTATE COMMERCE COMMISSION

AGREEMENT FOR LEASING

THIS AGREEMENT FOR LEASING is dated as of November 29, 1990, between CARGILL LEASING CORPORATION, a Delaware corporation (Lessor), and WESTERN FUELS ASSOCIATION, INC., a Wyoming corporation (Lessee).

RECITAL:

WHEREAS, Lessor, Lessee, and The St. Paul Bank for Cooperatives, a corporation organized under the laws of the United States of America (Lender), are parties to the Participation Agreement dated as of November 29, 1990 and Lessor and Lender are parties to a Loan and Security Agreement dated as of November 29, 1990 which agreements collectively contemplate that by mutual written agreement of the parties, Lessor will lease, which lease will incorporate by reference the provisions of this Agreement for Leasing, equipment acquired by Lessor in part through an investment of Lessor and in part by financing provided by Lender.

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Relationship and Definitions.

(a) This is an Agreement for Leasing, in connection with which the parties will, by mutual agreement, execute an agreement entitled "Coop Lease". The Coop Lease will incorporate by reference all of the terms, conditions, covenants, and provisions contained in this Agreement for Leasing except as may be expressly set forth herein or therein. Subject to such exceptions, each term or phrase defined herein shall apply to the Coop Lease. Each term or phrase set forth herein with initial capital letters but not defined herein will for purposes of the Coop Lease have the meaning set forth in the Coop Lease.

(b) All the agreements or instruments herein defined shall mean such agreements or instruments as the same may from time to time be supplemented or amended or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms thereof.

(c) The following terms shall have the following meanings for all purposes of the Coop Lease:

"Affected Unit" shall have the meaning set forth in Section 10(a) hereof.

"After-Tax Basis" shall mean on a basis such that any payment received or deemed to have been received by any Person shall be supplemented by a further payment to that Person such that the sum of the two payments shall, after deduction of all income taxes (taking into account any credits or deductions arising therefrom) imposed on the Person receiving such payments by or under federal law, be equal to the payment received or deemed to have been received.

"Alteration Inclusion" shall have the meaning set forth in Section 14(d)(i)(3) hereof.

"Alterations" shall have the meaning set forth in Section 8(c) hereof.

"Applicable Tax Rate" shall have the meaning set forth in Section 14(b)(ix) hereof.

"Basic Rent" shall mean any and all rent payable pursuant to Section 3(a) hereof.

"Claims" shall have the meaning set forth in Section 12 hereof.

"Coop Lease" shall have the meaning set forth in Section 1(a) hereof.

"Event of Default" shall have the meaning set forth in Section 16 hereof.

"Event of Loss" with respect to any Unit shall have the meaning set forth in Section 10(c) hereof.

"Fair Market Value" for any Unit as of any date shall mean the cash price for such Unit obtainable in an arm's length transaction between an informed and willing purchaser (other than a purchaser currently in possession) under no compulsion to purchase and an informed and willing seller under no compulsion to sell and shall, if not maintained as required herein, be determined on the basis that such Unit has been maintained in accordance with the Coop Lease. If Lessor and Lessee are unable to agree upon a determination of Fair Market Value within thirty (30) days of written notice by one party to the other that such determination need be made, it shall be determined by mutual agreement of two independent appraisers, one chosen by Lessee and one by Lessor. Lessor or Lessee, as the case may be, shall deliver a written notice to the other party appointing its appraiser within 15 days after receipt from the other party of a written notice appointing that party's appraiser. If within 30 days after appointment of the

two appraisers, as described above, the two appraisers are unable to agree upon the amount in question, a third independent appraiser shall be chosen within 10 days thereafter by the mutual consent of such first two appraisers or, if such first two appraisers fail to agree upon the appointment of a third appraiser, such appointment shall be made by the American Arbitration Association. The decision of the third appraiser so appointed and chosen shall be given within 10 days after the selection of such third appraiser and, upon receipt of such decision, shall be binding and conclusive on Lessor and Lessee. Lessor and Lessee shall pay the fees and expenses of the respective appraisers appointed by them and the fees and expenses of the third appraiser, if any, shall be divided equally between Lessor and Lessee.

"Final Determination" shall have the meaning set forth in Section 14(f) hereof.

"Foreign Use" shall have the meaning set forth in Section 14(d)(i)(5) hereof.

"Income Inclusion" shall have the meaning set forth in Section 14(d)(i)(2) hereof.

"Interest Deductions" shall have the meaning set forth in Section 14(b)(iv) hereof.

"Lessee Act or Omission" shall have the meaning set forth in Section 14(d)(i)(1) hereof.

"Loss" shall have the meaning set forth in Section 14(d)(i)(2) hereof.

"Loss of Foreign Tax Credits" shall have the meaning set forth in Section 14(d)(i)(5) hereof.

"Loss Payment" shall have the meaning set forth in Section 10(c) hereof.

"MACRS Deduction" shall have the meaning set forth in Section 14(b)(iii) hereof.

"Net Economic Return" shall mean Lessor's nominal after-tax yield, and aggregate after-tax cash flow, and aggregate after-tax cash flow as a percentage of Lessor's equity investment, all using the multiple investment sinking fund method originally used by Lessor in calculating the Basic Rent Applicable To each Unit.

"Notes" shall have the meaning set forth in the Loan and Security Agreement.

"Rent" shall mean all Basic Rent and Supplemental Rent.

"Requisition of Use" shall have the meaning set forth in Section 10(a) hereof.

"Sale Proceeds" shall mean, with respect to any sale of any Unit by Lessor to any Person other than Lessee, the net proceeds of such sale payable in cash.

"State Deductions" shall have the meaning set forth in Section 14(b)(x).

"Supplemental Rent" shall have the meaning set forth in Section 3(b) hereof.

"Tax Assumptions" shall have the meaning set forth in Section 14(b) hereof.

"Tax Benefits" shall have the meaning set forth in Section 14(d)(i)(2) hereof.

"Tax Payment" shall have the meaning set forth in Section 14(f).

"Transaction Expense Deductions" shall have the meaning set forth in Section 14(b)(v).

(d) For all purposes of this Coop Lease, the following terms shall have the meaning given or referred to in the Participation Agreement: "Agreement for Leasing", "Assignment", "Basin", "Business Day", "Buyer", "Coal Purchase Contract", "Code", "Default", "Financing Agreements", "Guarantee", "Indemnitee", "Lender", "Lessee Documents", "Lien", "Loan Agreement", "Notes", "Participation Agreement", "Permitted Liens", "Person", "Prescribed Closing Date", and "Transaction Expenses".

(e) The terms defined in the Coop Lease shall include the plural as well as the singular and the singular as well as the plural. Except as otherwise indicated, all the agreements or instruments herein defined shall mean such agreements or instruments as the same may from time to time have been or be supplemented or amended or the terms thereof waived or modified.

## SECTION 2. Lease of Equipment; Term.

Lessor hereby agrees to lease each Unit to Lessee for the Lease Term, and Lessee hereby agrees to so lease each Unit from Lessor.

SECTION 3. Rent.

(a) Basic Rent. In respect of each Unit during the Lease Term, Basic Rent Applicable To that Unit shall be paid by Lessee on and as of each Basic Rent Payment Date.

(b) Supplemental Rent. Lessee shall pay to Lessor, as Supplemental Rent, the following amounts:

(1) Any amount (other than Basic Rent, Stipulated Loss Value Applicable To any Unit, and the Termination Value) which Lessee assumes the obligation to pay, or agrees to pay, under the Coop Lease, including any amount to be indemnified or reimbursed to Lessor or others, as soon as the amount to be paid can be reasonably determined and is requested in writing by the Person entitled to the same; and

(2) On the date provided as to the Unit or Units affected, i) any amount payable hereunder as Stipulated Loss Value Applicable To that Unit, and ii) any amount payable hereunder as the Termination Value; and

(3) On demand, interest (computed on the basis of a 360-day year and twelve (12) months of thirty (30) days each) at a rate per annum equal to the Overdue Rate, on all or any payments of Basic Rent or Supplemental Rent for any period for which the same shall be overdue (without regard to any period of grace).

(c) Form of Payment. All payments of Rent shall be made so that the Person entitled to receive the same shall have immediately available funds on the date each such payment shall be payable hereunder and shall be paid either: (i) to Lessor at its then current address determined as provided in Section 20 hereof or at such address as Lessor may direct by notice in writing to Lessee, or (ii) to such other Person as shall be entitled to receive such payment pursuant to and at such address as may be set forth in the Financing Agreements or as may be provided therein. If the date on which any payment of Rent is due thereunder shall not be a Business Day, such payment shall be made on the immediately preceding Business Day.

SECTION 4. Net Lease.

The Coop Lease is a net, and, except as otherwise set forth herein, a non-cancellable lease with Lessee's obligation to pay all Rent hereunder, and the rights of Lessor in and to such Rent, being absolute and unconditional and unaffected by any circumstances or happening whatsoever. Lessee hereby waives, to the extent permitted by applicable law, any and all

rights which it may at any time have, by statute or otherwise, to terminate, cancel, quit, or surrender the Coop Lease, except in accordance with the express terms hereof. If the Coop Lease shall be terminated for any reason in whole or in part with respect to any or all Units by operation of law or otherwise, Lessee nonetheless agrees to pay in accordance with the terms hereof, except as specifically provided herein, all Basic Rent and all Supplemental Rent at the time such payment would have become due and payable hereunder had the Coop Lease not been so terminated. Each payment of Rent made by Lessee shall be final and Lessee shall not seek to nor shall it recover all or any part of such payment from Lessor or any other Person for any reason whatsoever.

SECTION 5. Warranty of the Lessor.

(a) Quiet Enjoyment. Lessor warrants that during the Lease Term if Lessee is in compliance with each and every term and provision of the Coop Lease and the Participation Agreement, Lessee's use of that Unit shall not be interrupted by Lessor or any Person claiming solely through or under Lessor and its assigns.

(b) DISCLAIMER OF OTHER WARRANTIES. AS BETWEEN LESSOR AND LESSEE, EXECUTION BY LESSEE OF THE COOP LEASE AND THE DELIVERY AND ACCEPTANCE CERTIFICATE IN SUCH FORM AS ATTACHED TO THE COOP LEASE SHALL BE CONCLUSIVE PROOF OF THE COMPLIANCE OF THE UNITS WITH ALL REQUIREMENTS OF THE COOP LEASE, AND LESSOR LEASES AND LESSEE TAKES EACH UNIT AS IS, AND, EXCEPT AS TO THE WARRANTY SET FORTH IN SECTION 5(a), LESSOR SHALL NOT BE DEEMED TO HAVE MADE NOR LESSEE BE DEEMED TO HAVE RELIED UPON, AND LESSOR HEREBY DISCLAIMS, ALL REPRESENTATIONS AND WARRANTIES, EITHER EXPRESS OR IMPLIED, ORAL OR WRITTEN AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE MERCHANTABILITY OF OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY UNIT, NOR SHALL LESSOR BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES TO LESSEE OR ANY OTHER PERSON (INCLUDING LIABILITY IN TORT), ALL SUCH RISKS, AS BETWEEN LESSOR AND LESSEE, BEING BORNE BY LESSEE, but Lessor authorizes Lessee, at Lessee's expense, to assert for Lessor's account, during the Lease Term, so long as no Default or Event of Default shall have occurred and be continuing hereunder, all of Lessor's rights under any applicable warranty and any other claims that Lessor may have against the manufacturer with respect to such Unit, and Lessor agrees to cooperate with Lessee in asserting such rights. Any amount received by Lessee as payment under any such warranty shall be applied first to restore such Unit to the condition required by Section 8 hereof, second, to reimburse Lessee for its reasonable out-of-pocket fees and expenses, if any, incurred in enforcing any such warranty and, third, the balance

of such amount, if any, shall be paid over to and retained by Lessor.

#### SECTION 6. Liens.

Lessee will not directly or indirectly create, incur, assume, or suffer to exist any Liens on or with respect to any of the Units, Lessor's title thereto, or any interest of Lessor therein, and Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such Lien, except Permitted Liens; provided that at the end of the Lease Term the only Permitted Liens which may exist shall be the Liens of Lessor and Lender.

#### SECTION 7. Licensing and Taxes, Etc.

All payments to be made by Lessee under the Coop Lease will be free to Lessor with respect to the amount of any local, state, or federal taxes (except any determined by reference to or measured by the net income of Lessor), license or registration fees, assessments, fines, or penalties (collectively being herein called, Impositions) hereafter levied or imposed upon or in connection with or measured by the Coop Lease, the transactions contemplated hereby, or relating to the Units or their use. Lessee agrees to prepare and file in its own name, or if necessary on behalf of Lessor, all returns, reports, and the like to be prepared and filed in connection therewith and to assume and pay all such Impositions before they become delinquent and against which Lessee agrees to indemnify and hold harmless Lessor on an After-Tax Basis; provided, however, that Lessee shall not be under any obligation to pay any particular Impositions so long as it is contesting in good faith and by appropriate proceedings such Imposition and such nonpayment does not, in the reasonable opinion of Lessor, adversely affect the title, property, or rights of Lessor hereunder. If Lessee chooses to contest such payment, Lessor shall have the right, but not the obligation, to participate fully in any such contest. Lessee agrees to give Lessor notice of the filing of such reports and of initiation of such a contest as promptly as may be necessary to constitute adequate and timely notice to Lessor, but in any case within thirty (30) days after filing or initiation thereof, as the case may be, and Lessor agrees to promptly provide upon request such information as may be reasonably requested by Lessee in furtherance of such filing or initiation.

#### SECTION 8. Use, Maintenance, and Operation; Equipment Marking.

(a) Nature and Place of Use. Throughout the Lease Term, Lessee agrees that each Unit will be used and maintained

in compliance with applicable laws, including all laws of the jurisdictions in which its operations involving the Units may extend, all interchange rules of the Association of American Railroads (and qualify for interchange service in accordance with such interchange rules), and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission, and any other legislative, executive, administrative, or judicial body exercising any power or jurisdiction over the Units; will remain in the possession and control of Lessee; will be located in the United States and will be used or operated only for the purposes for which it was designed and intended; and used and maintained in compliance with all applicable requirements of the insurance policies maintained pursuant to Section 11 hereof.

(b) Maintenance. (1) Throughout the Lease Term, Lessee, at its own expense, will maintain, service, repair, and overhaul, as necessary, or will cause to be maintained, serviced, repaired, and overhauled, each Unit (a) consistent with Lessee's standards for similar owned and leased equipment, a copy of such standards if ever put in writing will be promptly provided to Lessor and from time to time promptly upon any amendment thereto; (b) in compliance with all insurance, Federal Railroad Administration, American Association of Railroads, and any other applicable regulatory agency rules and requirements then in effect; (c) in as good working order and repair as when originally delivered, normal wear and tear excepted; (d) mechanically suitable for interchange; (e) in accordance with all manufacturer recommended maintenance and warranty procedures and in compliance with all applicable safety bulletins issued by the manufacturer; and (f) in a condition desirable to and suitable for immediate purchase or lease and use by a Class I line-haul railroad. Lessee will not operate any Unit with broken, unserviceable, or missing parts or remove parts that diminish the value, life, utility, or intended use of the Unit.

(2) Within thirty (30) days of either side of the 5th, 10th, and 15th anniversary dates of the Basic Lease Term commencement and within ten (10) days of either side of 270 days prior to the end of the Basic Lease Term, Lessee shall send Lessor and Lender Lessee's maintenance and repair records pertaining to all of the Units. If after reviewing the records, Lender or Lessor deem it desirable to physically inspect any such Unit, Lender, Lessor, or their respective agents shall be permitted to physically inspect such Units which such Units shall be made available for such purpose at the maintenance facilities of Lessee at a mutually agreeable time but no later than 180 days after such request for inspection is made, provided however, the inspection shall

occur within 90 days if requested in conjunction with the Lender/Lessor review and/or inspection occurring 270 days prior to the end of the Basic Lease Term.

After review of the records and/or after the physical inspection of the Units, Lender and/or Lessor may, if necessary, provide Lessee with a notice identifying all such Units which in its judgment have not been maintained pursuant to the maintenance provisions herein.

Lessee shall thereafter have ten (10) days to request that an independent mutually acceptable appraiser be appointed to inspect the Units addressed in the non-conformance notice. The appraiser shall by review of the records and by physical inspection determine and report to the parties whether the so noted Units are in fact being maintained as required hereunder. Lessee shall make the Units available for inspection by the appraiser at the maintenance facilities of Lessee at a mutually agreeable time but no later than 180 days after such request for an appraiser is made, provided however, such inspection shall occur within 90 days if requested in conjunction with the Lender/Lessor review and/or inspection occurring 270 days prior to the end of the Basic Lease Term.

If Lessee does not request an appraiser or to the extent the appraiser determines any so noted Units is not in compliance with the maintenance provisions hereunder, Lessee shall, no later than the earlier of 90 days after the delivery of the Lender's or Lessor's notice of non-conformance or the delivery of the appraiser's report, as the case may be, or the end of the Basic Lease Term, provide a certificate at Lessee's sole expense prepared by an appraiser, or the earlier appointed appraiser, as the case may be, stating that all Units identified in the notice, or the appraiser's report, as the case may be, have had the appropriate maintenance performed and are now in compliance with the maintenance provisions set forth herein. If such certificate is not delivered prior to the last date specified for such delivery or shall state that any such Unit is not in the required condition on such date, such Unit shall at the option of Lessor be deemed to have suffered an Event of Loss and Lessee shall pay Lessor such amount due Lessor pursuant to Section 10(c) hereof and upon payment of such amount the provisions of Section 10(d) and (e) shall apply with respect to such Unit.

If Lessee requests an appraiser and the appraiser determines that any Unit identified in a non-conformance notice is not in compliance with the maintenance provisions herein, all such costs associated with the appraiser shall be paid by Lessee, otherwise, all such costs shall be for the account of

Lender or Lessor, whichever such party shall have sent the non-conformance notice.

The rights of Lender and Lessor to inspect the records and/or the Units set forth herein shall not be construed as an obligation of Lender or Lessor nor shall any inspection, or lack thereof, notice of non-conformance, or lack thereof, or failure or delay of Lender or Lessor to exercise its rights hereunder, or the express or implied waiver thereof, be construed as an express or implied waiver by Lender or Lessor of the maintenance requirements herein. The maintenance requirements set forth herein shall remain an unconditional obligation of Lessee.

(c) Alterations. Throughout the Lease Term, Lessee, at its expense: (i) will make such alterations, modifications, and additions (collectively, "Alterations") to each and every Unit as may be required to meet the requirements of applicable law; and (ii) may make other Alterations to any Unit as it may deem desirable; provided that if such desired Alterations may diminish the value, utility, or condition of such Unit, they may be made only with Lessor's prior written consent. All Alterations shall be made in a good and workmanlike manner and shall be promptly reported in writing to Lessor.

(d) Title to Parts and Alterations. Title to all parts, components, and the like incorporated or installed in or attached to any Unit, and all alterations (except Alterations which are made under Section 8(c)(ii) and which can be, and Lessee agrees will, at its expense be removed at the end of the Lease Term without diminishing the value, utility, or condition thereof) shall without further act vest in Lessor and shall be deemed to constitute a part of such Unit for all purposes hereof. Parts, components, and the like which are replaced or substituted shall, after the new part is installed, incorporated, or attached, become the property of Lessee.

(e) Personal Property. Lessee agrees that each Unit and every part thereof is severed and shall be and remain severed from any real property and, even if physically attached to any real property, shall retain the character of personal property, shall be removable, and shall be treated as personal property with respect to the rights of all Persons.

(f) Marking. Lessee agrees, at all times and at its expense, to cause each Unit to be kept numbered with the identification or serial number therefor, and maintain such reasonable equipment marking on a Unit as from time to time may be required by law or otherwise reasonably deemed necessary by Lessor or Lender in order to protect the title of Lessor.

thereto, the rights of Lessor under this Lease, and the Lien of Lender under the Loan Agreement.

SECTION 9. Inspection.

Notwithstanding anything to the contrary herein, Lessor and Lender shall have the right, but not the duty, to inspect any or all of the Units and audit Lessee's maintenance facilities and maintenance procedures at any time during the Lease Term. Upon reasonable notice from Lessor, Lessee shall make the Units, Lessee's maintenance and repair records pertaining to the Units, and/or Lessee's maintenance facilities available to Lessor and Lender for inspection during Lessee's business hours, provided that Lessor's inspection of the Units will not interfere with Lessee's use of the Units.

SECTION 10. Loss or Destruction; Requisition of Use.

(a) Damage or Loss. In the event that any Unit shall be damaged, destroyed, stolen, or lost, for any reason whatsoever, or title thereto or use thereof shall be requisitioned or otherwise taken by any governmental authority under power of eminent domain or otherwise (any such taking being herein referred to as a "Requisition of Use") during the Lease Term (the Unit subject to any of such occurrences being herein referred to as an "Affected Unit"), such fact shall promptly be reported by Lessee to Lessor.

(b) Determination to Repair Damage. Lessor and Lessee shall within thirty (30) days after the date of occurrence of any damage referred to in Section 10(a) jointly determine, in good faith, whether the Affected Unit can be repaired in a manner consistent with the provisions of Section 8(b) hereof; and if such determination is affirmative, Lessee will promptly so repair the Affected Unit at Lessee's cost.

(c) Payment of Stipulated Loss Value. In the event Lessor and Lessee determine that an Affected Unit suffering damage cannot be repaired or cannot agree as to such determination, or in the event of such destruction, theft or loss, or in the event of a Requisition of Use for an indefinite period or a stated period which ends on or after the last day of the Lease Term (each of such occurrences being referred to as an "Event of Loss", and the date thereof being the date of such damage, destruction, theft, loss, or Requisition of Use), provided Lessee has not elected to replace the Unit pursuant to Section 10(g) Lessee shall, not later than the earlier of the Ninetieth (90th) day following the date of such Event of Loss or the day of payment of insurance proceeds, if any, in respect of such Event of Loss, pay to Lessor the Stipulated Loss Value

Applicable To such Unit determined as of the Basic Rent Payment Date on or next following the date of such Event of Loss, together with any Rent due with respect to such unit through and including such Basic Rent Payment Date (the total amount payable as described above being herein referred to as a "Loss Payment").

(d) Termination of Obligation. Upon making a Loss Payment relative to a Unit, Lessee's obligation to thereafter pay Basic Rent Applicable To that Unit shall cease.

(e) Salvage. Following the making of a Loss Payment relative to a Unit, and so long as no Default or Event of Default shall have occurred and be continuing, (i) the Lessor shall transfer to Lessee all of its right, title, and interest in and to such Unit on an as-is, where-is basis, without recourse, representation, or warranty, express or implied, free and clear and any liens or encumbrances caused by Lessor, and (ii) Lender shall release all such claims it may have to the Unit.

(f) Requisition of Use. In the case of a Requisition of Use of any Unit not constituting an Event of Loss, this Lease shall continue, to, and each and every obligation of Lessee hereunder shall remain in full force and effect. So long as no Event of Default shall have occurred and be continuing, Lessee shall be entitled to all sums received by reason of any such Requisition of Use.

(g) Replacement. Provided no Event of Default shall have occurred and be continuing, in lieu of payment of all or any portion of the Stipulated Loss Value Applicable To such Unit as provided in the subsections above, Lessee may, on or prior to the date on which such payment would have otherwise been due, convey or caused to be conveyed to Lessor as replacement for any such Unit with respect to which an Event of Loss has occurred title to a new Unit free and clear of all liens and encumbrances of any nature whatsoever. Prior to or at the time of such conveyance, Lessee, and its own expense, will furnish to Lessor the following documents which shall have been duly authorized, executed, and delivered by the respective parties thereto and shall be in full force and effect on the date of such conveyance: (i) a bill of sale, in form and substance satisfactory to Lessor with respect to such replacement Unit, (ii) an opinion or opinions of counsel in form and substance satisfactory to Lessor with respect to such replacement Unit to the effect that upon such conveyance Lessor will acquire or has acquired good and marketable title to such replacement Unit free and clear of all liens and encumbrances and, that the replacement Unit will be or has been leased

hereunder, duly registered with the appropriate governmental agencies, as necessary, and to the extent there is still outstanding amounts due under the Notes, the Unit is subject to the liens of Lender as set forth in the Financing Agreements to the same extent as the Unit replaced thereby, and (iii) an opinion of counsel (which shall be Lessor's counsel) to the effect that such replacement will not have any adverse tax consequences for Lessor. On full compliance by Lessee with the terms of this subsection Lessor will transfer to Lessee all of its right, title, and interest in and to such replaced Unit on an as-is, where-is, basis without recourse, representation, or warranty, express or implied, free and clear of any liens or encumbrances caused by Lessor, and Lender shall release all such claims it may have to the replaced Unit. 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. The replacement of an Affected Unit shall not result in any reduction in or abatement of the Basic Rent Applicable To such Unit.

#### SECTION 11. Insurance.

(a) Lessee will, at its expense, cause to be carried and maintained throughout the Lease Term insurance against theft of, damage to or destruction of all Units, and liability insurance with respect to third party personal injury and property damage, with such insurers, in such amounts and against such risks as shall be reasonably satisfactory to Lessor and Lender. Any policies with respect to such insurance shall: (i) name Lessor, Lender, and Lessee as insureds and require that payment of all claims in excess of \$25,000 made under said policy shall be in the name of Lender and Lessor only, as loss payees, (ii) provide for at least thirty (30) days' prior written notice by the insurance carrier to Lessor and Lender in the event of cancellation, expiration, or material modification, and (iii) provide that Lessor or Lender is permitted, but not required, to make payments to effect the continuation of such insurance coverage upon notice of cancellation due to nonpayment of premium. Each such policy (A) shall be primary without right of contribution from any insurance carried by Lessor or Lender; (B) shall provide that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured; and (C) shall provide that in respect of the interests of Lessor and Lender in such policies the insurance shall not be invalidated by any action or inaction of Lessee or any other Person and shall insure Lessor and Lender regardless of any breach or violation of any warranty, declaration, or condition contained in such policies by the Lessee or by any other Person. So long as no Default or

Event of Default shall have occurred and be continuing, all insurance proceeds received by Lessor (directly or from Lender) in respect of any Unit not suffering an Event of Loss shall be paid to Lessee upon proof satisfactory to Lessor that any damage to such unit in respect of which such proceeds were paid has been fully repaired. If such Unit suffers an Event of Loss, the proceeds shall first be used to pay amounts due Lessor as a result thereof to the extent not already paid by Lessee and the excess thereof paid to Lessee.

(b) With respect to any requisition, loss, or damage to any Unit which is not an Event of Loss or with respect to which Lessee has elected to replace pursuant to Section 10(g), the net proceeds of insurance or awards from condemnation resulting from claims for losses shall be paid to Lender (or if the Notes are fully paid, the Lessor), except as otherwise provided in this Section 11 if the amount is less than \$25,000, and held by Lender or Lessor, as the case may be, in an interest bearing account to be used solely for the purpose of paying the costs of repair, restoration, or replacement which repair, restoration, or replacement Lessee shall diligently and with all practicable speed undertake. No such Rent due hereunder shall be abated during any such repair, restoration, or replacement. Prior to commencement of such repair, restoration, or replacement, Lessee shall provide Lessor and Lender copies of any plans and specifications, architectural or engineering contracts, construction contracts or supply contracts entered into by Lessee in connection therewith. Payments of the cost of such repair, restoration, or replacement shall be made from the account by Lender or Lessor, as the case may be, to the contractor or supplier upon receipt of a written requisition signed on behalf of Lessee, stating: (i) that none of the items for which payment is being requested has formed the basis for any payment previously made from the account and each such item is or was necessary in connection with the repair, restoration, or replacement of the Unit; (ii) the name and address of each person to whom payment is due or has been made (which person may be Lessee if Lessee has made such payment) and the amount of such payment; (iii) that, except for the amount, if any, currently due to the particular contractor or supplier for which payment is being requested, there is no outstanding indebtedness to any contractor or supplier which is then due in connection with the repair, restoration, or replacement of the Unit which, if unpaid, might become the basis of any lien upon the Unit; (iv) the work performed or materials supplied by the person(s) to whom such payment is requested conforms to the plans and specifications thereof; and (v) that, after such payment is made, either the balance remaining in the account will be sufficient to pay in full the costs of repair, restoration, or replacement of the

Unit, or all of the costs of such repair, restoration, or replacement will have been paid in full. Each written requisition shall also be accompanied by such other showings (including without limitation contractor's statements, architect's or engineer's reports, affidavits and lien waivers) as may be reasonably requested by Lender or Lessor. If at any time Lessor or, if any part of the Notes remain outstanding Lender, shall determine that the amount remaining in the account is insufficient to pay in full the costs of such repair, restoration, or replacement of the Unit, Lessee shall deposit an amount equal to such deficiency in the account at the request of Lessor or Lender, as the case may be. The amounts on deposit in the account shall be invested or reinvested at the direction of and in accordance with the customary practice of Lender or Lessor, as the case may be, with due regard, however, for any estimates provided by Lessee with respect to the timing of payments from the account to its contractors and suppliers. Any amounts earned from such investment shall remain a part of the account. If, upon completion of any such repair, restoration, or replacement of the Unit and the payment in full of all of the costs thereof, any monies remain in the account, such excess monies shall be paid to Lessee. If, however, Lessee is in default in the payment of any sums due hereunder or any Event of Default shall have occurred and is continuing at such time as the excess monies are to be paid to Lessee, such proceeds shall be applied in respect of such payment or against amounts owing hereunder by reason of such Event of Default.

#### SECTION 12. Indemnification.

Lessee agrees, whether or not any of the transactions contemplated by the Coop Lease shall be consummated and whether or not the Coop Lease shall have expired or terminated, to assume liability for, and does hereby agree to indemnify, protect, save and keep harmless each Indemnitee, on an After-Tax Basis, from and against, any and all liabilities, obligations, losses, damages, penalties, claims (including, without limitation, claims involving liability in tort, strict or otherwise), actions, suits, judgments, costs, expenses, and disbursements (including without limitation, reasonable legal fees and expenses) of any kind and nature whatsoever without any limitations as to amount (herein referred to as "Claims") which may be imposed on, incurred by or asserted against any Indemnitee, whether or not such Indemnitee shall also be indemnified as to any such Claim by any other Person, (i) relating to or arising out of any of the Financing Agreements, the Assignment, or the Coop Lease or the performance or enforcement of any of the terms thereof or hereof, (ii) relating to a disposition of any or all Units in connection

with an Event of Default or an Event of Loss, (iii) relating to or arising out of the design, manufacture, ownership, delivery, lease, sublease, possession, use, operation, maintenance, condition, registration, sale, return, storage, or disposition of any of the Units; provided, however, that Lessee shall not be required to indemnify any Indemnitee for any Claim in respect of a Unit arising from acts or events which occur after the end of or termination of the Lease Term (other than after an Event of Default) or any Claim resulting solely from the acts of such Indemnitee which would constitute the gross negligence or willful misconduct of such Indemnitee. To the extent that an Indemnitee in fact receives indemnification payments from Lessee under this Section, Lessee shall be subrogated, to the extent of such indemnity paid, to such Indemnitee's rights with respect to the transaction or event requiring or giving rise to such indemnity provided, that such right of subrogation shall take effect and continue only so long as no Default or Event of Default shall have occurred and be continuing. Nothing herein contained shall be construed as constituting a guaranty by Lessee of the principal of or interest on any note issued by Lessor in connection with the acquisition of the Units.

**SECTION 13. Limitation on Right to Assign, Sublease, Merge, Etc.**

(a) No Assignment. Except to the extent permitted by paragraphs (c) and (d) of this Section 13, Lessee shall not assign, transfer, or encumber (except for Permitted Liens) its leasehold interest under the Coop Lease or in any of the Units or sublease any Unit to another Person, without the prior written consent of Lessor.

(b) No Changes, Mergers, Etc. Lessee shall not, without giving Lessor and Lender sixty (60) days prior written notice thereof, change its name, and Lessee agrees that, except as permitted by paragraph (c) of this Section 13, so long as the Coop Lease remains executory in whole or in part, it will maintain its corporate existence, will not dissolve or dispose of all or substantially all of its assets or consolidate with or merge into another corporation or permit one or more corporations to consolidate or merge into it.

(c) Permitted Mergers, Etc. Lessee may consolidate with or merge into another corporation or permit one or more other corporations to consolidate with or merge into it, or sell, assign, or otherwise transfer to another corporation all or substantially all of its assets, including its interests in the Coop Lease and thereafter dissolve; provided that:

(i) the surviving, resulting, or transferee corporation assumes, in a writing in form and substance satisfactory to Lessor, all of the obligations of Lessee under this Coop Lease and the other Lessee Documents;

(ii) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing and the net worth of such successor corporation shall not be less than the net worth of Lessee immediately before such transaction; and

(iii) the surviving, resulting, or transferee corporation shall have delivered to Lessor and Lender a certificate signed by the President or a Vice President and the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of Lessee satisfactory to Lessor and Lender, stating that such consolidation, merger, sale, assignment, or other transfer complies with this Section 13 and that all conditions precedent therein provided for relating to such transaction have been complied with, and an opinion of counsel reasonably satisfactory to Lessor and Lender as to the legal effect of the writing described in clause (i) above.

(d) Lessee may otherwise sublease the Units subject to the prior written consent of Lessor, which consent shall not be unreasonably withheld, provided that such sublease shall in all respects be subject to and subordinate to the rights of Lessor under this Coop Lease and that the transferee corporation assume, in writing in form and substance satisfactory to Lessor without modification or amendment, all of the obligations of Lessee under this Coop Lease and the other Lessee Documents. Subleases equal to or less than six (6) months shall not require the prior written consent of Lessor but will require written notice to Lessor as soon as practicable but no later than five (5) days following commencement of the sublease. Notwithstanding anything to the contrary herein, in no situation will a sublease be permitted longer than the remaining Lease Term of the Coop Lease.

No such merger, consolidation, sale, assignment, sublease, or other transfer shall have the effect of releasing Lessee or any successor corporation which shall heretofore have become such in the manner prescribed in this Section 13 from its liability hereunder.

#### SECTION 14. Tax Indemnification.

(a) Consistent Tax Returns. Lessee agrees that neither it nor any related party, directly or indirectly, will at any time take any action or file any returns or other

documents inconsistent with this Section 14 except as specifically provided in the Coop Lease. Notwithstanding the foregoing, in the event there is a Final Determination (as hereinafter defined) which results in tax treatment inconsistent with the representations, warranties, and assumptions set forth in this Section 14, and by reason thereof Lessee is required to indemnify Lessor as set forth in Paragraph (c) of this Section, then Lessee and any of its related parties shall be permitted to file returns or other documents consistent with such Final Determination. Lessee agrees to keep and make available for inspection and copying by Lessor such records (but not Federal income tax returns) as will enable Lessor to determine the extent to which it is entitled to the benefit of the MACRS Deductions, the Interest Deductions, and the Transaction Expense Deductions, if any, (all three of which are hereinafter defined) with respect to the Units.

(b) Tax Assumptions.

The tax assumptions (hereinafter items (i)-(xiii) in this subsection shall be collectively referred to as the "Tax Assumptions") are as follows:

(i) The Coop Lease will constitute a "true lease" for federal and state income tax purposes, and for such purposes Lessor will be the owner and lessor of each Unit and Lessee will be the lessee thereof;

(ii) The unadjusted basis of the Units (within the meaning of Section 167(g) of the Code) to Lessor will be the cost thereof;

(iii) For federal income tax purposes, Lessor will be entitled to treat the Units as "7-year property" within the meaning of Sections 168(c) and 168(e)(1) of the Code and will be entitled to depreciation deductions on 100% of the cost of the Units (the "MACRS Deductions") in each taxable year, commencing with the first taxable year in which such Units are delivered, using the 200% declining balance method, switching to straight line for the first taxable year for which using the straight line method with respect to the adjusted basis as of the beginning of such year will yield a larger allowance, as provided by Section 168(b)(1) of the Code, and using the half-year convention described in Section 168(d)(4)(A) of the Code, as provided by Section 168(d)(1) of the Code;

(iv) For federal income tax purposes, Lessor will be entitled to deductions for interest paid with respect to the Notes as and when such interest accrues, in accordance

with the accrual method of accounting (the "Interest Deductions");

(v) For federal income tax purposes, Lessor will be entitled to deductions for amortization of (1) the Transaction Expenses paid by Lessor pursuant to Section 10 of the Participation Agreement, plus (2) such other transaction expenses as Owner may actually pay, in each case ratably over the Basic Lease Term (the "Transaction Expense Deductions");

(vi) Lessor will not be required, for federal or state income tax purposes, to include any amounts in its income for any taxable year or part thereof prior to the end of the Lease Term with respect to the transactions effected or contemplated by the Coop Lease and the other Lessor Documents except for (1) Rent for each Unit as and when such Rent accrues, determined on the basis of the amount of Rent allocable to each period under the Coop Lease and any renewal payable pursuant to Section 18 of the Coop Lease at the time such Rent is payable, (2) amounts constituting gain recognized with respect to the receipt of Stipulated Loss Value or Termination Value on any Unit pursuant to the Coop Lease, or by reason of the sale or other disposition of any of the Units upon the expiration or termination of the Coop Lease, (3) any amounts payable by Lessor pursuant to the Coop Lease to the extent that such amounts are required to be and are determined by reference to the income tax effect to Lessor of the receipt thereof, (4) amounts constituting interest pursuant to Section 3 of the Coop Lease, and (5) any other amount with respect to the payment of which Lessor shall be entitled to a contemporaneous and offsetting deduction to which it would not have been entitled but for the inclusion of such amount in income;

(vii) Without limiting the generality of subsection (vi) hereof, Lessor will not be required, for federal or state income tax purposes, to include in its gross income for any taxable year or part thereof prior to the end of the Lease Term any amount with respect to any replacement, modification, addition, or improvement made to any of the Units;

(viii) For federal and state income tax purposes, all income, deductions, and credits arising out of the transactions contemplated by the Lessor Documents will be treated as income, deductions, or credits from sources within the United States;

(ix) Lessor's combined federal, state, and local income tax rate will be 38% for its taxable year ending May 31, 1991, and at all subsequent times during the Lease Term ("Applicable Tax Rate");

(x) For state and local income tax purposes, the Lessor will be entitled to deductions for depreciation, amortization, and interest expense deductions to the same extent and at the same times as the MACRS Deductions, the Transaction Expense Deductions, and the Interest Deductions are deducted for federal income tax purposes (the "State Deductions");

(xi) Lessor will not be deemed to lose any items of State Deductions except at the same time and to the same extent as the corresponding item is lost for federal income tax purposes and will be deemed to recognize taxable income for state and local income tax purposes at the same time and in the same amount as recognized for federal income tax purposes;

(xii) Lessor's taxable year end, for federal and state income tax purposes, is May 31.

(xiii) The Units were placed in service on the Prescribed Closing Date.

(c) Representations. Lessee represents, warrants, and agrees that:

(i) No portion of the MACRS Deductions in respect of any unit shall be recaptured or decreased at any time prior to the expiration of the Lease Term;

(ii) Throughout the Lease Term such Unit will not be used predominantly outside the United States within the meaning of Section 168(g)(1)(A) of the Code;

(iii) For Federal income tax purposes, to the extent that the source of the following tax attributes are determined by reference to the physical location and use of the Units, all items of income, gain, loss, deduction, or credit attributable to each Unit will be treated as derived from, or allocable to, sources within the United States;

(iv) Each Unit will be placed in service on the Prescribed Closing Date; and

(v) The representations and warranties, if any, elsewhere contained in the Coop Lease relative to the income tax consequences flowing from the Coop Lease or ownership of the Units are true and correct.

(vi) Assuming that the transactions provided by the Lessor Documents effect a "true lease," under which Lessor is the owner of the Units for federal and state income tax

purposes, the Units will be "7-year property" within the meaning of Section 168(c) and Section (e)(1) of the Code.

(vii) Lessor shall not use or permit or suffer the use of any of the Units in any place or manner or by any person (other than Lessor and its respective successors and assigns (other than Lessee)) if the effect of such use or status is to render any Unit limited use property ineligible for the MACRS Deductions as specified in Section 14(b) hereof;

(viii) When delivered and accepted under the Coop Lease, none of the Units will require any improvement, modification, or addition (other than ancillary items of removable equipment of a kind that are customarily selected and furnished by purchasers and lessees of property similar to the Units) in order to be rendered complete for its intended use by Lessee;

(ix) Upon delivery of any of the Units and full payment thereof by Lessor, Lessee, all affiliates of Lessee, and all shareholders and other persons related to Lessee shall have been fully reimbursed for all costs and expenses paid or incurred by them with respect to all of the Units and shall not during the Lease Term purchase or guarantee any interest in the Notes except as stated in Section 14(e) of the Participation Agreement;

(x) All information supplied by Lessee to Lessor or the appraiser with respect to any of the Units was materially complete and accurate to the best of Lessee's knowledge at the time given and at the date hereof;

(xi) Neither Lessee nor any user of any Unit shall have a status for tax purposes as a tax exempt entity which has the effect of rendering any Unit ineligible for the MACRS Deductions as specified in Section 14(b) hereof.

Lessee covenants and agrees that it will promptly notify Lessor of the happening of any event of which Lessee has knowledge that will cause or may cause any amount to be payable hereunder.

Lessee will promptly and duly execute and deliver to Lessor or file with the appropriate governmental authority such further documents and assurances and take such further action as Lessor may from time to time reasonably request in order more effectively to carry out the intent and purpose of this Section 14 and to establish and protect Lessor's right to the income tax benefits contemplated in the Tax Assumptions.

(d) Lessee's Income Tax Indemnification.

(i) (1) "Lessee Act or Omission" shall mean: (i) any act or omission of Lessee or any other user of the Units (excluding an act or omission that is required or permitted under the Lessee Documents), (ii) any misrepresentation or breach of any agreement, covenant, or warranty contained herein or the Lessee Documents or any other certificate provided in conjunction herewith on the part of Lessee or any affiliate of Lessee or any sublessee or assignee of Lessee, (iii) any disposition of any of the Units in the exercise of remedies during the continuance of an Event of Default as set forth in Section 16 of the Agreement for Leasing, or (iv) any Event of Default.

(2) If, as a direct result of any Lessee Act or Omission, Lessor shall, for federal or state income tax purposes: (i) lose the right to claim, suffer a disallowance, be required to recapture, or recapture or fail to claim as a result of its good faith determination all or any portion of the MACRS Deductions, the Interest Deductions, the Transaction Expense Deductions, or the State Deductions, ("Tax Benefits") or, (ii) shall be required to include any amount in its income or shall include in income any such amount as a result of its good faith determination that such inclusion is required, at any time with respect to the Units and the transaction effected pursuant to the Agreement for Leasing and the other operative documents other than in the amounts and at the time contemplated by the Tax Assumptions ("Income Inclusion") (any such disallowance, recapture, failure to claim, or Income Inclusion being referred to hereafter as a "Loss"), then, except as provided in Section 14(e) hereof, Lessee will indemnify Lessor for such Loss.

(3) If, as a direct result of any Lessee Act or Omission, Lessor shall be required to include any amount in its income or shall include in income any such amount as a result of its good faith determination that such inclusion is required, at any time with respect to the Units and the transactions effected pursuant to this Agreement for Leasing and the Lessor Documents other than in the amounts and at the times contemplated by the Tax Assumptions for any taxable year or part thereof prior to the end of the Lease Term by reason of any replacement, modification, addition, or improvement to any Unit (any such inclusion being referred to herein as an "Alteration Inclusion"), then, except as provided in Section 14(e) hereof, Lessee will indemnify Lessor for such Alteration Inclusion.

(4) The amount of the indemnity payable to Lessor by Lessee as a result of a Loss or Alteration Inclusion

shall be that amount which would, on an After-Tax Basis and independent of the Lessor's actual tax position, preserve Lessor's Net Economic Return (assuming, for purposes of computing the before-tax amount payable, that the tax rate is the Applicable Tax Rate for any Loss, other than an Income or Alteration Inclusion and that the federal tax rate for any Income or Alteration Inclusion is the maximum federal income tax rate applicable to corporations for the year or years in which the Income or Alteration Inclusion occurs and, furthermore, for the purpose of computing the Income and Alterations Inclusion, it shall be assumed that the state income tax rate is 4%) taking into account any federal or state tax benefits available to Lessor in subsequent taxable years by reason of the circumstances or adjustments giving rise to the Loss or the Alteration Inclusion that would have been realized by Lessor if such Loss or Alteration Inclusion had not occurred.

(5) Except as provided in Section 14(e) hereof, if as a result of any Lessee Act or Omission Lessor shall lose the right to claim currently, or shall not claim currently as a result of its good faith determination that such claim is not properly allowable, any foreign tax credits on the basis that any item of income or deduction with respect to this Agreement for Leasing shall be treated as derived from, or allocable to, sources outside the United States solely due to the location or operation of the Units outside the United States ("Foreign Use") for a given taxable year (any such loss or failure to claim being hereinafter referred to as "Loss of Foreign Tax Credits"), then Lessee shall pay to Lessor as an indemnity such amount, which, on an After-Tax Basis, shall equal the excess of (i) the foreign tax credits which Lessor would have been entitled to for such year had no Foreign Use occurred over (ii) the actual foreign tax credits to which Lessor was limited as a result of such Foreign Use. In calculating the before-tax amount payable under this subsection, the tax rate used is the actual federal and state income tax rates applicable to corporations for the year of the Loss of Foreign Tax Credit. The amount of any foreign tax credits which Lessor may lose in any year as a result of use of any of the Units outside the United States shall be computed by assuming that all foreign tax credits available to Lessor with respect to transactions unrelated to the ownership and leasing of the Units would have been fully utilized in the year that any of the Units are used outside the United States but for such Foreign Use, and that any creditable foreign taxes which result from such Foreign Use are to be utilized after the application of all other credits available to Lessor.

(6) Subject to the provisions of subsection 14(f) hereof, Lessee shall pay Lessor for any Loss, Alteration

Inclusion, or Loss of Foreign Tax Credits at Lessee's option either (1) a lump sum amount, to be determined by Lessor, within thirty (30) days after written notification by Lessor to Lessee of the amount of the indemnity due Lessor hereunder or (2) an amount, to be determined by Lessor, on each of the remaining Basic Rent Payment Dates during the Basic Lease Term, or the Renewal Term as applicable, commencing with the first such date following written notice to Lessee by Lessor of the amount of the indemnity due Lessor hereunder which, taken together with the Basic Rent Applicable To the Units due on such Basic Rent Payment Dates, will maintain the Net Economic Return of Lessor in respect of such Units hereunder at the same level that would have been available if such Loss, Alteration Inclusion, or Loss of Foreign Tax Credits had not occurred. In the event the Coop Lease is terminated with respect to any such Units prior to the time Lessee is obligated to make payments to Lessor pursuant to the option chosen by Lessee, then Lessee shall pay to Lessor an amount, to be determined by Lessor, a lump sum within thirty (30) days after written notice to Lessee by Lessor of the amount of the indemnity due Lessor hereunder.

Lessee's option to make indemnity payments over the remaining Basic Lease Term or the Renewal Term, as applicable, shall be conditioned on the fact that there is no adverse change as reasonably determined by Lessor in the aggregate financial condition of Lessee, Buyer, and Lender as compared with their aggregate financial conditions on November 29, 1990.

(7) Any amount paid hereunder shall, if subsequent circumstances require, be thereafter adjusted (or further appropriate adjustments shall be made in respect thereof, including any adjustments necessary to reflect the amount of any refund of taxes, interest, or penalties received by Lessor, or the receipt by Lessor of interest with respect to such refund) when and to the extent necessary so that, on an After-Tax Basis, the Net Economic Return of the Lessor which would have been expected to be realized independent of the Lessor's actual tax position (assuming that the tax rate for a Loss, other than an Income or Alteration Inclusion, is the Applicable Tax Rate and that the federal tax rate for any Income or Alteration Inclusion is the maximum federal income tax rate applicable to corporations for the year or years in which the Income or Alteration Inclusion occurs and, furthermore, for the purpose of computing the Income and Alterations Inclusion, it shall be assumed that the state income tax rate is 4%) is preserved. To the extent possible, all adjustments made pursuant to the immediately preceding sentence shall be made as a credit or debit to any amount to be paid on the next succeeding Basic Rent Payment Date.

(8) Lessee shall also pay Lessor upon demand an amount which, on an After-Tax Basis, shall be equal to the amount of any interest (net of the decrease in taxes caused by the deduction of such interest from taxable income) and penalties (excluding any interest and penalties attributable to acts of Lessor unrelated to this transaction and excluding any interest and penalties resulting from Lessor's negligence as defined under Code Section 6662(b)(1)), assessed against Lessor under federal or state income tax laws in connection with a Loss, Alteration Inclusion, or Loss of Foreign Tax Credits.

(ii) (1) All demands for amounts payable to Lessor hereunder shall be accompanied by a written statement describing the related Loss, Alteration Inclusion, or Loss of Foreign Tax Credits and the amounts so payable in enough detail to allow Lessee to make a reasonable evaluation of the demand. Lessee shall also have the right to demand that Lessor obtain at Lessee's expense an opinion of counsel, which such counsel shall be selected by Lessor and reasonably acceptable to Lessee, that any such good faith determinations made by Lessor in subsections (2), (3), and (5) above are correct.

(2) Lessee agrees to give Lessor, within thirty (30) days after request therefor, written notice describing in reasonable detail any replacement, improvement, modification, or addition made to any of the Units which is alleged by the Internal Revenue Service or comparable State Tax Authority to have the effect of an Alteration Inclusion and specifying the cost thereof if such information is required in connection with an audit by the Internal Revenue Service or comparable State Tax Authority of the tax returns of Lessor.

(e) Limitation on Indemnification. Notwithstanding anything to the contrary set forth in subsection (d) of this Section, Lessee shall have no liability to Lessor for any Loss, Alteration Inclusion, or Loss of Foreign Tax Credits which is solely attributable to:

(i) Any sale, assignment, or other disposition by Lessor of its interest in this Lease or any Unit other than upon the occurrence of an Event of Loss or an Event of Default and the exercise of remedies by Lessor.

(ii) The failure of Lessor or an affiliated group, as defined in Section 1504 of the Code, of which it is a member to have sufficient taxable income within the meaning of Section 63(a) of the Code to benefit from the MACRS Deductions, Interest Deductions, or Transaction Expense Deductions.

(iii) An amendment, addition, or change in or to the Code, the regulations thereunder, or interpretation thereof via revenue rulings, which is enacted, adopted or issued after the date of this Agreement for Leasing.

(iv) The failure of Lessor or an affiliated group, as defined in Section 1504 of the Code of which it is a member to claim or deduct all or part of the MACRS Deductions, Interest Deductions, Transaction Expense Deductions, on timely filed income tax returns or claims for refund.

(v) Lessor electing not to or failing to contest any claim through and until a Final Determination (as hereinafter defined) is reached upon request of Lessee made as provided in subsection (f), it being agreed that under such circumstances the Loss, Alteration Inclusion, or Loss of Foreign Tax Credits will be deemed attributable to such election or failure.

(f) Contest of Claims. If at the conclusion of any audit, Lessor shall receive a preliminary or "30-day letter" which proposes an adjustment in any item, which if resolved adversely to Lessor, would result, or if a claim shall be made against Lessor which, if successful, would result, in payments by Lessee under this Section, Lessor agrees to as promptly as may be necessary to constitute adequate and timely notice but in any case within fifteen (15) days of receipt or filing, as the case may be, notify Lessee of such claim. Notwithstanding the above, the failure of Lessor to notify Lessee, unless willful, shall not relieve Lessee of its indemnifications hereunder provided Lessee's contest rights are not materially jeopardized by such failure to give notice. If, in the opinion of Lessee's independent tax counsel reasonably satisfactory to Lessor, a reasonable basis for contesting such claim exists, Lessor shall, upon timely request and at the expense of Lessee, contest such matter in such forum as Lessor in its sole judgment (after consulting in good faith with the Lessee) shall select, subject to Lessor's right to make an election as provided in subsection 14(e)(v) above. Lessor shall promptly provide to Lessee all documentation filed with or received from the Internal Revenue Service or any court pertaining to such contest to the extent relating to a possible Loss, Alteration Inclusion, or Loss of Foreign Tax Credits.

Lessor may, at its option, take any such action to contest such claim prior to making payment of any tax and interest and/or penalty attributable to such claim (herein referred to as a "Tax Payment") or may make such Tax Payment and then sue for a refund. If Lessor takes such action prior to making such Tax Payment, such sums payable hereunder need

not be paid by Lessee while such action is pending, provided that Lessee shall pay the liabilities, interest, and expenses relating to such action when and as the same shall become due. In such case, if the Final Determination shall be adverse to Lessor, the sums payable hereunder shall be computed by Lessor as of the date of such Final Determination. Lessor shall notify Lessee of such computation and Lessee shall make payment thereof within thirty (30) days of notification. If Lessor makes such Tax Payment prior to contesting the matter, and then sues for a refund, Lessor shall notify Lessee of such payment and the sums payable hereunder shall be paid in full by Lessee with thirty (30) days of Lessor's notification to Lessee that such Tax Payment has been made. If in such event the Final Determination shall be in favor of Lessor, no future payments shall be due hereunder in respect of such matter (or an appropriate reduction shall be made if the Final Determination is partly in favor of and partly adverse to Lessor). In addition, Lessee and Lessor shall adjust their accounts so that Lessor pays to Lessee an amount equal to the sums theretofore paid by Lessee to Lessor in respect of the Loss, Alteration Inclusion, or Loss of Foreign Tax Credits (or a proportionate part thereof if the Final Determination is partly adverse to the Lessor) on or before such next succeeding Basic Rent Payment Date.

"Final Determination" shall mean (i) a non-appealable determination by any court of competent jurisdiction in a proceeding in which Lessor is the taxpayer up to the appellate level; (ii) a closing agreement entered into by Lessor, with the prior written consent of Lessee, pursuant to Section 7121 of the Code; or (iii) the failure of Lessee to request in writing that Lessor contest a claim of which Lessee had timely notice within the period allowed by law for instituting a contest of such claim; provided that if Lessor shall determine to contest such claim, then the result of such contest shall be the "Final Determination".

(g) General.

(i) In the event of any adjustments or claims for indemnity hereunder, each party shall be entitled to review such documents and shall be provided with such information by the other as shall be reasonably required in order that it may reasonably satisfy itself as to the requested amount of such indemnification; provided, however, that Lessor shall not be obligated to make available any confidential information relating to its federal or state income tax returns or any issues relating thereto nor any computer program employed to calculate any such amount.

(ii) The representations, warranties, indemnities, obligations, and agreements of Lessee provided for in Section 14 hereof and the obligations of Lessor in Section 14 hereof shall survive the expiration or other termination of this Agreement for Leasing.

(iii) All payments made hereunder shall be made in immediately available funds (unless the paying party is otherwise instructed by the recipient of such payment) to the account of the recipient.

(iv) Except as otherwise provided herein, no payment required to be made by Lessee or Lessor pursuant to Section 14 hereof shall be subject to any right of set-off, counterclaim, defense, abatement, suspension, deferment, or reduction, and, except in accordance with the express terms hereof, Lessee or Lessor shall have no rights to terminate or to be released, relieved, or discharged from any obligation or liability under Section 14 hereof for any reason whatsoever.

(v) All such adjustments and claims for indemnity hereunder shall be subject to verification at the request and expense of Lessee by a "big-six", or similar such, accounting firm selected by Lessor and reasonably acceptable to Lessee. Notwithstanding such verification, Lessee shall timely make payment as required hereunder. At such time and to the extent said verification determines the adjustments or claims demanded should have been less, Lessor will reimburse Lessee. Lessee shall promptly pay such additional amounts should the verification determine that the demand should have been more.

(vi) Section 14 hereof shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and assigns whether or not an express assignment to any such holder of rights under Section 14 hereof has been made.

#### SECTION 15. Purchase Option.

Unless a Default or Event of Default shall have occurred and be continuing, Lessee may, by irrevocable written notice to Lessor given not less than one hundred eighty (180) days prior to the end of the:

(a) Basic Lease Term, elect to purchase all but not less than all of the Units as of the last day of the Basic Lease Term at a cash price equal to the lesser of the Fair Market Value of the Units or sixty percent (60%) of the Equipment Cost Of the Units; or

(b) Renewal Lease Term, elect to purchase all but not less than all of the Units as of the last day of the Renewal Lease Term at a cash price equal to the Fair Market Value Of the Units.

If Lessee shall have so elected to purchase the Units, payment by Lessee shall be made in immediately available funds against delivery of a bill of sale transferring and assigning to Lessee all right, title, and interest of Lessor in and to the Units, as-is, where-is, without recourse or warranty free and clear of any liens or encumbrances caused by Lessor.

SECTION 16. Events of Default.

The term Event of Default, wherever used herein, shall mean any of the following events (whatever the reason therefore):

(a) Lessee shall fail to make any payment of Basic Rent, Stipulated Loss Value, or the Termination Value under the Coop Lease within five (5) days after the same shall become due, or any payment of Supplemental Rent other than Stipulated Loss Value or the Termination Value under the Coop Lease within ten (10) days after the same shall become due; or

(b) Lessee shall fail to maintain insurance with respect to any Units as required by the respective provisions of the Coop Lease;

(c) Lessee shall fail to perform or observe any other covenant, condition, or agreement to be performed or observed by it under the Coop Lease, the Participation Agreement, or the Assignment and such failure shall continue for a period of thirty (30) days after notice thereof shall have been given to Lessee by Lessor or Lender; or

(d) Any representation or warranty made by Lessee in the Coop Lease or in the Participation Agreement or in conjunction with the Lessee Documents shall prove at any time to have been incorrect in any material respect when any such representation or warranty was made or given and shall remain material and uncured at the time in question; provided that a breach of the representations and warranties contained or referenced in Section 14(b) of the Coop Lease shall not constitute an Event of Default; or

(e) Lessee shall fail to observe or perform any of its obligations under any material indenture, contract, agreement, or other instrument to which Lessee is party or by which Lessee is or its properties are bound if the effect of such failure is

likely to have a material adverse effect upon Lessee or its business or property; or

(f) Lessee, Lender, or Buyer (as defined in the definition of Coal Purchase Contract) shall commence a voluntary proceeding seeking its liquidation, its reorganization, or other relief under any bankruptcy, insolvency, or other similar law or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official or an involuntary proceeding shall be commenced against Lessee, Lender, or Buyer seeking such relief or appointment and such involuntary proceeding shall remain undismissed and unstayed for a period of sixty (60) days, or any of the above shall make a general assignment for the benefit of creditors or shall fail generally to pay their respective debts as they become due; provided, however, no such event or circumstance relating to Lender or Buyer shall be deemed to be an Event of Default hereunder if (A) during the 180-day period following the date of such event or circumstance Lessee provides additional credit support of a type at least as favorable as the Assignment or the Guarantee, as applicable, and acceptable to the Lessor and the Lender (unless such event or circumstance relates to the Lender), in accordance with their then current credit standards, and (B) the financial condition of Lessee shall not, at the time of such event or circumstance or at any time during such 180-day period, have substantially deteriorated in the judgment of Lessor or (unless such event or circumstance relates to the Lender) the Lender, and (C) Lessor and (unless such event or circumstance relates to Lender) Lender shall have determined in its judgment that such event or circumstance will not have the effect of impairing any contingent claims against Lender or Buyer relating to the Coop Lease, and (D) within thirty (30) days after the date of occurrence of such event or circumstance Lessee shall deposit with Lender (unless such event or circumstance relates to Lender) or with Lessor (if the event or circumstance does relate to Lender) the amount of the next Basic Rent Payment, and (E) Lessor and (unless the event or circumstance relates to the Lender) Lender are given assurances acceptable to them to the effect that there is a reasonable likelihood that all conditions set forth in clause (A) of the proviso will be timely met and are being diligently pursued.

#### SECTION 17. Remedies.

(a) Remedies. Upon the occurrence of any Event of Default and so long as the same shall be continuing, Lessor may, at its option, declare the Coop Lease to be in default by written notice to such effect given to Lessee, and at any time thereafter or in conjunction therewith Lessor may, at its

discretion and without limitation or election as to other remedies available to it hereunder or at law or equity:

(1) by notice to Lessee, terminate the Coop Lease;

(2) demand that Lessee, and Lessee shall thereupon, deal with the Units in the manner required by the provisions for returning and storing the Units as set forth in the Coop Lease as if it were the last day of the Lease Term;

(3) enter upon the premises where any or all of the Units shall be located and remove such Units, by summary proceedings or otherwise; and thereupon hold, sell, lease, or otherwise deal with such Units as Lessor shall determine. If notice thereof is required by law, any notice in writing to the Lessee of any such sale or lease not less than seven (7) days prior to the date thereof shall constitute reasonable notice thereof to the Lessee;

(4) demand, by written notice to Lessee, that Lessee pay to Lessor, and Lessee shall pay to the Lessor within ten (10) days following delivery of such notice, as liquidated damages for loss of a bargain and not as a penalty, any unpaid Rent due as of the next succeeding Basic Rent Payment Date, after the payment date specified in such notice, less the sum of any rental payments received by Lessor from other than Lessee in the event Lessor shall have gained possession of any or all of the Units and leased some or all of them, plus an amount equal to the sum of the Stipulated Loss Values Applicable To each Unit computed as of the next Basic Rent Payment Date, less the sum of the Sale Proceeds of any such Unit received by Lessor in the event Lessor shall have gained possession of any or all of the Units and sold some or all of them, and in that event, upon full payment by Lessee of all sums due hereunder, Lessor shall transfer to Lessee, as-is, where-is, without recourse or warranty, all Lessor's right, title, and interest in and to all of the Units not previously sold by Lessor and for which Lessee received credit as aforesaid, whereupon the Coop Lease shall terminate if not already terminated.

(b) No Release. No exercise of any remedy under Section 17(a) hereof shall, except as specifically provided therein, relieve Lessee of any of its liabilities and obligations hereunder, including, without limitation, any costs and expenses incurred in connection with any of the remedies set forth in this Section 17, all of which shall survive any termination or repossession. At any sale of the Units or any part thereof in connection with a declared Event of Default

hereunder, Lessor or Lender may bid for and purchase such property, therein, relieve Lessee of any of its liabilities and obligations hereunder, including, without limitation, any costs and expenses incurred in connection with any of the remedies set forth in this Section 17, all of which shall survive any termination or repossession.

(c) No Waiver. No express or implied waiver by Lessor of any Event of Default hereunder shall constitute a waiver of any future or subsequent Event of Default. The failure or delay of Lessor in exercising, or the partial exercise by Lessor of, any rights granted it hereunder shall not constitute a waiver, in whole or in part, of any such right in the future.

#### SECTION 18. Renewal Term.

Following the Basic Lease Term, Lessee may with respect to all but not less than all of the Units then subject to the Coop Lease, if no Default or Event of Default has occurred and is continuing, extend the Lease Term for one two-year period upon at least 180 days irrevocable prior written notice from Lessee to Lessor ("Renewal Term"). The Basic Rent Applicable To the Units during the Renewal Term will be payable quarterly in arrears and will on each of the eight (8) Basic Rent Payment Dates of the Renewal Term be equal to one-quarter of the average of the Basic Rent Applicable To the Units during the Basic Lease Term. All of the provisions of the Coop Lease shall be applicable during the Renewal Term.

#### SECTION 19. Notices.

All communications and notices provided for in this Lease shall be given in person or by means of telex, telecopy, or other wire transmission (with request for assurance of receipt in a manner typical with respect to communications of that type), or mailed by registered or certified mail, addressed as follows:

If to Lessee at:	Western Fuels Association, Inc. Magruder Building 1635 M Street, N.W. Washington, D.C. 20036-3210 Attn: Manager of Finance and Administration
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If to Lessor:	Cargill Leasing Corporation 15407 McGinty Road West Minnetonka, Minnesota 55345 Attn: General Manager
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With copies to Lender: St. Paul Bank for Cooperatives  
375 Jackson Street  
St. Paul, Minnesota 55101  
Attn: Commercial Lending  
Division

or at such other address as such party shall from time to time designate by notice in writing to such other parties. All such communications and notices given in such manner shall be effective on the date of receipt of such communication or notice.

SECTION 20. Successors and Assigns.

The Coop Lease, including all agreements, covenants, representations, and warranties, shall be binding upon and inure to the benefit of Lessor and Lessee and their respective permitted successors and assigns.

SECTION 21. Right to Perform for Lessee.

If Lessee shall fail to make any payment to be made by it hereunder or shall fail to perform or comply with any of its other agreements contained herein, Lessor or Lender may, but shall not be obligated to, make such payment or perform or comply with such agreement, and Lessee shall indemnify the Person making the same for the amount of such payment and the amount of all cost and expenses (including, without limitation, reasonable attorneys' and other professionals' fees and expenses) Lessor or Lender incurred in connection with such payment or the performance of or compliance with such agreement.

SECTION 22. Recording.

Lessee shall, at its own expense, file and record the Coop Lease, any assignments hereof and amendments hereto, and the Loan Agreement pursuant to Section 11303 of Title 49 of United States Code, and shall execute and file any other instruments requested by Lessor or Lender that are necessary or appropriate to protect and preserve such interest.

SECTION 23. Early Termination.

(a) Provided no Default or Event of Default shall have occurred and be continuing, Lessee may on or at any time after the 10th anniversary of the Basic Lease Term commencement date but prior to or on the 18th anniversary of Basic Lease Term commencement date, terminate the Coop Lease as to all but not less than all of the Units on any Basic Rent Payment Date, provided that in Lessee's good faith judgment, as evidenced by an officer's certificate in form and substance reasonably satisfactory to Lessor, the Units shall have become uneconomic, surplus to Lessee's business, or economically obsolete due to

burdensome government regulations. Lessee shall deliver written notice to Lessor not less than 180 days prior to any such termination date, which shall be the Basic Rent Payment Date so designated in the notice ("Termination Date"). After delivery of such notice, Lessee, as non-exclusive agent for Lessor, shall solicit bids for the sale of the Units as a whole to a person unrelated to Lessee which such sale shall close on the Termination Date. Lessor may obtain bids, but shall be under no duty to solicit bids, inquire into the efforts of Lessee to obtain bids, or otherwise take any action in connection with arranging such sale. Lessor shall execute and transmit to Lessee all papers needed to effectuate the sale to the highest bidder. On the Termination Date, Lessee shall cause the proceeds of sale of such Units to be transmitted to Lessor against delivery by Lessor of a quit claim deed or a bill of sale transferring and assigning to the purchaser all right, title, and interest of Lessor in and to such Units as-is, where-is, without recourse or warranty, express or implied, except for a warranty against liens or claims arising by, through, or under Lessor. If the net proceeds of such sale, less any expenses of sale paid by Lessor, shall be less than the Termination Value for the Units, Lessee shall pay to Lessor on the Termination Date, in addition to the Basic Rent Applicable To the Units then due on such date, an amount equal to such deficiency. If the net proceeds of such sale, less any expenses of sale paid by Lessor, shall be more than the Termination Value, Lessor shall retain such proceeds and Lessee shall pay to Lessor an amount equal to the Basic Rent Applicable To the Units then due. The obligations of Lessee hereunder in respect to the Units shall continue until Lessee pays such amounts. If no such sale shall occur on the Termination Date, Lessee's notice given pursuant to this Section shall be deemed to be withdrawn as of such date and the Coop Lease shall continue in full force and effect in respect to all of the Units. Lessee shall reimburse Lessor for its reasonable out-of-pocket expenses including inside or outside counsel fees incurred as a result of Lessee's having given such notice of termination.

(b) Notwithstanding the foregoing provisions of this Section, Lessor may within 90 days after receipt of notice from Lessee as provided above, and prior to the termination applicable to the Units, at its sole option, undertake to pay all unpaid principal amounts of any and all of the Notes with accrued interest thereon to be due and payable as of the Termination Date. Upon receipt of such undertaking, Lessee shall cease its efforts to negotiate the sale of the Units as provided above. On the Termination Date, Lessee shall deliver the Units to Lessor and, if so requested, store the Units for Lessor in accordance with Section B of the Coop Lease and pay the Basic Rent Applicable to the Units due and owing as of the Termination Date. Thereafter, the Coop Lease shall terminate.

SECTION 24. Lessor as Lessee's Agent and Attorney.

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

SECTION 25. Amendments and Miscellaneous.

(a) Amendments in Writing. The terms of the Coop Lease shall not be waived, altered, modified, amended, lended, supplemented, or terminated in any manner whatsoever except by written instrument signed by Lessor and Lessee.

(b) Survival. All indemnities, representations, and warranties contained in any of the Financing Agreements or any agreement, document, or certificate delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery of the Coop Lease and the expiration or other termination of the Coop Lease.

(c) Separability of Provisions. Any provision of the Coop 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 thereof, 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, Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

(d) True Lease. The Coop Lease shall constitute an agreement of Lease and nothing herein shall be construed as conveying to Lessee any right, title, or interest in or to the Units, except as lessee only.

(e) Governing Law. The Coop Lease has been negotiated and delivered in the State of Minnesota and shall be governed by and construed in accordance with the laws of the State of Minnesota notwithstanding its choice of laws provisions.

(f) Headings. The division of the Coop Lease into sections or paragraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of the Coop Lease.

(g) Counterpart Execution. The Coop Lease may be executed in any number of counterparts and by each of the

parties hereto on separate counterparts, all such counterparts together constituting but one and the same instrument, with the counterparts delivered to the Lender pursuant to the Loan Agreement being deemed the "Original" and all other counterparts being deemed duplicates.

Section 26. Security for Lessee's Performance.

As security for the performance of Lessee's obligations under the Coop Lease, Lessee hereby grants to Lessor a security interest in and assigns to Lessor all of its right, title, and interest in and to any sublease of any of the Units hereafter entered into. Lessee further acknowledges and agrees that such security interest grants to Lessor, upon the occurrence of any Event of Default hereunder, and without limitation as to any rights granted to Lessor elsewhere herein, including Lessor's right to terminate the sublease it being understood such sublease is subordinate to and subject to the rights of Lessor under the Coop Lease, the right to demand, receive, and collect all payments under such subleases and to apply the same to payments of Lessee's obligations under the Coop Lease, and to take such other actions, including the commencement, conduct, and consummation of legal, administrative, or other proceedings as shall be permitted by the terms hereof or such subleases or by law. It is the intent and purpose hereof that this security interest as to the subleases shall be effective and operative immediately without further act or instrument upon the execution of any such sublease, and shall continue in full force and effect throughout the term of each such sublease, and Lessor and Lender pursuant to the terms of the Loan Agreement shall have such rights until all amounts due and owing hereunder shall have been fully paid and discharged. Lessee shall not permit any third party other than the sublessee to have possession of the original of any sublease document for any of the Units subleased hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Leasing.

CARGILL LEASING CORPORATION  
INC.

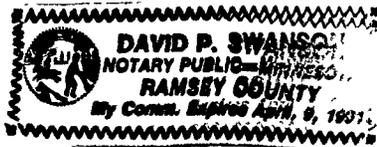
WESTERN FUELS ASSOCIATION,

By: [Signature]  
Its: [Signature]  
Date: 11-29-90

By: Robert P. Jorgard  
Its: Manager of Finance & Administration  
Date: November 29, 1990

STATE OF MINNESOTA)  
                  RAMSEY ) SS  
COUNTY OF HENNEPIN)

Before me, the undersigned authority, on this 29th day of November 1990, personally appeared Philip J. Martini, Vice President, Cargill Leasing Corporation; and Robert P. Norrgard, Manager of Finance and Administration, Western Fuels Association, Inc.; who, each being duly sworn, did declare with respect to their title only, that they are the Vice President, and the Manager of Finance and Administration of their respective corporations, and each declared that the foregoing instrument was executed on behalf of their respective corporations by authority of their respective Board of Directors, and each did declare and acknowledge that the said instrument is the free act and deed of their respective corporation.



David P. Swanson  
Notary Public

My Commission Expires:

April 9, 1991

