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17642 X
RECORDATION NO FILED 1425

1-361A019 DEC 27 1991 - 11:30 AM

December 26, 1991

INTERSTATE COMMERCE COMMISSION 32

Mr. Sidney L. Strickland, Jr.
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

17642
RECORDATION NO FILED 1425

New Number

-A

DEC 27 1991 - 11:30 AM

Dear Mr. Strickland:

Agreement INTERSTATE COMMERCE COMMISSION

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two (2) fully executed and acknowledged copies each of a Lease, dated as of December 27, 1991, a primary document as defined in the Commission's Rules for the Recordation of Documents under 49 C.F.R. Section 1177, and a Lease Supplement dated as of December 27, 1991 a secondary document.

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

Lessor: KeyCorp Leasing Ltd.
One KeyCorp Plaza
P.O. Box 655
Albany, New York 12201

Lessee: Westmoreland Coal Company
700 The Bellevue
200 South Broad Street
Philadelphia, Pennsylvania 19102

A description of the railroad equipment covered by the enclosed document is set forth in Schedule A attached hereto and made a part hereof. WCCX 10001-10095

Also enclosed is a check in the amount of \$32 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return stamped copies of the enclosed document to Charles T. Kappler, Esq., Alvord and Alvord, 918 Sixteenth Street, N.W., Washington, D.C. 20006.

DEC 27 10 21 AM '91
MOTOR OPERATING DIV

Handwritten signatures and notes on the left margin, including "C.T. Kappler" and "C. Alvord".

Mr. Sidney L. Strickland, Jr.
December 26, 1991
Page Two

A short summary of the enclosed primary document to appear in the Commission's Index is:

^{Agreement}
Lease, dated as of December 27, 1991 between KeyCorp Leasing Ltd., Lessor, and Westmoreland Coal Company, Lessee; and Lease Supplement dated December 27, 1991 covering 95 new 100-ton steel 3805 cubic foot triple hopper cars. *WCCX 10001 - WCCX 10095*

Very truly yours,

Charles T. Kappler

CTK/bg
Enclosures

LEASE AGREEMENT

17642

DEC 27 1991 -11 22 AM

INTERSTATE COMMERCE COMMISSION

Dated as of December 27, 1991

between

KEYCORP LEASING LTD.

as Lessor

and

WESTMORELAND COAL COMPANY

as Lessee

with respect to

OPEN TOP COAL HOPPER RAILCARS

FILED WITH THE INTERSTATE COMMERCE COMMISSION

PURSUANT TO 49 U.S.C. (11303

ON _____, 19__

AT __:__ A.M.

RECORDATION NUMBER _____

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Exhibit A -- Form of Lease Supplement

LEASE AGREEMENT dated as of December 27, 1991 between KEYCORP LEASING LTD., a Delaware corporation ("Lessor"), and WESTMORELAND COAL COMPANY, a Delaware corporation ("Lessee").

Lessor and Lessee agree as follows:

SECTION 1. Definitions. The following terms shall have the following meanings for all purposes of this Lease:

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

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

"Appraisal Procedure" shall mean the following procedure for determining a Fair Market Sale Value for the Railcars. If either Lessor or Lessee shall give written notice to the other requesting determination of such Fair Market Sale Value by appraisal, Lessor and Lessee shall consult for the purpose of appointing a mutually acceptable qualified Independent Appraiser. If such parties shall be unable to agree on an Independent Appraiser within 30 days of the first giving of such notice (the "**Appraisal Request Date**"), such Fair Market Sale Value shall be determined by a panel of three Independent Appraisers, one of whom shall be selected by Lessee, another of whom shall be selected by Lessor and the third of whom shall be selected by such other two Independent Appraisers or, if such Independent Appraisers shall be unable to agree upon a third Independent Appraiser within 10 days of the selection date of the second of such two Independent Appraisers, such third Independent Appraiser shall be selected by the American Arbitration Association; provided, that if either party shall not select its Independent Appraiser within 45 days after the Appraisal

Request Date, such value shall be determined solely by the Independent Appraiser selected by the other party. The Independent Appraiser or Independent Appraisers appointed pursuant to the foregoing procedure shall be instructed to determine such Fair Market Sale Value within 60 days after the final appointment of any Independent Appraiser pursuant hereto (but in no event may such determination be made more than 90 days following the Appraisal Request Date), and such determination shall be final and binding upon the parties. If three Independent Appraisers shall be appointed, (a) and if none of the Fair Market Sale Values determined differs from the others by an amount equal to 15% of the lowest Fair Market Sale Value determined by any Independent Appraiser, then all three Fair Market Sale Values shall be averaged and such average Fair Market Sale Value shall constitute the determination of the Independent Appraisers, otherwise (b) the Fair Market Sale Value of the Independent Appraiser that differs most (in dollar amount) from the Fair Market Sale Values of the other two Independent Appraisers shall be excluded, the remaining two Fair Market Sale Values shall be averaged and such average Fair Market Sale Value shall constitute the determination of the Independent Appraisers. Fees and expenses relating to an Appraisal Procedure shall be payable as follows:

(i) if the Appraisal Procedure is utilized in connection with the exercise of remedies upon the occurrence of an Event of Default under the Lease, all such fees and expenses shall be borne by Lessee;

(ii) if the Appraisal Procedure is utilized in connection with the possible exercise of a purchase option pursuant to Section 2(e), then each party shall bear its respective fees and expenses, provided (A) if an appraisal under the Appraisal Procedure shall be conducted by one Independent Appraiser only, Lessee shall bear the fees and expenses of such Independent Appraiser, or (B) if an appraisal under the Appraisal Procedure shall be conducted by more than one Independent Appraiser, Lessee shall bear the fees and expenses of the Independent Appraiser appointed by Lessee and of the Independent Appraiser appointed jointly by the Independent Appraiser of Lessee and the Independent Appraiser of Lessor; and provided, further, that if after the utilization of such Appraisal Procedure Lessee does not exercise such purchase option, then Lessee shall reimburse Lessor for all fees and expenses paid by Lessor in respect of such Appraisal Procedure; and

(iii) in all other instances, each party shall bear (A) its respective fees and expenses with respect to any Appraisal Procedure and (B) one-half of the fees and expenses of the Independent Appraisers participating in any Appraisal Procedure.

"Appraiser" shall mean a Person engaged in the business of appraising property who has at least three years' experience in appraising property similar to the Railcars.

"Authorized Person" shall mean any Person authorized by or pursuant to the charter documents, the bylaws or any Board Resolution (in the case of a corporation), partnership agreement (in the case of a partnership), or trust agreement (in the case of a trust) to execute, deliver and take all other actions on behalf of such entity in respect of any of the Operative Documents.

"Basic Rent" shall mean \$345 per month in arrears in United States Dollars for each Railcar subject to the Lease.

"Basic Term" shall mean the 20-year period beginning on the Closing Date.

"Business Day" shall mean any day other than a Saturday or Sunday or other day on which the banks in New York, New York, or Philadelphia, Pennsylvania are closed.

"Closing" with respect to any Railcar shall mean the delivery of such Railcar by Seller to Lessor and acceptance by Lessee pursuant to the Lease Supplement delivered in connection therewith as provided in Section 2.

"Closing Date" shall mean the date on which a Closing occurs with respect to the Railcars, which date shall be December 27, 1991 unless the parties agree otherwise, provided that in no event shall the Closing Date occur later than December 31, 1991.

"Consent to Assignment and Agreement" shall mean the Consent to Assignment and Agreement dated as of the date hereof by the Supplier, pursuant to which the Supplier, among other things, consent to the Purchase Agreement Assignment.

"Daily Rent" shall mean the Basic Rent divided by 30.

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

"Event of Default" shall mean any of the events referred to in Section 13.

"Event of Loss" shall mean with respect to any Railcar any of the following events occurring during the Lease Term: (i) such Railcar suffers an actual or

constructive total loss, (ii) such Railcar becomes worn out or suffers destruction or damage or contamination beyond economic repair or such Railcar is rendered permanently unfit for commercial use by Lessee and for the purpose for which it was designed, as determined in good faith by Lessee and evidenced by an Officer's Certificate of Lessee to such effect, (iii) such Railcar is taken, condemned or requisitioned for title by any governmental authority, (iv) such Railcar is taken, condemned or requisitioned for use by any governmental authority or (v) such Railcar is lost, stolen or otherwise disappears. The date of such Event of Loss shall be the date of such loss, damage, contamination, condemnation, taking, requisition or disappearance, except that for purposes of clause (iv) above, no Event of Loss shall be deemed to have occurred until the earlier of (1) the last day of the Basic Term or any Renewal Term then in effect (unless Lessor shall elect in writing to accept return of such Railcar subject to government requisition) and (2) Lessee's declaration of the occurrence of an Event of Loss at any time following 12 months after such taking or requisition.

"Fair Market Rent" for any Railcar shall mean, for any period, the rent for such Railcar (excluding any Severable Improvements title to which has vested in the Lessee but assuming that such Railcar complies with Section 6) for such period that would be obtained for a lease of such Railcar in an arm's-length transaction between an informed and willing owner under no compulsion to lease and an informed and willing lessee, which determination shall be made (i) without deduction for any costs of removal of such Railcar from the location of current use, (ii) on the assumption that such Railcar is free and clear of all liens and is in the condition and repair in which it is required to be returned pursuant to Sections 2 and 6 (but otherwise on an "as is" basis) and (iii) interchangeable under the rules of the Association of American Railroads and other Applicable Law; provided, however, that the determination of Fair Market Rent for the purposes of Section 14(b) of the Lease shall be based on the actual condition of such Railcar at the time of such determination and shall take into account all liens on such Railcar (other than Lessor Encumbrances) and any legal impediments to the prompt leasing and interchange of such Railcar by a Person other than the Lessee, notwithstanding the provisions of clauses (ii) and (iii) of this sentence.

"Fair Market Sale Value" for any Railcar shall mean the sale value of such Railcar (excluding any Severable Improvements title to which has vested in Lessee) that would be obtained in an arm's-length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer (other than (a) a lessee in possession, and (b) a used equipment dealer), which

determination shall be made (i) without deduction for any costs of removal of such Railcar from the location of current use, (ii) on the assumption that such Railcar is free and clear of all liens and is in the condition and repair in which it is required to be returned pursuant to Sections 2(e) and 6 (but otherwise in an "as-is" condition) and (iii) interchangeable under the rules of the Association of American Railroads and other Applicable Law; provided, however, that the determination of Fair Market Sale Value for the purposes of Section 14(b) shall be based on the actual condition of such Railcar at the time of such determination and shall take into account all liens on such Railcar (other than Lessor Encumbrances), and any legal impediments to the prompt transfer of title to such Railcar and interchange of such Railcar by a Person other than Lessee, notwithstanding the provisions of clauses (ii) and (iii) of this sentence.

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

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

"Independent" shall mean, when used with respect to any specified Person, such a Person who (1) is in fact independent, and (2) does not have any direct financial interest or any material indirect financial interest in Lessor, Lessee, Hitachi Credit America Corp. or Helm Financial Corporation or in any Affiliate of any of them. Whenever it is provided that any Independent Person's opinion or certificate shall be furnished to Lessor, such Person shall be appointed by Lessee and approved by Lessor in the exercise of reasonable care and such opinion or certificate shall state that the signer has read this definition and that the signer is Independent within the meaning thereof.

"Lease" shall mean this Lease Agreement (including all schedules and exhibits hereto) dated as of December 27, 1991 between Lessor and Lessee, as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof and all Lease Supplements.

"Lease Supplement" shall mean each Lease Supplement between Lessor and Lessee substantially in the form of Exhibit A hereto.

"Lease Term" shall mean the Basic Term and all Renewal Terms actually entered into.

"Lender" shall mean Hitachi Credit America Corp., together with its successors and permitted assigns.

"Lessee" shall mean Westmoreland Coal Company, a Delaware corporation, together with its successors and permitted assigns.

"Lessor's Cost" shall be as specified in the Lease Supplement with respect to which each Railcar is leased.

"Lessor Encumbrances" shall mean any liens, security interests or encumbrances on or against any interest of Lessor in or to the Railcars and this Lease that result from acts of, or any failure to act by, or as a result of claims (including any taxes) against Lessor arising out of any event or condition unrelated to (x) the ownership of a Railcar, or (y) the transactions contemplated by the Operative Documents, excluding liens, security interests and encumbrances arising from any tax for which Lessee is obligated to indemnify under the Tax Indemnity Agreement, other than any such tax for which Lessee has already made full indemnification pursuant to such agreement.

"Lien" shall mean any mortgage, pledge, lien, charge, claim, encumbrance, lease, sublease, sub-sublease, security interest, deed to secure a debt, security title, deed of trust, easement, or rights of others of a similar kind.

"Nonseverable Improvement" shall mean, at any time, an Improvement that shall not be readily removable from a Railcar without causing material damage to such unit within the meaning of Revenue Procedure 75-21 promulgated by the Internal Revenue Service or other similar law, regulation or procedure then in effect, or any Improvement required by law.

"Note" shall mean the non-recourse Promissory Note made by Lessor to Lender pursuant to the Security Agreement.

"Officer's Certificate" shall mean with respect to any Person, a certificate signed by the chairman of the board, the president or a vice president of such Person or any Authorized Person of such Person.

"Operative Documents" shall mean this Lease, the Lease Supplement, the Purchase Agreement, the Warranty Bill of Sale issued pursuant to the Purchase Agreement, the Security Agreement, the Note, the Purchase Agreement Assignment and the Tax Indemnity Agreement.

"Opinion of Counsel" shall mean a written opinion of counsel, who shall be acceptable to Lessor (or such other

Person to whom such opinion is to be addressed pursuant to any of the Operative Documents).

"Overdue Rate" shall mean 11.75% (debt rate plus 2%) computed on the basis of a 360-day year of twelve 30-day months.

"Payment Date" shall mean the day of each month during the Basic Term and any Renewal Term which corresponds to the Closing Date (or the last day of a month if there is no corresponding day), beginning one month following the Closing Date, provided that if any such date shall not be a Business Day, then "Payment Date" shall mean the next succeeding Business Day.

"Permitted Encumbrances" shall mean (a) the rights of Lessee under the Lease, including, without limitation, subleases of and interchange agreements involving any Railcar in accordance with the terms of the Lease, (b) the rights of Lessor, which rights are subject to the liens and security interests created by Lessor, (c) liens for taxes either not yet due or being contested by Lessee in good faith by appropriate proceedings, diligently prosecuted or appealed which do not involve more than a de minimis risk of sale, forfeiture or loss of a Railcar, (d) the rights of Lender under the Security Agreement and (e) undetermined or inchoate materialmen's, mechanic's, workmen's, repairmen's or employee's liens or other like liens arising in the ordinary course of business and security obligations which are not yet due or which shall have been bonded or the enforcement of which shall have been suspended or which do not involve more than a de minimis risk of sale, forfeiture or loss of a Railcar or which are being contested by Lessee in good faith by appropriate proceedings diligently prosecuted or appealed.

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

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

"Purchase Agreement" shall mean the Railcar Purchase Agreement by and between Bethlehem Steel Corporation, as seller, and Helm Financial Corporation, as buyer, relating to the purchase and sale of the Railcars, as subsequently assigned by Bethlehem Steel Corporation to Johnstown America Corporation.

"Purchase Agreement Assignment" shall mean the Railcar Purchase Agreement and Assignment dated as of

December 27, 1991 by and between Helm Financial Corporation, as assignor, and Keycorp Leasing Ltd., as assignee.

"Railcar" shall mean any railcar identified in a Lease Supplement or any Replacement Railcar which becomes a Railcar pursuant to the terms of this Lease.

"Redelivery Locations" shall have the meaning assigned in Section 2(c).

"Renewal Term" shall have the meaning assigned in Section 2(b).

"Rent" shall mean the Basic Rent, Daily Rent and Supplemental Rent, collectively.

"Replacement>(*Railcars)* Railcar" shall mean an open top coal hopper railcar substantially similar in material and dimension to a Railcar with respect to which an Event of Loss has occurred and which is being replaced pursuant to Section 11(d).

"Responsible Officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of any party contained in any Operative Document, the President, or any Vice President, Assistant Vice President, Treasurer, Assistant Treasurer or other officer who in the normal performance of his operational responsibility would have knowledge of such matter and the requirements with respect thereto.

"Security Agreement" shall mean the Non-Recourse Loan and Security Agreement dated as of the date hereof between Lender and Lessor.

"Supplier" shall mean Johnstown America Corporation, the manufacturer of the Railcars identified in Lease Supplement No. 1.

"Severable Improvement" shall mean any Improvement other than a Nonseverable Improvement.

"Stipulated Loss Value" with respect to any Railcar shall be the amount (with respect to each Payment Date) set forth on a schedule attached to the Lease Supplement.

"Supplemental Rent" shall mean any and all amounts (other than Basic Rent and Daily Rent), that Lessee assumes the obligation to pay or agrees to pay under any of the Operative Documents to Lessor or others, including amounts payable as indemnity payments, and payments of Stipulated Loss Value under the Lease.

"Tax Indemnity Agreement" shall mean the Tax Indemnity Agreement dated as of December 27, 1991 between Lessee and Lessor, as the same may be amended, modified or supplemented pursuant to the provisions thereof.

"Term" shall mean the Basic Term and any Renewal Term thereof.

"Warranty Bill of Sale" shall mean the Warranty Bill of Sale from the Supplier to Lessor, pursuant to which the Supplier will transfer to Lessor good and marketable title to the Railcars.

SECTION 2. Purchase and Lease; Renewal Terms; Return; Purchase Options. (a) Purchase and Lease. On the Closing Date, (i) Lessor shall purchase the Railcars from Supplier, and (ii) Lessor and Lessee shall conclusively evidence that such Railcars have been delivered to and accepted by Lessee and have been made subject to this Lease by executing and delivering a Lease Supplement covering the Railcars so purchased and leased.

(b) Renewal Terms. Provided that no Default pursuant to Section 13(f) and no Event of Default shall have occurred and then be continuing, subject to Section 2(g) hereof, Lessee shall be entitled to renew this Lease with respect to at least 50 percent of the Railcars then being leased under this Lease for a term of two years beginning on the day following the last day of the Basic Term, and for an additional term of two years beginning on the day following the last day of the first renewal term (each such two-year period herein referred to as a "Renewal Term"). The Rent for any Renewal Term shall remain the same as during the Basic Term. In the event that Lessee elects to renew this Lease, Lessee shall provide Lessor with a notice irrevocably electing such renewal and identifying the Railcars subject to the renewal at least 180 days but not more than 360 days prior to the beginning date for such Renewal Term. In no event shall Lessee have any right to extend the Term of this Lease beyond such Renewal Terms, and in the event of an earlier termination of this Lease, all rights of the Lessee to the Renewal Terms shall be of no further force and effect.

(c) Redelivery. Lessee shall assemble and deliver possession of the Railcars in accordance with the terms of this Lease, at Lessee's own cost and expense, to any interchange point of any Class I Railroad on which the Railcars are then being used, as the Lessee shall designate by notice to Lessor not less than 30 days prior to such redelivery (a "Redelivery Location") (i) on the date of the expiration of the Basic Term or any applicable Renewal Term, or (ii) at the termination of the applicable storage period or at such earlier time as Lessor may specify prior to the

expiration of such storage period, provided that Lessee shall not be obligated to move any Railcar more than once at the request of Lessor. Notwithstanding anything to the contrary contained herein, Lessee may deliver the Railcars to no more than two (2) Redelivery Locations. Any Railcar delivered to a Redelivery Location (or into storage, as Lessor may have requested as provided in Section 2(e) hereof) shall be deemed to be redelivered hereunder (and Basic Rent with respect to such redelivered Railcars shall cease to accrue with respect thereto) on the later to occur of (i) the expiration of the Basic Term or any applicable Renewal Term, or (ii) the actual redelivery of such Railcar to such Redelivery Location or into storage.

If Lessor or its agent shall inspect any Railcar pursuant to Section 2(e) and shall conclude in good faith that such Railcar is not in the condition required by Section 2(e), Lessor shall promptly deliver to Lessee written notice of any such failure to comply with Section 2(e). If Lessee disagrees in any respect with such notice, then Lessee, within 10 days following receipt of such notice, shall so notify Lessor, and both parties shall promptly agree on an unrelated party experienced in doing repair work on railcars similar to the Railcars, who shall determine which of the repairs listed on Lessor's notice, and which have been objected to by Lessee, should be done. Such determination shall be final. If Lessor and Lessee are unable to agree on a third party expert, then a procedure similar to the selection of an Independent Appraiser pursuant to the Appraisal Procedure shall be undertaken. Lessee, at its expense and risk, shall within 60 days thereafter make such repairs and perform such work as shall be determined necessary to place such Railcars in the condition required by Section 2(e), and the Lease Term shall be extended during any period necessary to make such repairs. If, pursuant to the immediately preceding sentence, Lessor shall have made such conclusion with respect to more than 10% of the Railcars, Lessee shall reimburse Lessor for the portion of its reasonable costs and expenses related to the initial inspection of such nonconforming Railcars. Lessee will provide Lessor with notice when such Railcar has been repaired so as to be in the condition required by Section 2(e) and is ready to be reinspected by Lessor or its agent, and Lessor or its agent shall have 10 days from the date of receipt of such notice to inspect, at Lessee's sole cost and expense, such Railcar and inform Lessee if such Railcar is in the condition required by Section 2(e). If any Railcars are still not in the condition required by Section 2(e), the provisions of this subsection shall continue to control and any subsequent inspection required hereunder shall be at the sole cost and expense of Lessee. Lessee agrees to pay Daily Rent on each Railcar not redelivered in the condition required by Section 2(*(*d*)* e), from and including the last day on which

Lessee paid Basic Rent with respect to such Railcar to but excluding the day of actual redelivery of such Railcar to a Redelivery Location or into storage, as the case may be.

(d) Storage. Lessee will, at the request of Lessor, store each Railcar free of charge and at Lessee's expense and risk on storage tracks selected by Lessee for a period commencing on the date of the actual delivery thereof to such storage tracks and terminating on a date not later than 60 days after the later of (i) the expiration of the Lease, or (ii) the date of actual delivery of such Railcar to such storage track. In addition, Lessor shall have the right to request Lessee to store the Railcars, and Lessee agrees to so store at such storage tracks for an additional period of up to 60 days, at Lessor's sole cost, expense and risk. During such additional 60 day storage period, Lessee shall maintain insurance covering the Railcars pursuant to Section 10 hereof to the extent such insurance is available at commercially reasonable rates and in such amounts and against such risks as would be carried under similar circumstances by a reasonably prudent lessor, with such insurance being paid by Lessor.

(e) Return Condition. At the time of any return (including a return occasioned by an Event of Default hereunder), the Railcars so being returned shall be free and clear of all liens, security interests, charges and encumbrances and rights of others (except any Permitted Encumbrances) and shall be in the condition required by this subsection and Section 6. Each Railcar redelivered hereunder shall be (i) in a condition suitable for the purpose and use for which it was originally intended (haulage of coke and coal) and in a condition commercially acceptable to shippers, (ii) in a condition comparable to that of railcars of a similar type and age and suitable for interchange generally (iii) in compliance with the requirements of Applicable Law, and (iv) in such operating condition and repair that such Railcar can be immediately put into service by Lessor for the hauling of coke and coal, or by another party, without having to undergo additional maintenance, refurbishment, or rebuilding. In addition, Lessee, at Lessee's sole cost and expense, including, but not limited to, any transportation costs involved in moving each Railcar to and from a suitable work area to perform demarking, shall demark each Railcar's roadmark and number. Such demarking shall (A) be performed at a facility mutually agreed to by Lessor and Lessee, and (B) include the following: (1) removal of existing mandatory markings and all company logos of Lessee; and (2) complete cleaning of the area where new marks are to be placed, as designated by Lessor. Notwithstanding expiration of the Term of this Lease or any Lease Schedule, Lessee's obligations under this Section shall continue until the Railcars are returned to

Lessor in accordance with this Section. Lessor may conduct such inspection and testing of the Railcars, at Lessor's expense, to ensure that the Railcars are in compliance with this Section. In addition, each Railcar redelivered pursuant to Section 2(c) shall be in the condition required by Section 6, excepting the passage of time and reasonable wear and tear. Lessor or its agent may inspect any Railcar redelivered hereunder to determine whether such Railcar is in the condition required by this subsection at such time and location as Lessor and Lessee may reasonably establish. At such inspection, independent inspectors or surveyors representing both Lessee and Lessor, or an independent inspector or surveyor satisfactory to both sides, shall be present and shall determine and state the agreed repairs or work necessary to place such Railcar on the date of return in the condition required by Sections 2(e) and 6. Lessee and Lessor shall bear the cost of their respective independent inspectors or surveyors except as otherwise provided in Section 2(e).

(f) Purchase at Expiration of Lease Term. Provided that (1) no Default with respect to Section 13(f), and no Event of Default, shall have occurred and be continuing, and (2) this Lease has not earlier been terminated, at the expiration of the Lease Term, subject to Section 2(g) hereof, Lessee shall be entitled to purchase at least 50 percent of the Railcars then being leased under this Lease as follows:

(1) Lessee may, by notice to Lessor at any time not less than 180 days but not more than 360 days prior to the expiration of the Lease Term with respect to the Railcars, request that a determination be made under clause (iv) of this subsection of the Fair Market Sale Value of each of the Railcars. No such request for a determination pursuant to this clause shall be deemed an election by Lessee to purchase pursuant to the provisions of this subsection.

(2) In the event that Lessee elects to purchase the Railcars, Lessee shall provide Lessor with a notice irrevocably making such election at least 180 days but not more than 360 days prior to the expiration of the Lease Term with respect to the Railcars, and shall identify those Railcars for which the option is being exercised.

(3) Lessee shall pay to Lessor, on the expiration of the Lease Term with respect to the Railcars, an amount equal to the Fair Market Sale Value for the Railcars, and upon such payment and the payment by Lessee of all other Rent payable hereunder on or before such expiration date (including, without limitation, the Basic Rent becoming due and payable on such expiration date), Lessor shall transfer all its right, title and interest in and to such Railcars to

Lessee, without any representation, recourse or warranty on the part of Lessor except that Lessor shall warrant to Lessee that such Railcars are free and clear of all Lessor Encumbrances.

(4) In connection with an actual or prospective purchase by Lessee of the Railcars pursuant to this subsection, a determination shall be made (pursuant to the Appraisal Procedure) of the Fair Market Sale Value of each of the Railcars. Such determination (which shall be completed within the time periods required by the Appraisal Procedure and clauses (1) and (2) of this Subsection) shall be made as of the expiration of the Lease Term with respect to the Railcars.

(g) Random Selection of Railcars. If the Lessee shall exercise its option to renew this Lease with respect to, or purchase, at least 50% of the Railcars then being leased under this Lease pursuant to Section 2(b) or Section 2(f), respectively, Lessee shall deliver written notice to Lessor stating the exact number of Railcars with respect to which Lessee wishes to renew this Lease or purchase. Within fifteen days after receipt of such notice, Lessor shall select, on a random basis, the specific Railcars which will be the subject of such renewal or purchase. Within such fifteen day period, Lessor shall provide Lessee with a list setting forth the serial numbers of the cars so selected, which list shall be binding on Lessee in all respects.

SECTION 3. Rent. (a) Basic Rent; Daily Rent. Lessee hereby agrees to pay to Lessor (i) on each Payment Date during the Basic Term or any Renewal Term, Basic Rent for each Railcar, payable monthly in arrears, and (ii) for any extension of the Lease Term contemplated by Section 2(c), Daily Rent, payable on the date such Railcars shall be delivered by Lessee to Lessor pursuant to Section 2(c).

(b) Supplemental Rent. In addition to its obligation to pay Basic Rent hereunder, Lessee shall pay to Lessor any and all Supplemental Rent (whether provided for herein or in any other Operative Document) as and when the same shall become due and owing, including, without limitation, to the extent permitted by applicable law, interest at a rate per annum equal to the Overdue Rate on any part of any installment of Basic Rent, Daily Rent or Supplemental Rent not paid when due for any period for which the same shall be overdue.

(c) Manner of Payment; Unconditional Payment. All Rent and other payments of any kind due from Lessee to Lessor under the terms of the Operative Documents are payable and shall be paid directly to Lessor or to Lessor's designee and are for the sole benefit of Lessor. All Rent shall be payable in immediately available funds at the place

where payment is required to be made on the day when each such payment shall be due. Except as specifically provided in Section 10(b) of this Lease, Lessee's obligation- to pay Basic Rent, Daily Rent and Supplemental Rent payable hereunder shall be absolute and unconditional under any and all circumstances and shall not be subject to abatement, reduction, set-off, defense, counterclaim, interruption, deferment or recoupment for any reason whatsoever. Lessee hereby waives, to the extent permitted by applicable law, any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease except in accordance with the express terms hereof. If for any reason whatsoever this Lease shall be terminated in whole or in part by operation of law or otherwise except as specifically provided herein, Lessee nonetheless agrees to pay to Lessor an amount equal to each payment of Basic Rent and Supplemental Rent at the time such payment would have become due and payable in accordance with the terms hereof had this Lease not been terminated in whole or in part. Except to the extent of any payment in excess of that required to be made hereunder, each payment of Rent made by Lessee shall be final, and Lessee will not seek to recover all or any part of such payment from Lessor for any reason whatsoever.

SECTION 4. Disclaimer of Warranties. (a) No Representation or Warranty. LESSEE ACKNOWLEDGES THAT (i) THE RAILCARS ARE OF DESIGN AND MANUFACTURE SELECTED BY LESSEE, (ii) THE RAILCARS ARE SUITABLE FOR LESSEE'S PURPOSES AND (iii) LESSOR IS NOT A MANUFACTURER OR DEALER IN SUCH PROPERTY AND HAS NOT INSPECTED THE RAILCARS PRIOR TO DELIVERY TO AND ACCEPTANCE BY LESSEE. LESSEE ACKNOWLEDGES THAT LESSOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WAIVES, AS BETWEEN ITSELF AND LESSOR, ANY AND ALL RIGHTS OR CLAIMS AS TO THE DESIGN, OPERATION OR CONDITION OF THE RAILCARS OR AS TO THE TITLE, VALUE, CONDITION, DESIGN OR MERCHANTABILITY OF THE RAILCARS, OR AS TO THE FITNESS OF THE RAILCARS FOR ANY PARTICULAR USE OR PURPOSE, OR AS TO THE ABSENCE OF LATENT OR OTHER DEFECTS WHETHER OR NOT DISCOVERABLE, OR AS TO THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT, OR AS TO THE ABSENCE OF ANY OBLIGATIONS BASED ON STRICT LIABILITY IN TORT OR, EXCEPT AS SET FORTH IN SECTION 4(b), ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE RAILCARS AND UNDER NO CIRCUMSTANCES WHATSOEVER SHALL LESSOR BE LIABLE OR RESPONSIBLE TO LESSEE FOR ANY CONSEQUENTIAL DAMAGES. THE PROVISIONS OF THIS SECTION HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND, EXCEPT AS PROVIDED ABOVE, NEGATION OF ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, BY LESSOR AND ANY PARTICIPANT IN ANY CAPACITY, WITH RESPECT TO ANY RAILCAR, OR ANY PART THEREOF WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL

CODE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT OR OTHERWISE.

(b) Title. Notwithstanding the provisions of the foregoing subsection, Lessor represents and warrants that on the Closing Date it will have whatever title to the Railcars being delivered on such date as has been conveyed to it on such date by Supplier, subject to all Permitted Encumbrances.

(c) Supply Contract. Lessee acknowledges that either (i) Lessee has reviewed and approved of any written supply contract covering the Railcars purchased for lease to Lessee from the "Supplier" thereof as defined in the Uniform Commercial Code, or (ii) Lessor has informed or advised Lessee, in writing, either previously or by this Lease, of the following: (1) the identity of the Supplier; (2) that Lessee may have rights under the supply contract; and (3) that Lessee may contact the Supplier for a description of any such rights under the supply contract.

SECTION 5. Use and Operation of Railcars; Quiet Enjoyment. During the Lease Term, so long as no Event of Default has occurred and is continuing, Lessee has the exclusive right to possession, control and full use within the United States of the Railcars leased hereunder and may use such Railcars in any lawful trade or commerce, provided that Lessee shall use each Railcar only in the manner for which it was designed and intended and that such Railcars shall not be used or operated in any manner contrary to any Applicable Law.

SECTION 6. Maintenance. Lessee, at its own expense and risk, shall throughout the Lease Term maintain and repair the Railcars so as to keep them in good operating condition, ordinary wear and tear excepted, and in accordance with maintenance standards at least equal to the industry standards of maintenance for similar railcars used in the coal industry and in the manner and in the same condition as Lessee would, in the prudent management of its own business, maintain and repair similar equipment owned by it at such time so that such Railcars will remain (i) in as good operating condition as when originally delivered (ordinary wear and tear excepted), (ii) in compliance with any and all Applicable Law and industry regulations, (iii) mechanically suitable for interchange generally by Lessee, (iv) eligible under all manufacturer's warranties, and (v) in compliance with the maintenance standards as set forth in this Section and in Section 2(e) hereof. Nothing contained in subsection (iv) above shall be interpreted as requiring Lessee to extend the manufacturer's warranties, if any, which were originally in effect for the Railcars. Lessee agrees that it will not discriminate against any Railcar (as compared to other similar railcars owned or operated by

Lessee) with respect to its use, operation or maintenance in contemplation of the expiration or termination of this Lease.

SECTION 7. Inspection. Lessor or its authorized representatives, may at any time, upon reasonable notice and at its own risk and expense, inspect the Railcars and applicable maintenance and use records relating thereto, and Lessee shall make the foregoing available to Lessor, but Lessor shall have no duty to do so; provided, however, that any such inspection shall in no way interfere with any repairs or maintenance or the use and operation of the Railcars; and provided further, that in exercising such right of inspection, (i) Lessor shall not unreasonably interfere with Lessee's normal business operations and (ii) Lessor shall hold Lessee harmless from any claims resulting from injury, loss or death sustained by Lessor's representatives during any such inspection except to the extent that any such injury, loss or death occurs as a result of Lessee's gross negligence or willful misconduct.

SECTION 8. Improvements. (a) Improvements. Lessee shall make such Improvements to the Railcars as shall be required in order to comply with Sections 2(e) and 6. In addition, subject to Section 8(e) hereof, Lessee may make such other Improvements to the Railcars as Lessee may deem desirable but only to the extent that (i) in the case of Severable Improvements, such Severable Improvements are readily removable without causing damage to the Railcars and without impairing its commercial value (determined as if such Improvements had not been made) beyond a de minimis extent, and (ii) in the case of Nonseverable Improvements, such Nonseverable Improvements do not diminish the Railcars' Fair Market Sale Value, remaining expected useful life, productive capacity, residual value or utility.

(b) Title; Removal of Severable Improvements. Title to each Nonseverable Improvement shall, without further act, vest in Lessor. Title to each Severable Improvement shall, without further act, vest or remain, as the case may be, in Lessee, and, provided no Default with respect to Section 13(f) or Event of Default shall then have occurred and be continuing, Lessee at its own expense and risk shall have the right to remove any Severable Improvement to which Lessee has title from the Railcars at any time during or at the expiration of the Lease Term provided that the Lessee agrees to restore the Railcars to the condition required by Sections 6 and 2(e) hereof. Any Severable Improvement not so removed shall become the property of Lessor free and clear of all rights of Lessee, without further act; provided, however, at the expiration of the Lease Term, Lessor shall have the right, upon written notice to Lessee and at Lessee's risk and expense, to require Lessee to remove any Severable Improvement made to any Railcar by or

on behalf of Lessee , upon the same conditions of removal set forth in the preceding sentence.

(c) Removal of Property; Replacements. Lessee may, in the ordinary course of maintenance or repair of any Railcar, remove any item of property constituting a part of such Railcar, and unless the removal of such item is required by Section 6, Lessee shall replace such item as promptly as possible by an item of property that is free and clear of all liens, encumbrances and rights of any Person (other than Permitted Encumbrances) and in as good operating condition as, and with a Fair Market Sale Value, projected residual value, utility and useful life at least equal to, the item of property being replaced, assuming such item being replaced was in the condition and repair required to be maintained by the terms hereof. Any item of property removed from such Railcar as provided in the preceding sentence shall remain the property of Lessor free and clear of all rights of Lessee until replaced in accordance with the terms of the preceding sentence, but shall then, without further act, become the property of Lessee. Any such replacement property shall, without further act, become the property of Lessor and be deemed part of such Railcar for all purposes hereof.

(d) Identification Marks. Lessee shall (i) cause, as soon as practicable after a given Railcar becomes subject to the terms of this Lease, such Railcar to be kept numbered with the identifying number set forth in Schedule 1 to the Lease Supplement executed and delivered on the Closing Date and (ii) keep and maintain, as soon as practicable after such Railcar becomes subject to the terms of this Lease, plainly, distinctly, permanently and conspicuously marked on both sides of such Railcar in letters not less than one inch in height, the words "Subject to a security agreement filed with the Interstate Commerce Commission" or other appropriate words designated by Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by Applicable Law in order to protect the title of Lessor and the rights of Lessor under the Operative Documents. Lessee will not place any such Railcar in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such word or words which may be removed, defaced, obliterated or destroyed. Lessee will not permit the identifying number of any Railcar to be changed except in accordance with a Lease amendment or statement of new identifying numbers to be substituted therefor, which Lease amendment or statement shall have been previously filed, recorded or deposited with Lessor and in all public offices where this Lease will have been filed, recorded or deposited. Lessee shall have the right at its expense to display indication of operation of

any Railcar by Lessee or any Affiliate of Lessee and identify such Railcar with such name as Lessee may elect.

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

SECTION 9. Liens. (a) Liens. Lessee, any sublessee or any other Person shall not, directly or indirectly, create, assume, incur or permit to exist any Lien on or with respect to any Railcar, other than Permitted Encumbrances. Lessee shall notify Lessor promptly of the imposition of any such Lien and shall at Lessee's own cost and expense promptly cause the same to be discharged, dismissed or removed, within 30 days after Lessee first has notice of the existence of any such Lien; provided, that notwithstanding the foregoing, Lessee shall have the right to contest any such Lien in good faith by appropriate proceedings, diligently prosecuted or appealed so long as such lien or security interest does not involve more than a de minimis risk of sale, forfeiture or loss of such Railcar and so long as Lessee has, in the reasonable opinion of Lessor, provided adequate security therefor.

(b) Release of Liens. Lessee agrees that it will at its own cost and expense promptly take such action as may be necessary to discharge any Liens that are not Lessor Encumbrances or Permitted Encumbrances and that in the event that any Railcar shall be attached, levied upon or taken into custody, detained or sequestered, by virtue of any proceeding in any court or tribunal, or by any governmental or other authority on account of any such Lien, Lessee shall cause such Railcar to be released and all such Liens to be promptly discharged (except to the extent that the same shall be contested by Lessee in good faith by appropriate proceedings and shall not affect the continued use of such Railcar). Lessee shall protect, save and keep harmless Lessor from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including reasonable legal fees and disbursements) of whatsoever kind and nature that may be imposed on, incurred by or asserted at any time (whether before, during or after the Lease Term) against Lessor in any way relating to or arising out of any Liens that are not Permitted Encumbrances.

SECTION 10. Insurance. (a) Lessee shall at all times after the Closing Date, at its own expense, carry and maintain or cause to be carried and maintained (i) property damage insurance with respect to each Railcar subject to this Lease, and (ii) comprehensive public liability

insurance with respect to third party personal and property damage (including bodily injury, death, environmental restoration and property damage), in each case with such deductibles, in such amounts, against such risks, with such insurance companies of recognized responsibility and subject to such self-insurance, in each case as is consistent with coal industry practice, and in any event, in such amounts and against such risks so as to be no less protective than the insurance, if any, maintained by Lessee with respect to similar railcars owned by Lessee, provided, however, that in no event shall (1) the amount of such insurance be less than the Stipulated Loss Value shown on the applicable schedule attached to the Lease Supplement[, and (2) any such liability insurance policy contain a provision for deductible or self-insurance amounts per occurrence in excess of (x) if Lessee's Tangible Net Worth, as determined by Lessor pursuant to the below definition of "Tangible Net Worth," is greater than Forty Million Dollars (\$40,000,000), Ten Million Dollars (\$10,000,000), or (y) if Lessee's Tangible Net Worth, as determined by Lessor pursuant to the below definition of "Tangible Net Worth," is less than Forty Million Dollars (\$40,000,000), Five Million Dollars (\$5,000,000). As used in the preceding sentence, the term "Tangible Net Worth" shall mean tangible assets (which shall include all assets on the asset side of the balance sheet except intangible assets, such as, without limitation, good will, trademarks, formulas, franchises, copyrights, leaseholds, patents, research and development costs, training costs and organization costs) less total liabilities (which shall include subordinated debt and minority interests), as determined in accordance with GAAP consistently applied.

(b) All property or public liability insurance policies maintained by Lessee pursuant to Section 10(a) shall contain (1) loss payable clauses which name the Lender and Lessor as additional insureds, as their respective interests may appear, and (2) a covenant of the insurance company that it will provide the Lender with at least thirty days' prior written notice of any alteration in the terms of such policy or the expiration or cancellation thereof.

(c) The proceeds of any insurance for damage to any Railcar not constituting an Event of Loss shall be applied in payment for the repair of such damage to the extent required to maintain such Railcar in accordance with Section 6, if such repair shall not have already been paid for by Lessee, or, if already paid by Lessee, to reimburse Lessee for its payment of such repair and any balance remaining after compliance with said Section 6 shall be paid over to, or retained by, Lessee.

(d) Lessee agrees that it will not do any act or voluntarily suffer or permit any act to be done whereby any

insurance required to be maintained hereunder shall or may be suspended, or altered in such a manner which would reduce the required coverage under this Section, and will not suffer or permit any Railcar to be used in a manner not permitted under the insurance policies, if any, maintained hereunder without first covering such Railcar for such use.

(e) Lessor may, but shall have no obligation to, at Lessee's expense, provide insurance on or with respect to the Railcars or the operation thereof if Lessee fails to maintain the same and any amounts paid by Lessor for such insurance shall be reimbursed by Lessee to Lessor.

(f) On or before the Closing Date, Lessee will deliver to Lessor a certificate of insurance evidencing the insurance required to be maintained pursuant to this Lease. Lessor may, but not more than once in any twelve month period, request from Lessee and Lessee shall promptly thereafter furnish to Lessor, an Officer's Certificate setting forth all insurance maintained by Lessee pursuant to this Section and describing such policies, if any, including the amounts of coverage, any deductible amounts, the names of the insurance providers and a general description of each such policy's terms.

SECTION 11. Loss, Requisition or Seizure. (a) Risk of Loss. Lessee hereby assumes all risks of loss, theft, destruction, damage, seizure, taking or requisition, partial or complete, of or to the Railcars, however caused or occasioned, such risk of loss to be borne by Lessee until the Railcars have been returned to Lessor in accordance with Section 2 hereof. Lessee agrees that no occurrence specified in the preceding sentence shall impair, in whole or in part, any obligation of Lessee under this Lease, including the obligation to pay Rent.

(b) Requisition. A taking of any Railcar for use by any governmental entity shall not terminate this Lease with respect to such Railcar, but Lessee shall remain liable for all its obligations hereunder and under the other Operative Documents with respect to such Railcar, including, without limitation, its liability for payment of Rent, unless and until such taking becomes an Event of Loss hereunder, at which time the provisions of Section 11(c) shall apply. So long as such taking shall not have become an Event of Loss hereunder, all payments received by Lessor or Lessee for use of such Railcar as a result of such taking during the Lease Term shall be paid over to, or retained by, Lessee unless a Default with respect to Section 13(a), (b) or (f) or an Event of Default shall have occurred and be continuing in which event such payments shall be payable to Lessor, or to whomever shall be entitled to receive the same subject to an accounting between Lessor and Lessee immediately upon the curing of such Default or Event of Default. Provided that

no Default with respect to Section 13(a), (b) or (f) or Event of Default shall have occurred and be continuing, after an Event of Loss with respect to a Railcar, all payments received by Lessor or Lessee for use of such Railcar under this subsection shall be paid over to, or retained by, Lessee if Lessee has either made payment to Lessor for any such Railcar as provided in Section 11(c) or replaced any such Railcar as provided in Section 11(d); otherwise all such payments shall be retained by or paid over to Lessor or to whomever shall be entitled to receive the same subject to an accounting between Lessor and Lessee immediately upon the curing of such Default or Event of Default.

If an Event of Loss would otherwise occur upon the expiration of the Basic Term or any Renewal Term then in effect with respect to the taking or requisition of a Railcar by any governmental entity, prior to the expiration of the twelve month grace period in respect of an Event of Loss due to such taking or requisition, then Lessor shall be entitled to elect by written notice to Lessee within 30 days after the expiration of the Basic Term or the Renewal Term then in effect to accept return of such Railcar on an "as is," "where is" basis, subject to all risk of loss and to such taking or requisition, in lieu of declaration of an Event of Loss in respect of such Railcar. Lessor will use reasonable efforts to notify Lessee of its election prior to the expiration of the Basic Term or the Renewal Term then in effect if such taking or requisition occurs sufficiently in advance of the expiration of the Basic Term or the Renewal Term then in effect to allow Lessor to evaluate its options, and the taking or requisition, in Lessor's opinion, is reasonably likely to be continuing on such expiration date.

(c) Event of Loss. In the event that any of the Railcars suffers an Event of Loss, Lessee shall promptly notify Lessor in writing of such fact. Subject to the provisions of subsection (b), on the Payment Date next following the date of such Event of Loss (but no later than 90 days after the final Payment Date or no later than 90 days after the redelivery of the Railcars the Lease Term of which has been extended pursuant to Section 2(b), Lessee shall pay to Lessor, or to whomever shall be entitled to receive the same, (w) the Stipulated Loss Value for any Railcar, computed as of such Payment Date (or in the case of an Event of Loss with respect to any Railcar for which Stipulated Loss Value has not theretofore been paid or in the event of an extension of the Lease Term pursuant to Section 2(b), computed as of the final Payment Date), plus (x) if the date the payment of Stipulated Loss Value shall be due shall be other than a Payment Date, an amount equal to interest at the Overdue Rate computed for the period from, and including, the final Payment Date to, but excluding, the date such Stipulated Loss Value shall be

paid, plus (y) the Basic Rent payable on such Payment Date, plus (z) all other unpaid Rent for such Railcar accrued to the date of such payment of Stipulated Loss Value due in respect of such Event of Loss (collectively, the "Casualty Payment"). After the payment in full of the Casualty Payment, Lessee's obligation to pay further Basic Rent with respect to such Railcar shall terminate.

So long as no Default or Event of Default shall have occurred and be continuing, all payments received by Lessor or Lessee from any governmental authority or otherwise as compensation for an Event of Loss with respect to any Railcar shall be applied in reduction of Lessee's obligation to pay the Stipulated Loss Value of such Railcar, if not already paid by Lessee or if already paid by Lessee, shall be applied to reimburse Lessee for its payment of Stipulated Loss Value, and the balance, if any, of such payments shall be shared between Lessee and Lessor as their interests may appear, provided, however that the balance of any such payments constituting insurance payments shall be retained by Lessee. In the event that Lessee shall make the Casualty Payment, this Lease shall terminate with respect to such Railcar and Lessee or its designee (i) shall be subrogated to all rights that Lessor shall have with respect to such Railcar, (ii) shall, subject to Lessee's obtaining any governmental consents required, receive assignments and bills of sale from Lessor (in such form as Lessee or such designee shall reasonably require) of any or all such rights, together with all Lessor's right, title and interest in and to such Railcar, free and clear of any Lessor Encumbrances, but otherwise on an "As-Is, Where-Is" basis without any representation, recourse or warranty of any character on the part of Lessor, express or implied, and (iii) shall have the right to abandon such Railcar to underwriters on behalf of Lessor as well as itself. In such case, Lessor shall, at Lessee's expense, execute or cause to be executed such documents and take such other action as Lessor shall require to effect the surrender to the insurance underwriters of such Railcar. The Lease Term shall terminate with respect to such Railcar upon payment of the Casualty payment. Lessee shall determine, within fifteen (15) days after the date of occurrence of damage to any of the Railcars, whether such Railcars or Railcars, as the case may be, can be repaired, and if Lessee reasonably determines that it can, Lessee will cause such Railcar to be repaired within 120 days of the date of occurrence of damage. If Lessee determines that such Railcar or Railcars, as the case may be, cannot be repaired, an Event of Loss as to such Railcar or Railcars, as the case may be, shall be deemed to have occurred on the date of occurrence of damage.

(d) Replacement. Provided no Default with respect to Section 13(f) or Event of Default shall have occurred and be continuing, in lieu of payment of all or a portion of the

Casualty Payment, Lessee may, on or prior to the date on which such Casualty Payment would have otherwise been due, convey or cause to be conveyed to Lessor, as replacement for any such Railcar with respect to which an Event of Loss has occurred, title to a Replacement Railcar free and clear of all Liens other than Permitted Encumbrances and having a value, utility and useful life at least equal to, and being in as good operating condition as, such Railcar with respect to which an Event of Loss occurred assuming such Railcar was in the condition and repair required by the terms hereof immediately prior to the occurrence of such Event of Loss. Prior to, or at the time of any such conveyance, Lessee, at its own expense, will furnish Lessor with (1) a seller bill of sale conveying good and marketable title to such Railcars, free and clear of any Liens, in form and substance satisfactory to Lessor, with respect to such Replacement Railcar, and (2) an appraisal by a qualified independent Appraiser reasonably satisfactory to Lessor certifying that the Fair Market Sale Value, remaining useful economic life and residual value of each such Railcar, as the case may be, is not less than the Railcar it will be substituted for as of the time just prior to the Event of Loss (assuming such "original" Railcar was maintained as required by the terms of this Lease), and (3) an opinion of counsel to Lessee to the effect that Lessee is transferring to Lessor good title to such Railcar, free and clear of any Liens. Upon full compliance by Lessee with the terms of this subsection as determined by Lessor in good faith, Lessor will transfer to Lessee, without recourse or warranty (except as to the absence of Lessor Encumbrances) and subject to a disclaimer satisfactory to Lessor of all liabilities, including tort and negligence with respect to such Railcar, all of Lessor's right, title and interest, if any, in and to such replaced Railcar with respect to which an Event of Loss occurred. For all purposes hereof, each such Replacement Railcar shall, after such conveyance, be deemed part of the property leased hereunder and shall be deemed a "Railcar" as defined herein. No Event of Loss with respect to a Railcar under the circumstances contemplated by the terms of this subsection shall result in any reduction in Basic Rent. Lessee shall indemnify Lessor against any adverse tax consequences suffered by Lessor as a result of such replacement in accordance with the terms of the Tax Indemnity Agreement.

SECTION 12. Assignment and Sublease. (a) Assignment by Lessee. If no Event of Default has occurred and is continuing, Lessee may with the prior written consent of Lessor, which consent of Lessor shall not be unreasonably withheld (it being understood that the creditworthiness of the assignee shall be considered as a factor in determining the reasonableness of any withholding of consent hereunder), assign all of its rights and obligations under this Lease and the other Operative Documents to any Person at least as

creditworthy as that of Lessee on the date hereof (as determined by Lessor in its reasonable judgment); provided, however, no such consent of Lessor shall be required in the case of an assignment to an Affiliate of Lessee if Lessee remains liable for all its obligations under this Lease and the other Operative Documents to which it is a party to the same extent as if such assignment to such Affiliate had not been made. No assignment of this Lease by Lessee shall (except as otherwise agreed to in writing by Lessor) result in Lessee being released from its obligations hereunder. Lessee agrees to give not less than 30 days prior notice to Lessor of any such assignment. Any assignment done in violation of this subsection shall be void.

(b) Sublease. Lessee shall have the right, so long as no Event of Default shall have occurred and be continuing, to enter into a sublease of or interchange arrangement for any Railcar provided that each such sublease shall be expressly subject and subordinate to the terms of this Lease and Lessee shall remain liable for all its obligations under this Lease and the other Operative Documents to which it is a party to the same extent as if such sublease or interchange arrangement were not in effect. No such sublease shall relieve Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety. Lessee shall assign any such sublease to the Lessor (or any Assignee) as additional collateral for its obligations hereunder.

(c) Assignment by Lessor. Lessor may assign or transfer any or all of its right, title and interest in and to this Lease or any Railcar; provided that any agreement so assigning or transferring any or all of Lessor's right, title and interest shall expressly provide that such assignment or transfer is subject to the rights of Lessee hereunder so long as there has not occurred any Event of Default and the Assignee continues to receive all Rent payable under the Lease. Prior to executing any such assignment of its rights hereunder, Lessor shall notify Lessee thereof.

After such assignment, the term Lessor shall mean, as the case may be, such assignee or transferee (the "Assignee"). Notwithstanding the foregoing, any assignment by Lessor shall not relieve Lessor of its obligations to Lessee hereunder. The Lessee hereby consents to and shall acknowledge such assignment or assignments as shall be designated by written notice given by Lessor to Lessee and further covenants and agrees that:

(1) Any such Assignee shall have and be entitled to exercise any and all discretions, rights and powers of Lessor hereunder or under any Lease Supplement, but such Assignee shall not be obligated to perform any of the

obligations of Lessor hereunder or under any Lease Supplement, provided, however that such Assignee shall not disturb Lessee's quiet and peaceful possession of the Equipment and restricted use thereof for its intended purpose during the term hereof so long as Lessee is not in default of any of the provisions hereof and such Assignee continues to receive all amounts of Rent payable under such Lease Supplement.

(2) Lessee will pay all Basic Rent and any and all other amounts payable by Lessee under any Lease Supplement to such Assignee without abatement, reduction, set-off, defense, counterclaim, interruption, deferment, or recoupment for any reason whatsoever and notwithstanding any defense or claim of whatever nature, whether by reason of breach of such Lease Supplement or otherwise which it may or might now or hereafter have as against Lessor (Lessee reserving its rights to have recourse directly against Lessor on account of any such defense or claim); and

(3) Subject to and without impairment of Lessee's leasehold rights in and to the Equipment, Lessee holds the Equipment for such Assignee to the extent of such Assignee's rights therein.

SECTION 13. Events of Default. Each of the following events shall constitute an "Event of Default" (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law, pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body or other Applicable Law):

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

(b) Lessee shall fail to make any payment of Supplemental Rent (or any other payment required hereunder, other than Basic Rent, Daily Rent and the Casualty Payment, or under the Tax Indemnity Agreement) before the end of the 10th Business Day after the due date thereof; or

(c) Lessee shall fail to perform or observe or shall otherwise breach in a material respect any other covenant, condition or agreement to be performed or observed by it hereunder or under any other Operative Document to which it is a party and either (x) Lessee shall not have diligently commenced to cure such failure (in the case of a cure that cannot be effected by the payment of money is not reasonably susceptible to cure within 30 days and will not, in the reasonable opinion of Lessor, have a material adverse

effect on the aggregate value of the Railcars then being leased hereunder) or (y) Lessee shall not have cured such failure (in the case of a cure that can be effected by the payment of money or which may, in the reasonable opinion of Lessor, have a material adverse effect on the aggregate value of the Railcars then being leased hereunder), in each case on or prior to the 30th day after Lessee shall have received notice of such failure from Lessor; provided, that the failure by Lessee to cure such a failure referred to in clause (x) within four (4) months after receiving such notice shall constitute an immediate Event of Default on the last day of such four month period; or

(d) any representation or warranty made by Lessee herein or in any Operative Document (other than the Tax Indemnity Agreement) or any document or certificate furnished by it to Lessor shall prove at any time to be incorrect as of the date made in any material respect; or

(e) Lessee shall file a voluntary petition in bankruptcy or otherwise seek relief under the provisions of any now existing or future bankruptcy, insolvency or other similar law providing for the liquidation, reorganization or protection of debtors generally; or

(f) Lessee shall fail to maintain insurance as required by Section 10 hereof; or

(g) a receiver, trustee, liquidator or custodian of Lessee or of a substantial part of its property shall be appointed by court order and such order shall remain in effect for more than 60 days; or Lessee shall be adjudicated bankrupt or insolvent or any of its properties shall be sequestered by court order and such order shall remain in effect for more than 60 days; or a petition shall be filed against Lessee under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and shall not be dismissed within 60 days after such filing; or Lessee makes a general assignment for the benefit of its creditors; or Lessee admits in writing its inability to pay its debts generally as they become due, or is unable to pay or is generally not paying its debts as they become due.

(h) Lessee shall have failed, within sixty (60) days after the Closing Date, to provide Lessor and the Lender with (1) copies of resolutions of the board of directors of Lessee authorizing execution, delivery and performance by Lessee of the Operative Agreements to which Lessee is a party, and (2) a certificate of the secretary of Lessee as to the authenticity of such resolution.

SECTION 14. Action Following an Event of Default.

Upon the occurrence of an Event of Default and at any time thereafter so long as the same shall be continuing, Lessor may, at its option, declare this Lease to be in default (except that no such declaration shall be required in the case of an Event of Default pursuant to subsection (e) or (g) of Section 13, or as expressly provided in subsection (c) of Section 13); and at any time thereafter, so long as Lessee shall not have remedied all outstanding Events of Default, Lessor may do, and Lessee shall comply with, one or more of the following, as Lessor in its sole discretion shall so elect, to the extent permitted by and subject to compliance with, any mandatory requirements of Applicable Law then in effect:

(a) Redelivery and Retaking. Upon written demand, Lessor, and with or without terminating the Lessee's obligations under this Lease, may cause Lessee, at Lessee's expense, to, and Lessee hereby agrees that it will promptly redeliver the Railcars, or cause the Railcars to be redelivered, to Lessor with all reasonable dispatch and in the same manner and in the same condition as if the Railcars were being redelivered in accordance with all the provisions of Sections 2(c) and 2(d) and 2(e) and all obligations of Lessee under said Sections shall apply to such redelivery, provided, that (i) Basic Rent shall continue to accrue on each Railcar until it is redelivered to a Redelivery Location or into storage, as the case may be, and (ii) Lessor shall have the right to store each such redelivered Railcar on storage tracks selected by Lessee free of charge and at Lessee's risk for a period commencing on the date of the actual delivery thereof to such storage tracks and terminating on a date 180 days after the actual delivery of such Railcar to such storage tracks; or Lessor or its agent, at Lessor's option, without further notice, may, but shall be under no obligation to, retake the Railcars wherever found, and irrespective of whether Lessee, any sublessee or any other Person is in possession of the Railcars or any of them, all without prior demand and without legal process or summary proceedings, and for that purpose Lessor or its agent may enter upon any premises, where any such Railcar is and may take possession thereof, without Lessor or its agent incurring any liability by reason of such retaking, whether for the restoration of damage to property caused by such retaking or for damages of any kind to any Person for or with respect to any cargo carried, or to be carried by such Railcar or for any other reason, provided that Lessor shall be responsible to Lessee for any damage caused by the wilful misconduct or gross negligence of Lessor or its assignees, agents or representatives in connection with any retaking. The exercise by Lessor of its remedies under this subsection shall be without prejudice, and in addition to any of Lessor's other remedies referred to below in this Section.

(b) Liquidated Damages. Whether or not Lessor shall have exercised, or shall thereafter at any time exercise, any options, rights or remedies under this Section, Lessor may, by notice to Lessee specifying a Payment Date which is not earlier than 10 days after the date of such notice, demand that Lessee pay to Lessor (or the Assignee of Lessor) and Lessee shall pay to Lessor (or the Assignee of Lessor), on such Payment Date, as liquidated damages for loss of a bargain and not as a penalty, and in lieu of Basic Rent for any Railcar due after such Payment Date, all unpaid Basic Rent for such Railcar payable on each Payment Date occurring on or prior to such Payment Date, plus any Supplemental Rent then due with respect therefor, plus an amount equal to the Stipulated Loss Value of such Railcar computed as of such Payment Date. Upon payment in full of the sum of such amounts to the Lessor (or any Assignee of the Lessor), the Lessee shall be entitled to receive from the Lessor (and not from any Assignee) whichever of the following amounts Lessor, in its sole discretion, shall specify (together with interest on such amount at the Overdue Rate for the period from the Payment Date specified in such notice to the date of actual payment):

(i) an amount equal to the excess, if any, of the Stipulated Loss Value of such Railcar computed as of the Payment Date specified in such notice, over the Fair Market Rent thereof, determined by an Appraiser selected by Lessor, for the remainder of the Lease Term applicable to such Railcar after discounting such Fair Market Rent monthly to present worth as of such Payment Date at a rate of 5%; or

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

provided, however, that if such Railcar cannot be repossessed the Fair Market Rent and the Fair Market Sale Value of such Railcar for purposes of this subsection shall be deemed to be equal to zero.

(c) Sale; Use. Lessor or its agent may sell any Railcar at a public or private sale, by such advertisement or publication, if any, as Lessor may determine, or otherwise may dispose of, lease to others, hold, use, operate, lease (whether for a period greater or less than the balance of what would have been the Lease Term in the absence of the termination of Lessee's rights to such Railcar) to others or keep idle such Railcar, all on such terms and conditions and at such place or places as Lessor may in its sole discretion determine and all free and clear

of any rights of Lessee and of any claim of Lessee in equity, at law or by statute, whether for loss or damage or otherwise, and without any duty to account to Lessee.

(d) Termination of Lease. Lessor may terminate the Lease Supplement, without relieving the Lessee from liability for (i) any accrued and unpaid Rent thereunder, (ii) the Stipulated Loss Value payable pursuant to subsection (d) hereof, (iii) the Casualty Payment, and (iv) refurbishment and repair costs payable hereunder.

(e) Other Remedies. Lessor may exercise any other right or remedy, not inconsistent with the foregoing, that may be available to it under Applicable Law, in equity or proceed by appropriate court action to enforce the terms of this Lease or to recover damages for the breach hereof or to rescind this Lease.

In addition, Lessee shall be liable, on an After-Tax Basis (based on the Tax Assumptions provided for in the Tax Indemnity Agreement), for any and all Supplemental Rent payable hereunder before, during or after the exercise of any of the foregoing remedies, which Supplemental Rent shall include all reasonable legal fees and other costs and expenses incurred by Lessor by reason of the occurrence of any Event of Default or by reason of the exercise by Lessor of any remedy hereunder, including, without limitation, any costs and expenses incurred by Lessor in connection with any retaking of any Railcar or, upon the redelivery or retaking of such Railcar in accordance with this Section, the placing of such Railcar in the condition required by the terms of Sections 2(e) and 6. Except as specifically provided herein, no remedy referred to in this Section is intended to be exclusive, but each shall be cumulative and is in addition to, and may be exercised concurrently with, any other remedy which is referred to in this Section or which may otherwise be available at law, or in equity; provided, however, that liquidated damages having been agreed to by the parties hereto pursuant to subsection (b), Lessor shall not be entitled to recover from Lessee as damages upon the occurrence of one or more Events of Default an amount in excess of such liquidated damages plus any other Rent owing pursuant to the terms of this Lease. There shall be deducted from the aggregate amount so recoverable by Lessor the net balance, if any, remaining of any moneys held by Lessor which would have been required by the terms hereof or any other Operative Agreement to have been paid to Lessee but for the occurrence of an Event of Default. To the extent permitted by applicable law, the rights of Lessor and the obligations of Lessee under this Section shall be effective and enforceable regardless of the pendency of any proceeding which has or might have the effect of preventing Lessor and Lessee from complying with the terms of this Lease. No express or implied waiver by Lessor of any Event

of Default shall in any way be, or be construed to be, a waiver of any further or subsequent Event of Default.

SECTION 15. Notices. All notices and other communications under this Lease shall be in writing and shall be addressed (1) if to the Lessee, at its address at 700 The Bellevue, 200 South Broad Street, Philadelphia, Pennsylvania 19102, Telecopy: (215) 735-7175, Attn: John P. Lamond; or, if to Lessor, at its address at One KeyCorp Plaza, 30 South Pearl Street, Albany, New York 12207, Telecopy: (518) 486-8172, Attn: Frederick E. Wolfert, or such other address as either party hereto shall communicate to the other party at its address specified above. All notices, requests, demands, requisitions and other communications hereunder shall be in writing and shall be deemed to have been duly given: (a) if delivered by hand, (b) if sent by telegraph, cable, telex or telecopier and, in addition thereto, sent by commercial air courier service, or (3) if sent by certified mail, return receipt requested, to the party to whom such notice is intended to be given. Any communication delivered by hand or sent by telegraph, cable, telex or telecopier and, in addition thereto, commercial courier service, shall be deemed to have been duly given and received on the next succeeding business day following the day on which it was so sent. Any communication delivered by certified mail, return receipt requested, shall be deemed to have been duly given and received on the third business day following the day on which it was so sent.

SECTION 16. Further Assurances and Financial and Other Information. (a) Further Assurances; Perfection of Security Interests. Lessee hereby agrees promptly to execute and deliver to Lessor 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 Lease and to establish and protect the rights and remedies created or intended to be created in favor of Lessor hereunder. Lessee will at all times cause to be kept filed, and refiled any required financing and continuation statements and cause to be taken such other action as in the opinion of counsel to Lessor is required by law in order fully to perfect, preserve and protect Lessor's interest in the Railcars. Lessee will pay or cause to be paid all taxes, fees and other charges in connection with such filing and refiling.

(b) Information as to Lessee. Lessee agrees to furnish to Lessor in quantities reasonably requested, the following:

(i) Within 120 days after the end of each fiscal year of Lessee, Lessee's annual report on Form 10-K (or such other form containing the same information as may be required by the Securities and Exchange Commission) for such

year as filed with the Securities and Exchange Commission or, if Lessee is not subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, a consolidated balance sheet of Lessee and its consolidated Affiliates as of the end of the year, and a consolidated statement of income, shareholders' equity and cash flows of Lessee and its consolidated Affiliates for the year, setting out in each case, in comparative form, the consolidated figures for the previous fiscal year, all in reasonable detail, and accompanied by the opinion of independent public accountants selected by Lessee stating that (i) the financial statements were prepared in accordance with generally accepted accounting principles and practices applied (except as otherwise specified in such opinion) on a basis consistent with that of the preceding fiscal year, and present fairly the financial condition of Lessee and its consolidated Affiliates as of the end of such fiscal year and the results of operations for the period then ended, and (ii) the audit by such accountants was made in accordance with generally accepted auditing standards;

(ii) Within 60 days after the end of each of the first three quarterly periods of each fiscal year of Lessee, Lessee's quarterly report on Form 10-Q (or such other form as may be required by the Securities and Exchange Commission) for such quarter as filed with the Securities and Exchange Commission or, if Lessee is not subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, a consolidated balance sheet of Lessee and its consolidated Affiliates as of the end of such quarterly period and consolidated statements of income and shareholders' equity of Lessee and its consolidated Affiliates for such quarterly period, setting out in each case, in comparative form, the figures for the corresponding period of the previous fiscal year, all in reasonable detail and certified, subject to changes resulting from year-end audit adjustments, by the principal financial or accounting officer of Lessee; and

(iii) Promptly upon request, such other information relating to Lessee's financial condition as may reasonably be requested.

SECTION 17. Assignment of Warranties. Lessor hereby assigns to Lessee all right and interest it has or may acquire in any warranties from Supplier extended to Lessor in the Purchase Agreement or otherwise, such assignment to be effective without further act or deed with respect to any Railcar upon the execution of a Lease Supplement with respect to such Railcar. Lessee hereby agrees that such warranties will automatically be deemed to be reassigned to Lessor, without the need for any further documentation or act of Lessee, at such time as any Railcar is redelivered to Lessor, voluntarily or involuntarily, for any reason.

SECTION 18. Lessor's Right to Perform for Lessee. If Lessee fails to make any payment of Rent required to be made by it hereunder or fails to perform or comply with any of the terms of this Lease or any of its agreements contained herein, Lessor may, on behalf of Lessee and upon notice to Lessee, itself make such payment, perform such agreement or remedy such failure to perform or comply and such payment, performance or remedy of such failure shall be a cure in respect of any Event of Default which has occurred as a result of Lessee's failure to pay such Rent or to perform or comply with such term or agreement, as the case may be. The amount of any such payment and the amount of the reasonable expenses of Lessor incurred in connection with such payment or performance, together with interest thereon, to the extent permitted by applicable law, at the Overdue Rate, shall be deemed Supplemental Rent, payable promptly by Lessee to Lessor upon demand.

SECTION 19. Filings. Prior to the delivery and acceptance of any Railcar, Lessor will, at Lessee's sole expense, cause this Lease to be duly filed and recorded with the ICC in accordance with 49 U.S.C. (11303 of the Interstate Commerce Act. Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister or rerecord whenever reasonably required) any and all further instruments required by law or reasonably requested by Lessor or any of its assigns for the purpose of protecting Lessor's title to, or such assignee's security interest in, any Railcar and the Lease, and in connection with any such action, will deliver to Lessor and such assignee proof of such filings. Lessee will pay all costs, charges and expenses incident to any such filing, refiling, recording and rerecording or depositing and redepositing of any such instruments.

SECTION 20. Representations and Warranties.

(a) Lessee hereby represents, warrants and covenants that, with respect to itself, the Lease Agreement and each Lease Supplement executed hereunder:

(i) The Lessee is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware, is qualified to do business in each jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, and has full corporate power and authority to hold property under lease and to enter into and perform its obligations under the Lease Agreement and each Lease Supplement.

(ii) The execution, delivery and performance by the Lessee of each of the Lease Agreement and the Lease Supplements have been duly authorized by all necessary

corporate action on the part of the Lessee, and each of the Lease Agreement and the Lease Supplement is not inconsistent with the Lessee's Certificate of Incorporation or By-Laws, does not contravene any law or governmental rule, regulation or order applicable to it, does not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound, and each of the Lease Agreement and the Lease Supplement constitutes a legal, valid and binding agreement of the Lessee, enforceable against the Lessee in accordance with its terms.

(iii) No consent or approval of, giving notice to, registration with, or taking of any other action in respect of, any state, Federal or other governmental authority or agency is required with respect to the execution, delivery and performance by the Lessee of the Lease Agreement or the Lease Supplement or, if any such approval, notice, registration or action is required, it has been obtained.

(iv) There are no actions, suits or proceedings pending or, to the knowledge of the Lessee, threatened against or affecting the Lessee in any court or before any governmental commission, board or authority which, if adversely determined, will have a material adverse effect on the ability of the Lessee to perform its obligations under the Lease Agreement or the Lease Supplement.

Lessee, upon certification of each Lease Supplement, shall, within sixty (60) days after the Closing Date, provide Lessor with certified authorizing resolutions of the Lessee's Board of Directors (which may be a standing resolution of the Board of Directors if specific authorization of the Board of Directors is not required), and an opinion of Lessee's counsel addressed to Lessor and any Assignee of the Lessor with respect to the representations and warranties set forth in subparagraphs (i) through (iv) above and shall also supply such other documents as Lessor may reasonably request.

(b) Lessor hereby represents, warrants and covenants that, with respect to itself, the Lease Agreement and each Lease Supplement executed hereunder:

(i) The Lessor is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware is qualified to do business in each jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, and has full corporate power and authority to hold property under lease and to enter into and perform its obligations under the Lease Agreement and each Lease Supplement.

(ii) The execution, delivery and performance by the Lessor of each of the Lease Agreement and the Lease

Supplements have been duly authorized by all necessary corporate action on the part of the Lessor, and each of the Lease Agreement and the Lease Supplement is not inconsistent with the Lessor's Certificate of Incorporation or By-Laws, does not contravene any law or governmental rule, regulation or order applicable to it, does not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound, and each of the Lease Agreement and the Lease Supplement constitutes a legal, valid and binding agreement of the Lessor, enforceable against the Lessor in accordance with its terms.

(iii) No consent or approval of, giving notice to, registration with, or taking of any other action in respect of, any state, Federal or other governmental authority or agency is required with respect to the execution, delivery and performance by the Lessor of the Lease Agreement or the Lease Supplement or, if any such approval, notice, registration or action is required, it has been obtained.

(iv) There are no actions, suits or proceedings pending or, to the knowledge of the Lessor, threatened against or affecting the Lessor in any court or before any governmental commission, board or authority which, if adversely determined, will have a material adverse effect on the ability of the Lessor to perform its obligations under the Lease Agreement or the Lease Supplement.

SECTION 21. General Indemnification. The Lessee agrees to assume liability for, and does hereby agree to indemnify, protect, save and keep harmless, on an After-Tax Basis, the Lessor, any Assignee, and their respective agents, employees, officers, directors, and successors and assigns (hereinafter referred to as an "Indemnified Party") from and against any and all liabilities, obligations, losses, damages, penalties, claims (including, without limitation, claims involving strict or absolute liability in tort), actions, suits, costs, expenses and disbursements (including, without limitation, attorneys' fees and expenses) of any kind and nature whatsoever (hereinafter referred to as a "Claim") which may be imposed on, incurred by or asserted against such Indemnified Party, whether or not the Indemnified Party shall also be indemnified as to any such Claim by any other person, in any way relating to or arising out of (i) the manufacture, purchase, acceptance, rejection, ownership, delivery, lease, sublease, possession, use, operation, maintenance, condition, registration, sale, return, storage or disposition of any of the Railcars, (ii) any accident in connection therewith (including, without limitation, latent and other defects, whether or not discoverable and any Claim for patent, trademark or copyright infringement), (iii) any failure on the part of Lessee to perform or comply with any of the terms, covenants

and agreements contained in this Lease or the Operative Documents to which it is a party, (iv) the offer, issue, sale or delivery of the Note, or (v) this Lease or the Operative Documents; provided, however, that the Lessee shall not be required to indemnify any Indemnified Party for (a) any Claim in respect of any of the Railcars arising from acts or events which occur after possession of such Railcars have been redelivered to the Lessor in accordance with Section 2(c) hereof, or (b) any Claim resulting from acts which would constitute the willful misconduct or gross negligence of the Indemnified Party making claim hereunder. To the extent that any Indemnified Party in fact receives indemnification payments from the Lessee under the indemnification provisions of this Section, the Lessee shall be subrogated, to the extent of such indemnity paid, to the Indemnified Party's rights with respect to the transaction or event requiring or giving rise to such indemnity.

SECTION 22. General Tax Indemnity.

(a) Indemnity. All payments by Lessee in connection with the transactions contemplated by this Lease shall be free of withholdings of any nature whatsoever (and in the event Lessee is required to make any such payment upon which any withholding is required Lessee shall pay an additional amount such that the net amount actually received by the Lessor entitled to receive such payment will, after such withholding, equal the full amount of the payment then due) and shall be free of expense to Lessor for collection or other charges. Lessee agrees to pay promptly when due, and to indemnify and hold Lessor harmless from all license and registration fees and all levies, imposts, duties, charges, assessments or withholdings, and all sales, use, personal property and other taxes whatsoever, together with any penalties, additions to tax, fines or interest thereon, imposed on Lessor, Lessee, or the Railcars upon or with respect to (i) the Railcars (ii) the manufacture, financing, construction, purchase, sale, ownership, acquisition, acceptance, rejection, delivery, nondelivery, possession, installation, transportation, lease, sublease, condition, return, abandonment or other application or disposition of the Railcars (iii) the use, operation, maintenance or repair of the Railcars or payable pursuant to the Lease or (iv) otherwise with respect to or in connection with the transactions contemplated hereby or in the Lease.

(b) Exceptions. The provisions of this Section shall not apply to:

(i) Taxes imposed by the United States of America or any state or local government or taxing authority therein (a "Taxing Authority") which are (a) on, or measured solely

by, the net income (including minimum or alternative minimum taxes) of Lessor or (b) business license, franchise, doing business, capital stock or excess profits Taxes imposed on Lessor;

(ii) Taxes imposed by a Taxing Authority on or with respect to Lessor as a result of a voluntary sale, transfer or other disposition by such Lessor of its interest in the Railcars or in the Lease (it being understood that a sale, transfer or other disposition pursuant to the provisions of the Lease shall not be deemed to be "voluntary" while a Default with respect to Section 13(f) of the Lease or an Event of Default shall have occurred and be continuing);

(iii) Taxes imposed by a Taxing Authority on Lessor resulting from the willful misconduct or gross negligence of Lessor;

(iv) any interest, fines, penalties or additions to tax imposed on Lessor by a Taxing Authority resulting from the failure of such Lessor to file returns in a timely and proper manner unless such failure shall result from failure of Lessee to perform its obligations set forth in subsection (c); and

(v) any Taxes imposed by a Taxing Authority on or with respect to Lessor that are being contested in accordance with the provisions of subsection (d) hereof; provided however, that Lessor shall be receiving all amounts of Rent when due without reduction by reason of such Taxes.

(c) Reports. If any report or return is required to be made with respect to any obligations of Lessee under this Section or arising out of this Section, Lessee shall either make such report or return in such manner (including the making thereof in the name of Lessor) as will show the ownership of the Railcars in Lessor and send a copy of such report or return to Lessor, or shall notify Lessor of such requirement and make such report or return in such manner as shall be satisfactory to Lessor. Lessee and Lessor shall agree and set out in writing which fees, taxes, et al, are includable under this Agreement, before this Agreement is consummated.

(d) Payment; Contest. The amount that Lessee shall be required to pay to or for the account of any Lessor with respect to any Taxes that are subject to indemnification under this Section shall be paid not later than 30 days after written notice from the Lessor and shall be an amount sufficient to restore the Lessor to the same position (on an After Tax basis) the Lessor would have been in had such Taxes not been incurred or imposed. If the payment by Lessee under this Section of an amount equal to such Taxes

would be less than the amount that would be required to make such Lessor whole as a result of (i) the inclusion of any payment to be made by Lessee under this Section in the taxable income of any Lessor in one year and the deduction of the Taxes with respect to which such payment is made from the taxable income of such Lessor in a different year, other than through the failure of Lessor to claim deductions in a proper and timely manner, or (ii) the nondeductibility of such Taxes from the taxable income of such Lessor, other than through the failure of Lessor to have sufficient taxable income, or through the failure of Lessor to claim deductions in a proper and timely manner, the amount of the indemnity to be paid by Lessee shall be increased to an amount which will be sufficient to place the Lessor in the same position such Lessor would have been in had such Taxes not been imposed. All computations for purposes of the foregoing sentence shall be based on the highest marginal statutory tax rates in effect on the date or dates payment pursuant to this Section is made. If any Lessor shall determine that it has realized any net saving with respect to Taxes from any amount with respect to which Lessee shall have indemnified such Lessor pursuant to this Section (based on the assumption that such Lessor realizes savings from other sources before realizing savings from amounts indemnified by Lessee), such Lessor shall pay to Lessee the net amount of such saving together with the amount of any tax saving to such Lessor resulting from any payment pursuant to this sentence; provided, however, that the amount paid with respect to such Taxes and no amount shall be paid pursuant to this sentence while an Event of Default shall have occurred and be continuing.

(e) Contest. If Lessor shall receive a written notification from a Taxing Authority of proposed Taxes for which an amount would be payable by Lessee in accordance with this Section (a "Claim"), then such Lessor shall promptly notify Lessee of such Claim after receipt of such written notification from the applicable taxing authority. If (1) within thirty (30) days after notice by Lessor to Lessee of such Claim, Lessee requests in writing that Lessor contest such Claim, (2) Lessee shall agree in writing to indemnify Lessor, in a manner reasonably satisfactory to Lessor, for such Claims, and for any loss or expense that Lessor may incur as a result of any contest (including, without limitation, prompt payment or reimbursement of all costs, expenses, losses, legal and accounting fees and disbursements, bonding fees, penalties and interest), (3) no Event of Default shall have occurred and be continuing, (4) no appeal to the Supreme Court of the United States will be required, (5) Lessee shall have furnished Lessor with an opinion of Independent tax counsel, mutually acceptable to Lessee and Lessor, to the effect that there is a reasonable basis to contest such Claim, and (6) the aggregate amount which Lessee would be required to pay as an indemnity with

respect to such Claim, if sustained, exceeds \$15,000, then Lessor shall, at the expense of Lessee (including, without limitation, all costs, expenses and attorneys' and accountants' fees and disbursements) and in good faith, contest the validity, applicability or amount of such Claim by, in the exercise of its sole discretion, (i) resisting payment thereof, (ii) not paying the same except under protest, if protest is necessary and proper, or (iii) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings. Any contest required pursuant to the foregoing sentence shall be conducted by Lessor or Lessee in the name of Lessee, respectively; provided, however, that, in the case of such a contest by Lessee, Lessee shall first have obtained such Lessor's prior approval of the method of contest, which approval shall not be unreasonably withheld; provided further, however, that Lessee may take no action in contesting any Claim if the Lessor shall determine that such contest may result in the sale, forfeiture or loss of, or the imposition of a lien on, the Railcars, or any interest therein. If Lessor elects to contest a Claim hereunder by paying the Claim (including interest, penalties and additions to tax) and seeking a refund, Lessee shall make a non-interest bearing advance to Lessor in the amount of such paid Claim subject to indemnification under this Agreement, plus interest, additions to tax and penalties thereon, if any (and in the event that such contest is finally determined (i) adversely, the amount of such advance shall be applied against Lessee's obligation to indemnify Lessor with respect to such Claim, or (ii) favorably, the amount of such advance shall be applied against Lessee's obligation to indemnify Lessor against the cost of such contest, with the balance to be immediately refunded to Lessee). A final determination shall be deemed to occur upon (A) the receipt by Lessor of Lessee's written consent to the termination of the contest, or (B) the issuance of a final decision of the court in which such Claim was being contested and the expiration of the time for filing an appeal therefrom. Notwithstanding the foregoing, Lessor may decline to contest or permit Lessee to contest, if such Lessor agrees not to seek indemnity from Lessee with respect to the claim, or the part thereof, to be contested.

(f) Receipts. Lessee shall, at Lessor's request, furnish to Lessor certified copies of the corresponding receipts evidencing the payment of all obligations of Lessee under this Section.

SECTION 23 Conditions Precedent. The obligations of Lessor on the Closing Date to make its equity investment and borrow the loan from the Lender, and of Lessor to participate in the transactions contemplated hereby, shall

be subject to the fulfillment, on or before the Closing Date, of the following conditions precedent:

(a) Payment of Purchase Price. Lessor and Lender shall have concurrently made the full amount of its respective commitment available in accordance with the terms of the Security Agreement.

(b) Illegality. No change shall have occurred after the date of this Agreement in Applicable Law by any Governmental Authority that, as determined by Lessor in the reasonable exercise of its discretion, would make it illegal for Lessor to issue or acquire the Note or Beneficial Interest, or enter into this Lease.

(c) No Material Change to Code. No amendment, modification, addition or change shall have been made in or to the Code, regulations under the Code, published Internal Revenue Service Revenue Procedures, Revenue Rulings or other administrative interpretations or applicable judicial precedents that, in the opinion of Lessor, would render invalid any of the assumptions set forth in the Tax Indemnity Agreement.

(d) No Default. No Default or Event of Default shall have occurred and be continuing on the Closing Date.

(e) Representations True and Correct. Each representation and warranty contained in this Lease or in any other Operative Agreement shall be true and correct.

(f) Other Documents. Lessor shall have received such other documents and assurances, and such other conditions shall have been satisfied, as Lessor may reasonably request.

(g) Operative Documents. Lessor shall have received:

(1) the following documents (in form and substance reasonably satisfactory to Lessor) duly executed and delivered by the party or parties thereto, which documents shall be in full force and effect on the Closing Date:

- (A) the Warranty Bill of Sale;
- (B) this Lease (the chattel paper original of which shall be delivered only to the Lender);
- (C) the Security Agreement;
- (D) the Note (the original of which shall be delivered to Lender);
- (E) the Tax Indemnity Agreement;
- (F) the Lease Supplement;
- (G) the Purchase Agreement Assignment;

- (H) an invoice to the Borrower from the Manufacturer;
- (I) the Appraisal; and
- (J) the Consent to Assignment and Agreement.

(2) a certificate of the secretary or assistant secretary of Lessee as to the authenticity of the charter and bylaws of Lessee, as to the incumbency and the authenticity of the specimen signatures of the officers of Lessee executing documents in connection herewith;

(3) a certificate of Lessee to the effect that the representations and warranties of Lessee set forth in Section 20 of this Agreement are true and correct in all respects on and as of the Closing Date and that Lessee has satisfied or complied with all requirements set forth in this Agreement, the Lease and the other Operative Agreements to which it is a party to be satisfied or complied with by it on or prior to the Closing Date, dated as of the Closing Date;

(4) a certificate of Lessee's insurance brokers or brokers as to compliance by Lessee with the insurance requirements contained in this Lease, dated as of the Closing Date, and stating that such insurance complies fully with the terms of Section 10 hereof, is in full force and effect and that all premiums due and payable with respect thereto have been paid in full;

(5) an invoice from the Supplier of the Railcars dated on or before the Closing Date with respect to the Railcars;

(6) the Warranty Bill of Sale, dated the Closing Date, with respect to the Railcars naming Lessor as purchaser;

(7) a Lease Supplement, in substantially the form thereof attached as Exhibit A hereto, with respect to the Railcars, dated the Closing Date and completed as contemplated by this Lease and the Lease, duly executed by Lessee, and confirmation that the Lender has received the copy of the Lease and the Lease Supplement marked "Original";

(8) an appraisal from Independent Equipment Company (the "Appraisal") with respect to the Railcars to the effect that (A) the Railcars (1) has an economic useful life equal to at least 125% of the Basic Term, (2) will have a value equal to at least 20% of total Equipment Cost at the end of the Basic Term (without regard to inflation or deflation), (3) has a fair market value at least equal to the Equipment Cost, and (4) will have a fair market value

not greater than the Early Purchase Option Price on the Early Purchase Option Date, (B) the Railcars are not "limited use" property (as defined in IRS Revenue Procedure 76-30, 1976-2 C.B. 647), and (C) no additions or modifications are necessary for the Railcars to be suitable for its intended use;

(9) all other filings, recordings or other actions reasonably specified by counsel for Lessor or Lender as being necessary or advisable to perfect or protect the interests granted to Lessor or Lender pursuant to any of the Operative Agreements shall have been duly effected and all filing and recording fees in respect thereof shall have been paid;

(10) the following opinions of counsel, dated as of the Closing Date: (A) an opinion of counsel to the Lessee, addressed to and in form and substance satisfactory to Lender and Lessor, (B) an opinion of counsel to Lessor, addressed to and in form and substance satisfactory to the Lender and Lessee, and (C) an opinion of special ICC counsel to Lessor, addressed to and in form and substance satisfactory to Lessor, Indenture Trustee, Lender and Lessor; and

(11) all taxes, if any, payable by Lessee in connection with the execution and delivery of the Operative Agreement, and with respect to the issuance, sale and delivery of the Note, and all sales taxes, if any, in connection with the transactions contemplated hereby, shall have been paid in full.

SECTION 24. Miscellaneous. (a) Amendments. The terms of this Lease shall not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by the party or parties to be charged.

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

(c) Counterparts. This Lease may be executed by the parties hereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument. If Lessor grants a security interest in all or any part of a Lease Supplement, the Railcars covered thereby and/or sums payable thereunder, only that counterpart Lease Supplement marked "Secured Party's Original" held by the Assignee, shall be effective to transfer Lessor's rights therein and all other counterparts

shall be marked "Duplicate" to indicate that they are not the "Secured Party's Original".

(d) Severability of Provisions. Any provision of this Lease which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

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

(f) Lessor and Lessee acknowledge that there are no agreements or understandings, written or oral, between Lessor and Lessee with respect to the Railcars, other than as set forth herein and in each Lease Supplement and that this Lease and each Lease Supplement contains the entire agreement between Lessor and Lessee with respect thereto. Neither this Lease nor any Lease Supplement may be altered, modified, terminated or discharged except by a writing signed by the party against whom such alteration, modification, termination or discharge is sought.

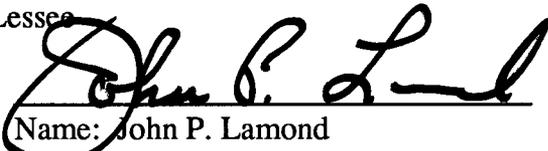
(g) No omission, or delay, by Lessor at any time to enforce any right or remedy reserved to it, or to require performance of any of the terms, covenants or provisions hereof by Lessee at any time designated, shall be a waiver of any such right or remedy to which Lessor is entitled, nor shall it in any way affect the right of Lessor to enforce such provisions thereafter.

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

KEYCORP LEASING LTD.,
as Lessor

By: _____
Name: Frederick E. Wolfert
Title: Executive Vice President

WESTMORELAND COAL COMPANY,
as Lessee

By: 
Name: John P. Lamond
Title: Vice President and Treasurer

STATE OF PENNSYLVANIA)

COUNTY OF Philadelphia) ss.:

On this 27th day of December, 1991, before me personally appeared John P. Lamond, to me personally known, who being by me duly sworn, says that he is Vice President and Treasurer of Westmoreland Coal Company, that said instrument was signed on behalf of said corporation, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Mayra B Gomez
Notary Public

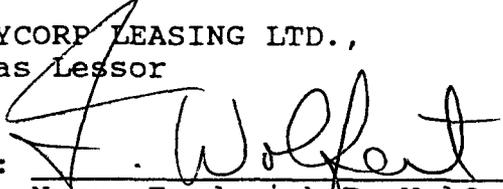
My Commission Expires:

[Notary Seal]

NOTARIAL SEAL
MAYRA B GOMEZ NOTARY PUBLIC
PHILADELPHIA, PHILADELPHIA COUNTY
MY COMMISSION EXPIRES MAR 13, 1994
Member Pennsylvania Association of Notaries

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

KEYCORP LEASING LTD.,
as Lessor

By: 

Name: Frederick E. Wolfert
Title: Executive Vice
President

WESTMORELAND COAL COMPANY,
as Lessee

By: _____

Name: John P. Lamond
Title: Vice Preident and
Treasurer

STATE OF NEW YORK)
 : ss.:
COUNTY OF ALBANY)

On this 26th day of December, 1991, before me personally appeared Frederick E. Wolfert, to me personally known, who being by me duly sworn, say that he is Executive Vice President of Keycorp Leasing Ltd., that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Patricia M Norwood
Notary Public

My Commission Expires:

[Notary Seal]

PATRICIA M NORWOOD
Notary Public, State of New York
Qualified in Rensselaer County
Commission Expires June 23, 19...92

STATE OF PENNSYLVANIA)
 : ss.:
COUNTY OF _____)

On this ____ day of December, 1991, before me personally appeared John P. Lamond, to me personally known, who being by me duly sworn, says that he is Vice President and Treasurer of Westmoreland Coal Company, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

My Commission Expires:

[Notary Seal]

**EXHIBIT A
FORM OF LEASE SUPPLEMENT**

LEASE SUPPLEMENT NO. 1

Dated December 27, 1991

Between

KEYCORP LEASING LTD.

as Lessor

and

WESTMORELAND COAL COMPANY

as Lessee

with respect to

OPEN TOP COAL HOPPER RAILCARS

FILED WITH THE INTERSTATE COMMERCE COMMISSION
PURSUANT TO 49 U.S.C. (11303

ON December __, 19__

AT __:__ A.M.

RECORDATION NUMBER _____

THIS LEASE SUPPLEMENT dated December 27, 1991 between Keycorp Leasing Ltd. ("Lessor") and Westmoreland Coal Company ("Lessee").

W I T N E S S E T H :

WHEREAS, Lessor and Lessee have heretofore entered into a Lease Agreement (the "Lease") dated as of the date hereof;

WHEREAS, the Lease provides that, on the Closing Date, Seller shall deliver to Lessor a Bill of Sale dated such date, pursuant to which Seller shall transfer, convey, assign, set over, sell and deliver to Lessor the Railcars, and said Bill of Sale has been delivered by Seller and accepted by Lessor on such Closing Date;

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

WHEREAS, capitalized terms used herein without definitions shall have the respective meanings set forth in the Lease;

NOW, THEREFORE, in consideration of the premises and for good and sufficient consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee hereby agree as follows:

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

2. Lessee hereby confirms to Lessor that Lessee has accepted such Railcars for all purposes hereof and of the Lease as being in accordance with all applicable mechanical specifications for such Railcars and in good working order.

3. The aggregate Lessor's Cost of the Railcars leased hereunder and the Lessor's Cost of each Railcar leased hereunder are set forth on Schedule 1. The Stipulated Loss Values set forth on Schedule 2 hereto shall be applicable in respect of the Railcars leased hereunder on the date hereof.

4. Lessee hereby confirms its agreement, in accordance with the Lease as supplemented by this Lease Supplement, to pay Basic Rent to Lessor (or to such Assignee as shall have been identified to Lessee) for each Railcar leased hereunder as provided for in the Lease.

5. All of the provisions of the Lease are hereby incorporated by reference in this Lease Supplement to the same extent as if fully set forth herein.

6. This Lease Supplement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

7. This Lease Supplement is being delivered in the State of New York and shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance.

SCHEDULE 1

SCHEDULE OF RAILCARS TO BE DELIVERED

Open Top Coal Hopper RailCars

Quantity Units	Serial Numbers	Lessor's Cost Per Unit	Aggregate Lessor's of Cost
95	See Attachment 1	\$41,348.64	\$3,928,120.80

Attachment 1

Identification Numbers of Railcars

WCCX 10001-10095