

8075-^B
RECORDATION NO. Filed & Recorded

OCT/10 1975-9 85 AM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of July 31, 1975

between

**CONTINENTAL ILLINOIS NATIONAL BANK AND
TRUST COMPANY OF CHICAGO, not in its
individual capacity but solely as Trustee
under a Trust Agreement dated as of the
date hereof,**

and

PLM-DELMARVA, INC.

LEASE OF RAILROAD EQUIPMENT dated as of July 31, 1975 (hereinafter called this Lease), between CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association (hereinafter called the Lessor), not in its individual capacity but solely as Trustee under a Trust Agreement dated as of the date hereof with International Paper Equipment Leasing Corporation, a Delaware corporation (hereinafter called the Beneficiary) and PLM-DELMARVA, INC., a California corporation (hereinafter called the Lessee).

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof with Pullman Incorporated (Pullman-Standard division), (hereinafter called the Builder), (such agreement being hereinafter called the Security Documentation), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (hereinafter called the Equipment);

WHEREAS, pursuant to an Agreement and Assignment dated as of the date hereof, the Builder is assigning its interests in the Security Documentation to Lincoln National Bank & Trust Co. of Ft. Wayne, a national banking association, acting as agent (said Bank, as so acting, being hereinafter together with its successors and assigns called the Vendor) under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) among the Lessee, the Lessor, the Beneficiary, the Vendor, Professional Lease Management, Inc. (hereinafter called PLM), Delmarva Power & Light Company (hereinafter called the Sublessee) and The Lincoln National Life Insurance Company; and

WHEREAS the Lessee desires to lease such number of units of the Equipment as are delivered and accepted and settled for under the Security Documentation (hereinafter called the Units) at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Documentation, including the Lessee's right by subrogation thereunder, or the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives 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 the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Documentation. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Security Documentation. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance (hereinafter called the Certificate of Accep-

tance) in accordance with the provisions of Article 3 of the Security Documentation, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the Security Documentation pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 31 consecutive semiannual payments payable on January 15 and July 15 of each year commencing January 15, 1976. The rental payment payable on January 15, 1976, shall be in an amount equal to 0.0302% of the Purchase Price (as defined in Article 4 of the Security Documentation) of each Unit then subject to this Lease for each day elapsed from and including the Closing Date to January 15, 1976. The next 30 rental payments shall each be in an amount equal to 5.4372% of the Purchase Price of each Unit then subject to this Lease.

The rental payments hereinbefore set forth are subject to adjustment pursuant to § 9 and § 16 hereof.

If any of the semiannual rental payment dates referred to above is not a business day the semiannual rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, or Fort Wayne, Indiana, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the Security Documentation, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in

the Security Documentation could constitute an event of default under the Security Documentation, this Lease or the Sublease shall have occurred and be continuing, to pay the balance in accordance with the provisions of the second paragraph of Paragraph 9 of the Participation Agreement. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Federal or other funds immediately available to the Vendor.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 9 and 14 hereof) shall survive the expiration of the term of this Lease.

All rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the Security Documentation; provided, however, that the Lessee shall be entitled to possession and use of the Units in accordance with the second paragraph of § 12 hereof.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the road number set forth in Schedule A hereto, or in the case of any Unit not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and of the rights of the Vendor under the Security Documentation. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new

number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect. The Units may be lettered with the names or initials or other insignia customarily used by the Sub-lessee or its affiliates.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of net expense (after giving effect to Federal, state and local income tax benefits accruing to the Lessor) to the Lessor for collection or other charges and will be free of net expense (after giving effect to Federal, state and local income tax benefits accruing to the Lessor) to the Lessor with respect to the amount of any local, state, federal, or foreign taxes (other than any United States federal income tax payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes based on such receipts which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documentation, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof

and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title or the interest of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the Security Documentation. The Lessee agrees to give the Lessor notice of such contest within 30 days after institution thereof and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative provision of the Security Documentation not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any returns, statements or reports with respect to impositions are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Vendor in such Units; provided, however, that the Lessor shall, with respect to any state or political subdivision thereof of the United States of America, file required returns, statements, and reports relating to sales or use taxes, and taxes, fees, and charges on or measured by Lessor's earnings or gross receipts arising from the Units, or the value added by the Lessor thereto, and remit the amount thereof and the Lessee shall reimburse the Lessor promptly upon demand for the amount of such taxes, fees and charges.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this

Lease, until all such impositions are paid or reimbursed by the Lessee.

To the extent the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in its own name and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

§ 7. Maintenance; Casualty Occurrences; Insurance.
The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good operating order, repair and condition, reasonable wear and tear excepted.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of this Lease or for an indefinite period, or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the January 15 or July 15 next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below.

Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 20% of the Purchase Price of such Unit. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition for use by the United States Government or any agency thereof (hereinafter called the Government) of any Unit during the term of this Lease or any renewal thereof for a stated period not in excess of the then remaining term of this Lease or any renewal thereof, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of

the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease or any renewal thereof, but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease or any renewal thereof, shall be paid over to, or retained by, the Lessor.

In the event that the Lessee shall in good faith reasonably determine that the Units have become economically obsolete in the Lessee's business during the original term of this Lease, the Lessee shall have the right at its option, on at least 60 days' prior written notice to the Lessor, to terminate (subject to the provisions for the survival of obligations contained herein) this Lease in respect of any or all Units then covered by this Lease on the first rental payment date following the expiration of such notice period (for the purpose of this § 7 called the "termination date"); provided, however, that (i) the termination date shall be not earlier than January 15, 1983, (ii) no Event of Default (or other event which after lapse of time or notice or both would become an Event of Default) shall have occurred and be continuing, (iii) on the termination date such Units shall be in the same condition as if being redelivered pursuant to § 14 hereof, and (iv) the Lessee shall have delivered to the Lessor a certificate signed by its Chairman of the Board, its President or one of its Vice Presidents to the effect that such Units are economically obsolete in the Lessee's business. Upon the giving of such notice to terminate, the Lessee shall (subject to the right of the Lessor to elect to retain the Units as provided below), during the period from the giving of such notice until the fifth business day preceding the termination date, use its best efforts to obtain bids for the purchase of such Units, and the Lessee shall at least 5 business days prior to such termination date certify to the Lessor the amount of each such bid and the name and address of the party (which shall not be a corporation or individual affiliated with the Lessee or any party from whom the Lessee

or any such affiliate intends thereafter to lease such Units) submitting such bid. On or before the termination date the Lessor shall, subject to the Lessee's obtaining, on behalf of the Lessor, any governmental consents required, sell such Units for cash to the bidder who shall have submitted the highest bid prior to the termination date. The total sales price realized at such sale shall be paid to the Lessor in immediately available funds on the termination date and, in addition, on the termination date the Lessee shall pay to the Lessor the excess, if any, of the Termination Value (as hereinafter defined) in respect of such Units, computed as of the termination date, over the net sales price of such Units after deducting from such sales price any and all costs and expenses whatsoever incurred by the Lessor in connection with such sale. If no sale shall occur on the date scheduled therefor as above provided, this Lease shall continue in full force and effect without change. In the event of such sale and the receipt by the Lessor of the amounts above described, the obligation of the Lessee to pay rent pursuant to § 3 hereof in respect of such Units on each rental payment date shall continue to and including the termination date but shall then terminate. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale pursuant to this § 7, other than to transfer or to cause to be transferred to the purchaser named in the highest bid certified by the Lessee to the Lessor as above provided all of the Lessor's right, title and interest in and to such Units. Any sale pursuant to this § 7 shall be free and clear of all of the Lessee's rights to such Units, but otherwise shall be made without warranties other than against the Lessor's acts.

If the Lessee shall exercise its option to terminate under this § 7, the Lessor may, notwithstanding such election by the Lessee, elect to retain the Units then subject to this Lease and to credit to the Lessee an amount equal to the then Fair Market Value (as defined in § 13 hereof) of such Units, the Lessor being solely entitled to retain the whole of such credit. In the event the Lessor shall so elect to retain the Units, the Lessee shall assemble and deliver the Units to the Lessor in accordance with the provisions of § 14 hereof.

The Termination Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule C hereto opposite

such rental payment date.

The Lessee will, at all times prior to the return of the Equipment to the Lessor, at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by the Sublessee in respect of similar equipment owned by it and in any event comparable to such insurance typically carried by railroad companies in respect of similar equipment, and the benefits thereof shall be payable to the Vendor, the Lessor and the Lessee, as their interests may appear, so long as the indebtedness, if any, evidenced by the Security Documentation shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

It is hereby acknowledged and recognized that the Lessee, as lessor under the Sublease, has granted and passed through to the Sublessee the option to terminate the Sublease with respect to any or all the Units during the original term of the Sublease upon the determination by the Sublessee that such Units have become economically obsolete and the Lessor hereby consents to said termination provisions of the Sublease and the Lessee hereby consents to the simultaneous termination of this Lease upon such termination by the Sublessee of the Sublease pursuant to § 13 of the Sublease.

§ 8. Reports. On or before March 31 in each year, commencing with the calendar year 1976, the Lessee will furnish to the Lessor, the Vendor and the Beneficiary an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documentation, the amount, description and numbers of all Units that

have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by Article 9 of the Security Documentation have been preserved or replaced. The Lessor shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A of the Security Documentation; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages;

or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal thereof, such laws or rules require any alteration, replacement or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documentation.

The Lessee agrees to indemnify, protect and hold harmless the Lessor, the Vendor and PLM from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default under the Security Documentation, the Participation Agreement or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease or the transfer of title to the Equipment by the Vendor

pursuant to any provision of the Security Documentation. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any amount provided for in §§ 3, 7 or 13 hereof, and such default shall continue for five days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

C. the Lessee shall carry out or become engaged in any other course of business other than to fulfill its obligations under this Lease, and the Participation Agreement or incurs additional debt or in any other way breaches its representations and warranties set forth in § 18 hereof;

D. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement, and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

E. any proceeding shall be commenced by or against the Lessee for any relief which includes or might result in any modification of the obligations of the Lessee

hereunder including the filing by the Lessee of a petition in voluntary bankruptcy under any of the provisions of any bankruptcy law; or the consenting by the Lessee to the filing of any bankruptcy or reorganization petition against it under any such law; or the filing by the Lessee of a petition to reorganize the Lessee pursuant to the Bankruptcy Act or any other similar statute; or the making by the Lessee of an assignment for the benefit of creditors; or the admitting in writing by the Lessee of its inability to pay its debts generally as they become due; or the consenting by the Lessee to the appointment of a receiver, trustee, liquidator or other similar official of it or of any substantial part of its property, and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

F. an event of default set forth in Article 15 of the Security Documentation shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder; or

G. an Event of Default shall have occurred under the Sublease, or the Lessee shall have breached any of its obligations under the Sublease;

H. the Sublease shall for any reason be terminated prior to January 16, 1991, without the consent of the Vendor;

then, in any such case, if the Sublease is then in effect, immediately and automatically and without any further action or consents (i) this Lease shall be terminated, (ii) the

participation of the Lessee as lessor under the Sublease shall be terminated and (iii) the Lessor shall be substituted for the Lessee, for all purposes, as the lessor under the Sublease. If the Sublease is not then in effect, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor, subject to the applicable provisions of law, may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee with respect to such action or inaction for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor in its sole discretion, shall specify in such notice of termination: (x) a sum equal, with respect to each Unit, to (A) the excess, if any, of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value

of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, plus (B) an amount which, after deduction of all taxes required to be paid by the Beneficiary in respect of all amounts payable by the Lessee to the Lessor hereunder, under the laws of any Federal, state or local government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall, in the reasonable opinion of the Beneficiary, be equal to all or such portion of the Investment Credit (as defined in § 16 hereof) lost, not claimed, not available for claim, disallowed or recaptured by or from the Beneficiary as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 16 or any other provision of this Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as shall cause the Beneficiary's net return under this Lease to be equal to the net return that would have been available to the Beneficiary if it had been entitled to utilization of all or such portion of the ADR Deduction and the Interest Deduction (as such deductions are defined in § 16 hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of Units as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 16 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessee or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default plus such sum as will pay or reimburse the Beneficiary for any interest, penalties or additions to tax incurred in connection with such loss, failure to claim, inability to claim, disallowance or recapture; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination specified for payment

in such notice of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this subparagraph (ii) with respect to such Unit, may, if it shall so elect, demand that the Lessee shall pay to the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination specified for payment in such notice of termination, over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted to it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. Return of Units Upon Default. If this

Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner place such Units upon such storage tracks of the Sublessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any reasonable place, as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of expiration of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such expiration, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the per diem interchange for such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

Without in any way limiting the obligation of

the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment, Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 9, 10, 11 and 16 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the Vendor).

So long as the Lessee shall not be in default under this Lease and the Sublessee is not in default under the Sublease and the Lessee has not breached any of its obligations under the Sublease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Lessor and the Vendor, which shall not be unreasonably withheld, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them, except pursuant to the Sublease. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease and the Sublessee shall not be in default under the Sublease, the Lessee shall be entitled to the possession

of the Units in accordance with the terms hereof and to the use of the Units by it upon trackage owned or operated by it or the Sublessee or upon lines of railroad owned or operated by a railroad company or companies incorporated in the United States of America or over which such railroad company or companies have trackage or other operating rights or over which railroad equipment of such railroad company or companies is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease and the Security Documentation; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Participation Agreement and the Consent (as defined in the Security Documentation) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that the net worth of the assignee or transferee shall not be less than the net worth of the Lessee, and provided further that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

§ 13. Purchase and Renewal Options. It is hereby acknowledged and recognized that the Lessee, as lessor under the Sublease, has granted and passed through to the Sublessee the option to purchase the Units or renew the Sublease. The Lessor hereby consents to the said option provisions of the Sublease, subject to the provisions of this Lease and subject, further, to the understanding that in the event Sublessee shall exercise its purchase option under the Sublease, all payments to be made by Sublessee pursuant thereto are hereby irrevocably assigned to Lessor and shall be paid directly to Lessor.

If this Lease has not been earlier terminated, the Lessee is not in default hereunder and the Sublessee is not in default under the Sublease or the Security Documentation, the Lessee may, subject to the prior purchase and renewal rights of the Sublessee under the first paragraph of Section 13 of the Sublease, by written notice delivered to the Lessor not less than five months prior to the end of the original term of this Lease, elect to purchase all, but not fewer than all, the Units covered by this Lease at the end of the original term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would be obtained in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If, after 60 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Value of the Units within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an

appraiser, the determination of Fair Market Value of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto as the Fair Market Value. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

If upon the expiration of any extended term of the Sublease the Sublessee does not exercise its option to purchase the Units, the Lessor shall promptly give written notice thereof to the Lessee which then may, by written notice delivered to the Lessor within 30 days from date of Lessor's notice to Lessee, elect to purchase such Units for a purchase price equal to the fair market value of such Units (plus all applicable taxes and transfer fees) at that time as determined by an arm's-length negotiation by Lessee and the Lessor; provided, however, that the option of Lessee hereunder shall be conditioned upon Lessee's representation and warranty that none of the Units so purchased shall, either directly or indirectly, be re-leased or resold to Sublessee, such representation and warranty to be deemed made by Lessee's exercise of its option hereunder and such representation and warranty being material in inducing Lessor to grant to Lessee the within option. In the event of breach by Lessee of its said representation and warranty Lessee shall pay to Lessor upon demand, a further amount equal to 100% of the purchase price of the Units. If after 20 days subsequent to Lessee's exercise of its option to purchase pursuant to this paragraph, Lessee and the Lessor are unable to agree upon the purchase price, the purchase price shall be determined by an independent expert selected by Lessor. If Lessee shall not accept the determination by such expert, Lessee shall itself select a second independent expert and agreement by the two experts on the amount of the purchase price shall be binding upon the parties. If the two experts shall fail to agree, they shall select an independent third expert whose determination shall be binding. The determina-

tions by the experts, in sequence, if such be the case, shall be made within 20 days after their respective appointments. The costs and fees of all experts shall be borne by Lessee.

Lessee's option pursuant to this paragraph may be assigned by Lessee to its parent company, PLM, subject to all the provisions hereof and the Sublease and provided that PLM also by the exercise of the option, if assigned to it, makes the representation and warranty herein set forth and assumes the obligations of Lessee by reason of such option, without releasing Lessee from such obligations.

Upon payment of the purchase price of any Unit, the Lessor shall upon request of the purchaser execute and deliver to the Lessee, or to the purchaser's assignee or nominee, a bill of sale (without warranties) for such Unit such as will transfer to the purchaser such title to such Unit as the Lessor derived from the Vendor, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

§ 14. Return of Units upon Expiration of Term.
As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit not purchased by the Lessee, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Sublessee as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding six months from the date of expiration of this Lease and transport the same, at any time within such six-month period, to any reasonable place, as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. If any Unit shall suffer a Casualty Occurrence as defined in § 7 hereof during such storage period, the Lessee shall pay to the Vendee the Casualty Value for such Unit as set forth in Schedule B hereto. All amounts earned in respect of the Units after the date of expiration of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such expiration, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the per diem interchange for such Unit for each such day exceeds

the actual earnings received by the Lessor on such Unit for each such day. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, lessee or user, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the Sublease, the Security Documentation and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Documentation and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Sublease, the Security Documentation and the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and

the Lessor. This Lease, the Sublease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16. (A) Federal Income Taxes. It is the intent of the parties to the Lease that the Lease be recognized as a lease for federal, state and local income tax purposes, that the Lease does not convey to the Lessee any right, title or interest in the Units except as a lessee and that the Beneficiary, as the beneficial owner of the Units for Federal income tax purposes, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including, without limitation, (a) the maximum depreciation deduction with respect to the Units authorized under section 167 of the Code based on the aggregate Purchase Price of the Units utilizing the 12-year depreciable life prescribed for the Units in the Asset Guideline Class No. 00.25 in accordance with section 167(m) of the Code, employing the double-declining method of depreciation, and switching to the sum-of-the-years digits method when most beneficial to the Beneficiary utilizing the half-year convention as provided in Reg. Sec. 1.167(a)11(c)2(iii) and without taking into account the salvage value of the Units until the Units have been depreciated to a salvage value of zero (such zero salvage value being based upon an estimated gross salvage value of 10% of the Purchase Price of the Units which shall be reduced by 10% of the Purchase Price as provided in section 1.67(f) of the Code) (such deduction being herein called the ADR Deduction) (b) deductions with respect to interest payable under the Security Documentation pursuant to section 163 of the Code (such deduction being herein called the Interest Deduction), and (c) the 10% investment credit in 1975 (herein called the Investment Credit) with respect to the aggregate Purchase Price of the Units pursuant to section 38 and related sections of the Code.

For purposes of this § 16, the term "Beneficiary" shall include any affiliated group, within the meaning of section 1504 of the Code, of which the Beneficiary is a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common con-

trol with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by the Beneficiary over the amount specified to be payable under this Lease or the Sublease on the dates due hereunder, except as specifically provided in this Lease or the Sublease, and that each of such corporations will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Beneficiary such records as will enable the Beneficiary to determine the extent to which it is entitled to the benefit of the Investment Credit and the ADR Deduction with respect to the Units.

The Lessee represents and warrants that (i) all the Units constitute property the full Purchase Price of which qualifies for the Investment Credit under section 50 of the Code; (ii) at the time the Beneficiary becomes the beneficial owner of the Units for Federal income tax purposes, the Units will constitute "new section 38 property" within the meaning of section 48 of the Code and at the time the Beneficiary becomes the beneficial owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code from commencing with the Beneficiary; (iii) at all times during the term of this Lease and the Sublease, each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code, and the Lessee will not at any time during the term of this Lease and the Sublease use or fail to use any Unit in such a way as to disqualify it as "section 38 property" within the meaning of section 48(a) of the Code; (iv) for Federal income tax purposes, all amounts includible in the gross income of the Beneficiary with respect to the Units and all deductions allowable to the Beneficiary with respect to the Units will be treated as derived from, or allocable to, sources within the United States; (v) the Beneficiary will be entitled to the ADR Deduction; (vi) the Beneficiary will be entitled to a 10% Investment Credit in 1975 with respect to the Purchase Price of the Units; (vii) the Lessee will maintain sufficient records to verify such use, which records will be furnished to the Beneficiary within 30 days after receipt of a written demand therefor.

If for any reason the Beneficiary shall lose,

or shall not have, or shall lose the right to claim, or shall suffer a disallowance of or shall be required to recapture (any such event being hereinafter called a Loss), all or any portion of the Investment Credit, the ADR Deduction, or the Interest Deduction with respect to all or part of any Unit, or if for Federal income tax purposes any item of income, loss or deduction with respect to any Unit is treated as derived from, or allocable to, sources without the United States under the Code (any such loss, disallowance, recapture or treatment being hereinafter called a Loss), then the rentals for the Units set forth in § 3 hereof shall, on the next succeeding rental payment date after written notice to the Lessee by the Lessor of such fact, be increased to such amount or amounts as shall, in the reasonable opinion of the Beneficiary, cause the Beneficiary's net return to equal the net return that would have been realized by the Beneficiary if such Loss had not occurred, and the Lessee shall forthwith pay to the Beneficiary as additional rental the amount of any interest and/or penalties which may be assessed by the United States of America against the Beneficiary attributable to such Loss; provided, however, that such rental rate shall not be so increased if the Beneficiary shall have suffered such Loss with respect to all or part of such Unit as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 7 hereof;

(ii) a voluntary transfer or other voluntary disposition by the Lessor or the Beneficiary of any interest in such Unit or the voluntary reduction by the Lessor or the Beneficiary of its interest in the rentals from such Unit under the Lease (other than pursuant to the Assignment of this Lease to the Vendor), unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the failure of the Beneficiary to claim in a timely manner the Investment Credit, the ADR Deduction or the Interest Deduction; or

(iv) the failure of the Beneficiary to have sufficient liability for Federal income tax against which to credit such Investment Credit or sufficient income to benefit from the ADR Deduction or the Interest Deduction, as applicable.

In the event the rental rates shall be adjusted as hereinbefore provided in this § 16, the Casualty Values set forth in Schedule B hereto, the Termination Values set forth in Schedule C hereto and the damages and amounts set forth in subparagraph (b) of § 10 hereof shall be adjusted accordingly.

(B) Burdensome Tax Indemnification. 1. In the event the Lessee shall become obligated to make any payment pursuant to § 16(A) hereof, and in the event that after giving effect to the provisions of said § 16(A) the total of the rentals paid and payable by the Lessee for the entire initial term of the Lease shall be at least 19% greater than the total rentals paid and payable by the Lessee for the entire initial term of the Lease before giving effect to the provisions of § 16(A), then, and in such event, and provided the Lessee is not in breach or default of this Lease, the Lessee, by written notice to the Lessor given within 15 days after the Lessor's notice to the Lessee that payments pursuant to § 16(A) are required, may:

(a) elect to purchase all but not less than all of the Units then subject to this Lease for an amount equal to their then Fair Market Value,* plus any additional amounts payable pursuant to paragraph 3 of this § 16(B), such purchase price to be paid by certified check or wire with immediately available funds where designated by the Lessor, upon at least 6 days' advance notice and within 30 days after the date of the Lessee's notice of election hereunder; or

(b) elect to terminate this Lease in which event the Units then subject to this Lease shall be sold for the best price obtainable at the cost and expense of the Lessee. Upon giving such notice to terminate pursuant to this subparagraph (b), the Lessee shall use its best efforts to obtain bids for the purchase of such Units, and the Lessee shall within 90 business days from the date of the Lessee's notice to terminate certify to the Lessor the amount of each such bid and the name and address of the party (which shall not be a corporation or individual affiliated with the Lessee or any party from whom the Lessee or any affiliate intends thereafter to lease such Units) submitting such bid. On or before the ninetieth day after the giving of the

* The term Fair Market Value as used in this § 16(B) shall have the meaning ascribed to it in § 13 hereof.

Lessee's notice to terminate, the Lessor shall, subject to the Lessee's obtaining on behalf of the Lessor any governmental consents required, sell such Units for cash to the bidder who shall have submitted the highest bid prior to such sale date. The total sales price realized upon such sale shall be paid to the Lessor in immediately available funds on such sale date and, if the net proceeds of such sale shall be less than the then Fair Market Value of the Units, the Lessee shall, in addition, pay to the Lessor on such sale date the difference between the net proceeds of the sale and such Fair Market Value; and in addition thereto and notwithstanding the amount of such proceeds, the Lessee shall pay to the Lessor any additional amount payable pursuant to paragraph 3 of this § 16(B). If no such sale shall occur on the date scheduled therefor as above provided, the Lessee shall purchase the Units pursuant to § 16(B)1(a) above. In the event of such sale and the receipt by the Lessor of the amounts above described, the obligation of the Lessee to pay rent pursuant to § 3 hereof in respect of the Units shall terminate in accordance with subparagraph 3(b) below. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or to otherwise take any action or incur any cost or expense in connection with any sale pursuant to this § 16(B)1(b), other than to transfer or to cause to be transferred to the purchaser named in the highest bid certified by the Lessee to the Lessor as above provided of all the Lessor's right, title and interest in and to such Units. Any sale pursuant to this § 16(B)1(b) shall be free and clear of all the Lessee's rights to such Units, but otherwise shall be made without warranties other than against the Lessor's acts.

2. If the Lessee shall exercise its option to terminate under § 16(B)1(b) above, the Lessor may, notwithstanding such election by the Lessee, elect to retain the Units then subject to this Lease and to credit to the Lessee an amount equal to the then Fair Market Value of such Units (the Lessor being solely entitled to retain the whole of such credit), and the Lessee, in addition thereto, shall pay to Lessor any additional amount payable pursuant to paragraph 3 of this § 16(B). In the event the Lessor shall so elect to retain the Units, the Lessee shall assemble and deliver the Units to the Lessor in accordance with the provisions of § 14 hereof.

3. The Lessee, in addition to the amounts specified in paragraphs 1(a), (b) and 2 of this § 16(B), shall pay to the Lessor upon demand the sum of:

(a) all amounts due, owing or otherwise payable under and pursuant to the provisions of this Lease, the Security Documentation, the Participation Agreement and any other obligation of the Lessee to the Lessor;

(b) rent for the Units then subject to this Lease which shall run to the date of payment to the Lessor of the proceeds of the sale under paragraphs 1(a) or (b) of this § 16(B), or, for such Units assembled and held pursuant to paragraph 2 of this § 16(B), ratably, until such Units are removed by the Lessor, as the case may be, such rent to be all the rental payments payable under § 3 hereof on regular rent payment dates prior to payment to the Lessor of the sale proceeds under paragraphs 1(a) or (b) above or removal by the Lessor of the final Units assembled and held pursuant to paragraph 2 above, as the case may be, and the ratable amount of such rent incurred during the period between the last such rental payment date and the payment of such proceeds to the Lessor or the removal of the Units by the Lessor, as the case may be, shall be paid to the Lessor on the date of the sale under paragraph 1(a) or (b) above or the removal by the Lessor of the Units assembled pursuant to paragraph 2 above.

(c) the Lessor's reasonable costs and disbursements, including but not limited to, reasonable counsel fees and disbursements, incurred by reason of and incident to, conveyance and transfer of title to the Units; and

(d) the amount, if any, which when added to the Fair Market Value of the Units shall, in the reasonable opinion of the Beneficiary, be necessary to cause the Beneficiary's net return under this Lease to be not less than the net return hereunder originally contemplated by the Beneficiary with due regard and computed for the period of this Lease ending on its termination pursuant to § 16(B).

4. Any sale and conveyance of title under paragraph 1(a) or (b) above shall be AS IS, WHERE IS, without representation or warranty of any kind, including but not limited to, warranty of merchantability and fitness for purpose.

5. It is hereby acknowledged and recognized that the Lessee, as lessor under the Sublease, has granted and passed

through to the Sublessee the option to terminate the Sublease in the event the Sublessee shall incur burdensome tax indemnification obligations and the Lessor hereby consents to said termination provisions of the Sublease and the Lessee hereby consents to the simultaneous termination of this Lease upon the termination by the Sublessee of the Sublease pursuant to § 16(B) of the Sublease.

§ 17 Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 11-3/4% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 18 Lessee's Representations. (a) The Lessee represents and warrants that it was duly organized and is now validly existing as a corporation under the laws of the State of California and that it shall maintain its corporate existence for the duration of the term of this Lease and that it shall not carry on or engage in any business other than the transactions contemplated by this Lease, the Participation Agreement the Consent and Agreement dated as of the date hereof, the Sublease and the Assignment of Sublease and Agreement dated as of the date hereof and that it will not amend or modify its certificate of incorporation or by laws in any way or form a subsidiary corporation or enter into a joint venture or any other similar type of arrangement with any other corporation for the purpose of carrying on or engaging in any such other course of business.

(b) The Lessee further represents and warrants that each of the agreements referred to above in paragraph (a) of the § 18 to which the Lessee is or becomes a party has been or will be duly and timely authorized, executed and delivered by the Lessee, that each constitutes and will constitute a legal, valid and binding obligation of the Lessee enforceable against the Lessee in accordance with its terms and that each is not and will not be in contravention of the provisions of the Lessee's certificate of incorporation or by laws or of any law or governmental rule, regulation or order applicable to the Lessee, and would not or will not result in a violation of, or be in conflict with, or constitute a default under, or subject in property or any assets of the Lessee to any lien, charge or encumbrance (other than

as contemplated in this Lease and the Participation Agreement) of any indenture, contract, agreement or other instrument binding on the Lessee.

(c) The Lessee further represents and warrants that it will not incur any obligations or indebtedness of any nature other than those contemplated by the Lease, and that without the consent of the Owner and the Vendor it will not enter into any agreements with any person other than those referred to above in paragraph (a) of this § 18 and that it will not guarantee or otherwise become contingently liable on any obligations of any other person.

§ 19. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at 231 South LaSalle Street, Chicago, Illinois, 60693, Attention of Corporate Trust Division, and

(b) if to the Lessee, in care of Professional Lease Management, Inc., One Embarcadero Center, Suite 2202, San Francisco, California 94111, Attention of President.

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 20. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, 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.

Except for the Participation Agreement, the Sublease and this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee, and no such variation shall be made without the written consent of the Vendor and the Sublessee.

§ 21. Quiet Enjoyment. The Lessor covenants that if, and so long as, the Lessee keeps and performs each and every covenant, condition and agreement to be performed or observed by it hereunder, the Lessee shall have the right to quiet enjoyment of the Units leased hereunder without hindrance by the Lessor or any other person lawfully claiming the same by, through or under the Lessor.

§ 22. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Assignment hereof to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 23. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

§ 24. Performance by Sublessee. The obligations of the Lessee under §§ 1, 2, 5-9, 11, 12, 14-17, 20, 22 and 23 of this Lease shall be deemed to be satisfied by the performance by the Sublessee of its obligations under the Sublease.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

CONTINENTAL ILLINOIS NATIONAL
BANK AND TRUST COMPANY OF CHICAGO,
not in its individual capacity
but solely as Trustee under a
Trust Agreement dated as of the
date hereof,

by



Second Vice President

[Corporate Seal]

Attest:



Trust Officer



PLM-DELMARVA, INC.,

by

Mark C. Hyman
~~Vice President~~

[Corporate Seal]

Attest:

Mark C. Hyman
Assistant Secretary
President

STATE OF ~~ILLINOIS~~ ^{New York})
COUNTY OF ~~COOK~~ ^{New York}) ss.:

On this ^{9th} day of ^{OCTOBER}, 1975, before me personally appeared ^{M. J. Kruger}, to me personally known, who, being by me duly sworn, says that he is the Second Vice President of CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed 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.

Ira E. Wiener
Notary Public

[Notarial Seal]

My Commission expires

IRA E. WIENER
Notary Public, State of New York
No. 43-4508409
Qualified in Richmond County
Certificate filed in New York County
Commission Expires March 30, 1977

STATE OF ~~CALIFORNIA~~ ^{NEW YORK})
COUNTY OF ~~SAN FRANCISCO~~ ^{NEW YORK}) ss.:

On this ^{9th} day of ^{OCTOBER} 1975, before me personally appeared ^{MARK C. HUNGERFORD}, to me personally known, who, being by me duly sworn says that he is ^{PRESIDENT} of PLM-DELMARVA, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed 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

[Notarial Seal]

My Commission expires

ALBERT F. MARCELLINO
Notary Public, State of New York
No. 43-2519700
Qualified in Richmond County
Certificate filed in New York County
Commission Expires March 30, 1977

SCHEDULE A TO LEASE

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>
100-ton open top hopper car	77	PLMX-1369 to 1445

SCHEDULE B TO LEASE

<u>Date</u>	<u>Casualty Value Percentage</u>
January 15, 1976	83.82
July 15, 1976	84.98
January 15, 1977	85.78
July 15, 1977	86.27
January 15, 1978	86.42
July 15, 1978	86.29
January 15, 1979	85.85
July 15, 1979	85.12
January 15, 1980	84.09
July 15, 1980	82.80
January 15, 1981	81.23
July 15, 1981	79.40
January 15, 1982	77.32
July 15, 1982	75.01
January 15, 1983	72.47
July 15, 1983	69.72
January 15, 1984	66.83
July 15, 1984	63.86
January 15, 1985	60.85
July 15, 1985	57.75
January 15, 1986	54.62
July 15, 1986	51.40
January 15, 1987	48.14
July 15, 1987	44.80
January 15, 1988	41.42
July 15, 1988	37.96
January 15, 1989	34.46
July 15, 1989	30.88
January 15, 1990	27.25
July 15, 1990	23.55
January 15, 1991, and thereafter including any renewed term of the Lease	20.00

The foregoing percentages have been computed without regard to recapture of the Investment Credit (as defined in § 16 hereof). Consequently, the Casualty Value of any Unit Suffering a Casualty Occurrence on or before the third, fifth and seventh anniversary of the date of delivery and acceptance of such Unit shall be increased by the applicable percentage of the Purchase Price set forth below.

**Anniversary of
Delivery and
Acceptance**

Third
Fifth
Seventh

**Percentage of
Purchase
Price**

20.00
13.33
6.67

SCHEDULE C TO LEASE

<u>Date</u>	<u>Termination Value Percentage</u>
July 15, 1983	68.68
January 15, 1984	65.72
July 15, 1984	62.67
January 15, 1985	59.56
July 15, 1985	56.38
January 15, 1986	53.14
July 15, 1986	49.81
January 15, 1987	46.44
July 15, 1987	42.97
January 15, 1988	39.46
July 15, 1988	35.85
January 15, 1989	32.20
July 15, 1989	28.45
January 15, 1990	24.65
July 15, 1990	20.76
January 15, 1991, and thereafter	00.00