

RAILROAD EQUIPMENT LEASE AGREEMENT

THIS RAILROAD EQUIPMENT LEASE AGREEMENT ("Lease"), dated as of the 19<sup>th</sup> day of DECEMBER, 1975, between NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY, a Massachusetts corporation ("Lessor") and CHICAGO & ILLINOIS WESTERN RAILROAD, an Illinois corporation ("Lessee").

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W I T N E S S E T H

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INTERSTATE COMMERCE COMMISSION

For and in consideration of the mutual covenants and promises hereinafter set forth, Lessor and Lessee hereby agree as follows:

SECTION 1. EQUIPMENT

1.1 Lease. Lessor leases to Lessee, and Lessee leases and hires from Lessor, all locomotives (collectively, the "Equipment" and individually, an "Item of Equipment") described in Schedule 1 attached hereto commencing and terminating on the dates specified on the Acceptance Supplement to this Lease ("Acceptance Supplement") covering said Item of Equipment, substantially in the form of Exhibit A hereto.

1.2 Inspection and Acceptance. Lessee agrees that its execution of an Acceptance Supplement shall conclusively establish, between Lessor and Lessee (but without prejudice to any rights either may have against the manufacturer or re-manufacturer of the Equipment), that Lessee has inspected the Items of Equipment covered thereby; that each Item of Equipment covered thereby is acceptable to and accepted by Lessee under this Lease, notwithstanding any defect with respect to design, manufacture, re-manufacture, condition or in any other respect; that each Item of Equipment covered thereby is in good order and condition; and that the same meets specifications applicable thereto described in Schedule 1, applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, and applicable interchange requirements of the Association of American Railroads.

SECTION 2. RENTS AND OTHER PAYMENTS

2.1 Rent. Lessee shall pay Lessor rent for the Equipment in the amounts and at the times ("Rent Payment Date") set forth in the Acceptance Supplement.

2.2 Place of Rent Payment. All payments provided for in this Lease to be made to Lessor shall be made in immediately available funds in New York City to be credited to Newing One & Co.'s Account No. 045-93-956 at:

Morgan Guaranty Trust Company of New York  
23 Wall Street  
New York, New York 10015  
ATTENTION: Money Transfer Department

with a notice of each such payment mailed to Lessor at its office in Boston, to the attention of its Investment Accounting Department.

2.3 Additional Sums Payable by Lessee. In addition to the periodic rents payable by Lessee under the provisions of Section 2.1 hereof and as separate items:

- (a) Lessee agrees to pay or reimburse Lessor for any and all taxes, assessments and other governmental charges of whatsoever kind or character and by whomsoever payable on or relating to each Item of Equipment, and on the sale, ownership, use, transportation, delivery or operation thereof or the performance of any obligation by Lessee hereunder, which are levied, assessed or imposed during the lease term, and to pay all taxes, assessments and charges of the kind generally referred to which remain unpaid as of the date of acceptance of such Item of Equipment by Lessee under this Lease irrespective of when the same may have been levied, assessed or imposed, and all gross receipts and like taxes levied by any state or local taxing authority having jurisdiction over property where the Equipment is located against Lessor on or measured by rents payable hereunder. Lessee agrees to comply with all state and local laws requiring the filing of ad valorem tax returns on the Items of Equipment. Any statements for such taxes received by Lessor shall be promptly forwarded to Lessee. This Section shall not be deemed to obligate Lessee to pay (i) any taxes, fees, assessments and charges which may have been included in the Lessor's cost of each Item of Equipment as set forth in Schedule 1 hereto; or (ii) any income, franchise and like taxes against the Lessor on or measured by the net income from the rents, unless such tax is in substitution for or relieves Lessee from any taxes which Lessee would otherwise be obligated to pay under the terms of this Section 2.3. Lessee shall not be obligated to pay any amount under this Section so long as it shall in good faith and by appropriate proceedings diligently conducted contest the validity or the amount thereof, unless such contest would adversely affect the title of Lessor to an Item of Equipment or would subject it to forfeiture or sale.

Lessee agrees to indemnify the Lessor against any loss, claim, demand and expense (including, but not limited to, legal expenses) resulting from such non-payment or contest.

- (b) Lessee agrees to pay all costs, expenses, fees and charges incurred in connection with the use and operation of each Item of Equipment, during the lease term thereof, including, but not limited to, repairs, maintenance, storage and servicing. Lessee shall maintain the Equipment in good order and repair, and shall furnish any and all parts, mechanisms, devices and labor to keep the Equipment in such condition. If Lessee's compliance with Section 4.2 (a) or (b) hereof requires that changes or additions be made on or to the Equipment, the same shall be made by the Lessee at its own cost and expense.

2.4 Net Lease. This Lease is a net Lease and Lessee shall not be entitled to any abatement of rent or other payments due hereunder or reduction thereof including, but not limited to, abatements or reductions due to any present or future claims of Lessee against Lessor under this Lease or otherwise or against the manufacturer or re-manufacturer of the Equipment, 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 failure of title of Lessor to the Equipment or any defect in or damage to or loss or destruction of all or any of the Equipment from whatsoever cause, the taking or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of Lessee's use of the Equipment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of right, power or authority of Lessor to enter into this Lease, or by reason of the Lessee's exercise of the rights to enforce manufacturer's warranties, which may be provided to Lessee by Section 5 hereof, 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 unless the obligation to pay the same shall be terminated pursuant to Section 7 hereof, or until the Equipment is surrendered pursuant to Section 11 hereof.

### SECTION 3. OWNERSHIP AND MARKING OF THE EQUIPMENT.

3.1 Ownership. The Equipment is, and shall at all times remain, the sole and exclusive property of Lessor, and Lessee acknowledges and agrees that it has not, and by the execution hereof it does not have or obtain, and by payments and performance hereunder it does not and will not have or

obtain any title to the Equipment, nor any property right or interest, legal or equitable, therein, except solely as Lessee hereunder and subject to all the terms hereof. Lessee agrees to keep the Equipment free and clear of all liens, encumbrances and charges of any nature imposed or asserted by persons claiming by, through or under Lessee.

3.2 Duty to Mark Equipment. Lessee covenants and agrees that prior to or concurrently with the acceptance of the Equipment hereunder, Lessee will cause each Item of Equipment to be numbered with a road number as set forth in Schedule 1 and to be plainly, distinctly, permanently and conspicuously marked by stencilling in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height the following legend:

"Owned by and leased from N.E.M.L.I.C.  
under a Lease recorded under the Inter-  
state Commerce Act, Section 20c"

with appropriate changes and additions thereto as from time to time may be required by law in order to protect the title of Lessor to such Item of Equipment, its rights under this Lease and the rights of any assignee under Section 17 hereof. Lessee will not place any Item of Equipment 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 stencilling which may be removed, defaced or destroyed or rendered illegible. Lessee will not change the road number of any Item of Equipment except with the consent of the Lessor and in accordance with a statement of new road numbers to be substituted therefor, which consent and statement previously shall have been filed with Lessor by Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

Except as above provided, Lessee will keep the Equipment free from any markings or labelling or the like which might be interpreted as a claim of ownership thereof by Lessee or any party other than Lessor and its assigns; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by Lessee or its affiliates on railroad equipment used by them of the same or similar type for convenience of identification.

#### SECTION 4. USE AND POSSESSION.

4.1 Possession. So long as Lessee shall not be in default under this Lease, Lessee shall be entitled to the possession and quiet enjoyment of the Equipment and to:

- (a) use the Equipment on lines of railroad located within the Continental United States, owned or operated by it (either alone or jointly with others), Illinois Central Gulf Railroad Company, or any corporation of which 50% or more of the outstanding voting stock (i.e., having ordinary voting power to elect a majority of the Board of Directors), other than directors' qualifying shares, is owned directly or indirectly by Lessee; or on lines of railroad over which any of them has trackage or other operating rights or over which equipment of Lessee is regularly operated pursuant to contract; or on connecting and other railroads in the usual interchange of traffic; and
- (b) temporarily sublet to or permit the emergency use by other parties of any Item of Equipment in the normal course of business; or sublet any or all Items of Equipment for any portion or all of the term of this Lease to the Illinois Central Gulf Railroad Company;

provided, however, that any use or subletting of the Equipment shall be subject to and in accordance with the terms of this Lease; and further provided that no sublease or interchange or other agreement respecting any Item of Equipment entered into by Lessee pursuant to this Section shall relieve Lessee of any of its liabilities and obligations hereunder, which shall remain and be at all times those of a principal and not a surety or guarantor.

4.2 Use. Lessee warrants and agrees that the Equipment shall at all times be used only in the manner for which it was designed and intended and only so as to expose it to ordinary wear and tear, and in a careful and proper manner in compliance with:

- (a) the laws of the jurisdictions in which the Equipment may be located and/or operated;
- (b) all applicable laws, ordinances, acts, rules, regulations and orders of any commissions, boards or other legislative, executive or judicial bodies or officers having power to regulate or supervise the use of such property including, but not limited to, the rules of the United States Department of Transportation and the Interstate Commerce Commission and the Rules of the Association of American Railroads, as in effect from time to time; and
- (c) any and all manufacturer's and re-manufacturer's instructions and warranty requirements.

Lessee further agrees that (i) it will not permit its rights or interests hereunder to be subject to any liens, charges or encumbrances and (ii) it will keep the Equipment free and clear of any and all liens, charges and encumbrances which may be levied against or imposed upon it by persons claiming by, through or under Lessee.

4.3 Assignment by Lessee. Except to the extent permitted by Section 4.1, Lessee shall not, without the prior written consent of Lessor, part with possession or control of any Item of Equipment, assign this Lease or any of its rights hereunder, or sublease the Equipment. Any purported assignment or sublease in violation of this Section shall be void and of no force and effect.

#### SECTION 5. DISCLAIMER OF WARRANTIES

LESSEE ACKNOWLEDGES AND AGREES THAT (i) THE EQUIPMENT IS OF A SIZE, DESIGN, TYPE AND MANUFACTURE SELECTED BY LESSEE; (ii) THAT LESSOR IS NOT A MANUFACTURER OR RE-MANUFACTURER OR A DEALER THEREIN; AND (iii) THAT AS BETWEEN LESSOR AND LESSEE, LESSEE LEASES THE EQUIPMENT AS-IS, AND THAT LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE ANY REPRESENTATION, WARRANTY OR COVENANT WITH RESPECT TO FITNESS, MERCHANTABILITY, CONDITION, QUALITY, DURABILITY OR SUITABILITY OF THE EQUIPMENT IN ANY RESPECT OR IN CONNECTION WITH, OR FOR THE PURPOSES AND USES OF LESSEE, OR AS TO LESSOR'S TITLE THERETO, ANY OTHER AGREEMENT, REPRESENTATION OR WARRANTY OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, IT BEING AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY LESSEE. Lessor does warrant, however, that it has whatever quality of title to the Equipment it obtained from the supplier thereof, subject to this Lease and any liens or encumbrances permitted hereby or which Lessee is obligated to discharge or satisfy. Lessor agrees, so long as no Event of Default has occurred and is continuing hereunder, that Lessee shall have the right to obtain the benefit of and enforce in Lessee's own name and at Lessee's sole expense any supplier's, re-manufacturer's or manufacturer's warranty or agreement in respect of the Equipment to the extent such warranty or agreement is assignable, and Lessor shall execute and deliver such instruments as may be reasonably necessary to enable Lessee to obtain such benefits.

#### SECTION 6. ALTERATIONS AND IMPROVEMENTS

Lessee may from time during the term of this Lease make alterations, additions and improvements ("Alterations") with respect to any Item of Equipment, provided that such Alteration in no way impairs the economic value or reduces the utility of such Item as of immediately prior to the Alteration. Any Alteration, unless leased by Lessee from others or purchased by Lessee and so long as conditionally owned by others pursuant to a conditional sales agreement, shall constitute and be deemed an accession to the Equipment and title thereto shall immediately vest in Lessor for all purposes hereof so long as such Alteration shall remain

part of or installed on or attached to the Equipment; it being agreed, however, that Lessee may at any time and at its own expense remove any such Alteration (whether or not leased by Lessee from others), whereupon such Alteration shall become the property of Lessee, provided that:

- (a) such Alteration is or was not required pursuant to Section 2.3(b) or Section 4.2 hereof;
- (b) no Event of Default as defined herein shall have occurred and then be continuing; and
- (c) such Alteration can be removed without impairing the economic value or reducing the utility of the Item(s) of Equipment in question as of immediately prior to the Alteration.

Any Alteration not removed by Lessee as above provided prior to the return of the Equipment to Lessor hereunder shall remain the property of Lessor.

#### SECTION 7. CASUALTY LOSSES; STIPULATED LOSS VALUE

Lessee shall bear the risk of any and all damage to, or loss, theft, or destruction, partial or complete, of the Equipment, from whatsoever source arising, subject to the terms hereof, and any and all replacements, repairs, or substitution of parts to or for the Equipment shall constitute accessions to the Equipment and title thereto shall vest and remain in Lessor. No damage, loss, theft or destruction of the Equipment shall affect any obligation of Lessee under this Lease, including but not limited to its obligations to make rent and other payments pursuant to Section 2 hereof, which shall continue in full force and effect.

In the event that during the term of this Lease any Item of Equipment shall be or become lost, stolen, destroyed, or, in the opinion of Lessee (as evidenced by a certificate from Lessee's officer charged with such matters and such other proofs as Lessor may reasonably require for verification) irreparably damaged, or shall be requisitioned or taken over for a period that exceeds the then remaining term of this Lease by any governmental authority under the power of eminent domain or otherwise (any such occurrence being hereinafter called a "Casualty Loss"), the Lessee shall (after it has knowledge of such Casualty Loss) immediately and fully inform the Lessor in regard thereto. In the event of a Casualty Loss, Lessee shall within twenty-one (21) days after the occurrence of the Casualty Loss ("Notice Period"), at Lessee's option, either:

- (a) replace the Equipment with like equipment in as good operating condition as, and with a value and utility at least equal to, the Item of Equipment replaced (assuming the

replaced Equipment was in the condition and repair required to be maintained by the terms hereof) and transfer title to such replacement equipment to Lessor by bill of sale or other appropriate documents which are acceptable to Lessor, which equipment shall thereupon be deemed to be Equipment subject to this Lease and upon replacement of or payment for any Item of Equipment in accordance with this Section 7(a), Lessee shall become entitled to such lost or damaged Item of Equipment, AS-IS-WHERE-IS, without representations or warranties, express or implied, with respect to any matter whatsoever; or

- (b) pay Lessor on the Rent Payment Date next following the expiration of the Notice Period with respect to such Item of Equipment (or if notice of such Casualty Loss shall be given by Lessee to Lessor after the final Rent Payment Date, then within ten (10) days after receipt by Lessee of Lessor's demand in writing therefor):
- (i) the Stipulated Loss Value, as set forth in Schedule 2, as determined as of the Rent Payment Date immediately preceding the date of such Casualty Loss;
  - (ii) interest on such Stipulated Loss Value at a percentage per annum rate equal to 2% per annum in excess of the prime rate then charged by the Continental Illinois Bank in Chicago on short term loans to substantial commercial borrowers with the highest credit standing or the maximum applicable lending rate permitted by law, if any, whichever is less, from the Rent Payment Date immediately following the earlier of Lessee's giving of such notice of a Casualty Loss to Lessor or the expiration of the Notice Period to the date on which the Stipulated Loss Value is paid by Lessee;
  - (iii) any interest due on late payments of rent with respect to such Item of Equipment, if any, to the date of such payment; and
  - (iv) all other then unpaid amounts due hereunder solely with respect to such Item of Equipment.

At such time as Lessor has received the sum of (i), (ii), (iii), and (iv) above, the obligation of Lessee to pay rent hereunder with respect to such Item of Equipment shall terminate.

The "Stipulated Loss Value" of each Item of Equipment shall mean the Stipulated Loss Value as defined in Schedule 2 covering said Item of Equipment.

Following payment of the Stipulated Loss Value with respect to an Item of Equipment, Lessee shall, as agent of Lessor, sell said Item of Equipment to a buyer, AS-IS-WHERE-IS, without recourse, representation or warranty whatever, for the best price obtainable, within one hundred twenty (120) days after the occurrence of the Casualty Loss. The sale shall be in an arm's length transaction with a buyer which, unless Lessor shall have been provided with the opinion of an independent and registered appraiser acceptable to Lessor that the fair market value of said Item of Equipment is not less than the price offered by such buyer, is not Lessee or any person, firm or corporation affiliated with Lessee.

Provided no Event of Default exists after payment to Lessor of the amounts specified in Subsection (b) above, Lessee shall retain such portion of the net sale price of said Item of Equipment (after deducting and retaining all reasonable out-of-pocket expenses incurred by Lessee in connection with such sale) as is equal to the Stipulated Loss Value of said Item paid by Lessee to Lessor. The excess shall be paid to Lessor. Following such sale and payment to Lessor of any such excess, Lessor shall, upon request of Lessee, execute and deliver to Lessee, or to Lessee's assignee or nominee, a bill of sale (without recourse, representation, or warranty except that the Item of Equipment is free and clear of all claims, liens, security interests or other encumbrances by or in favor of any person claiming by, through or under Lessor) for the Item and such other documents as may be required to release the Item from the terms and scope of this Lease and to transfer title thereto to Lessee or such assignee or nominee, in such form as may reasonably be requested by Lessee, all at Lessee's expense.

In the event that during the term of this Lease an Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for a period which by its terms does not exceed the then remaining term of this Lease, Lessee's duty to pay rent on account of such Item shall nevertheless continue for the duration of such requisitioning or taking. The Lessee, however, shall be entitled to receive and retain for its own account all amounts payable for any such period by such governmental authority as compensation for such requisitioning or taking of possession. In the case of a requisition or taking which constitutes a Casualty Loss, any payments received from any governmental authority for such taking shall, if Lessee has theretofore paid Lessor the Stipulated Loss Value and other payments required by this Section, be paid over to,

or retained by, Lessee until the aggregate of all such payments so paid or retained shall equal the total of the Stipulated Loss Value paid by Lessee and any additional reasonable expenses incurred by Lessee as a result of such taking, and any balance shall be paid to or retained by Lessor. Lessor shall be under no duty to Lessee to pursue any claim against any governmental authority, but Lessee may, at its own cost and expense, pursue the same on behalf of the Lessor in such manner as may be satisfactory to the Lessor.

#### SECTION 8. INSURANCE

Lessee agrees that it will, at all times during the term of this Lease and prior to the surrender of the Equipment, at its own cost and expense, keep the Equipment insured with insurers of recognized responsibility as follows:

- (a) property insurance in amounts and against risks from time to time insured against by Lessee in respect of similar equipment owned or leased by it and, in any event, comparable to insurance coverage which is customarily maintained by railroad companies owning or leasing property of a similar character and engaged in a business similar to that engaged in by Lessee ("Other Railroad Companies");
- (b) comprehensive general public liability insurance against damage because of bodily injury, including death, or damage to property of others, affording protection in respect of any one accident or occurrence to a limit at least equal to the greater of:
  - (i) the amount provided for by Lessee's insurance in respect of similar equipment then owned or leased by it;
  - (ii) the amount provided for by insurance coverage customarily maintained by Other Railroad Companies; or
  - (iii) an amount equal to Twenty Five Million Dollars (\$25,000,000) over the applicable deductible provision, as determined in accordance with this Section, provided that coverage in such amounts is obtainable, irrespective of any price considerations;

which insurance may have applicable thereto deduction provisions to no greater extent than the lesser of:

- (x) the amount provided for by Lessee's insurance in respect of similar equipment then owned or leased by it; or

- (y) the amount which, to the best of Lessee's knowledge, after due inquiry, is provided for by insurance coverage customarily maintained by Other Railroad Companies.

Lessee shall cause each insurance policy issued pursuant to the requirements of this Section to provide, and the insurer issuing such policy to certify to Lessor and its assigns, if any, as follows:

- (c) as to property insurance on the Equipment, that (i) Lessor, as owner and lessor of the Equipment, Lessor's assigns, and Lessee shall be insured and losses shall be payable to each as their interests may appear; (ii) all amounts payable thereunder will be paid to Lessor for the accounts of Lessor, Lessor's assigns and Lessee as their respective interests may appear; (iii) the insurance as to the interests of Lessor and its assigns, if any, shall not be invalidated by any breach or violation by Lessee of any covenants, declarations or conditions contained in such policy, or any act or neglect of Lessee, or by any foreclosure or other remedial proceeding or notice thereof relating to the Equipment or any interest therein, nor by any change in the title or ownership of the Equipment or any interest therein or with respect thereto, or by the use or operation of the Equipment for purposes more hazardous or in a manner more hazardous than is permitted by such policy; (iv) if such policy be cancelled or materially changed for any reason whatsoever such insurer will promptly notify Lessor and its assigns and such cancellation or change will not be effective as to Lessor or its assigns for 30 days after receipt by Lessor and its assigns of such notice; (v) coverage shall be "primary" for the protection of Lessor and Lessee notwithstanding any other coverage carried by either protecting against like risks; (vi) no such policy shall contain a provision relieving the insurer thereunder of liability for any loss by reason of the existence of other policies of insurance covering the Equipment against the peril involved, whether collectible or not; and (vii) losses shall be adjusted by the Lessee provided, however that in the event the Lessee shall be in default under this lease, losses shall be adjusted by Lessee with the consent of Lessor.

- (d) as to general public liability and property damage insurance, that (i) Lessor and its assigns, as owner(s) and Lessor(s) of the Equipment, are additionally named insureds thereunder; (ii) all

provisions of such policy, except the limits of liability, will operate in the same manner as if there were a separate policy covering each named insured; and (iii) if such policy be cancelled or materially changed for any reason whatsoever such insurer will promptly notify Lessor and its assigns and such cancellation or change will not be effective as to Lessor or its assigns for 30 days after receipt by Lessor of such notice.

Lessee shall deliver to Lessor and its assigns certificates of insurance satisfactory to Lessor upon the execution hereof and copies or other evidence of each renewal policy not less than 30 days prior to the expiration of the original policy or preceding renewal policy, as the case may be, and Lessee shall deliver to Lessor and its assigns receipts or other evidence that the premiums thereon have been paid.

Lessee shall deliver to Lessor and its assigns annually, within thirty (30) days following the anniversary of the execution hereof, a certificate of its officer charged with such matters as to the maintenance of insurance coverage in compliance with this Section substantially in the form of Exhibit B hereto.

In the event of an assignment of this Lease by Lessor of which Lessee has notice, Lessee shall cause such insurance to provide the same protections to Lessor's assigns as their interests may appear. Lessee shall promptly notify any appropriate insurer, Lessor and its assigns of each and every occurrence which may become the basis of a substantial claim or cause of action against the insureds and provide Lessor and its assigns with all data pertinent to such occurrence. The proceeds of such insurance, at the option of Lessee or its assigns shall be applied toward (a) the repair or replacement of the appropriate Item or Items of Equipment, (b) payment of the Stipulated Loss Value thereof or (c) payment of, or as provision for, satisfaction of any other accrued obligations of Lessee hereunder. Any excess of such proceeds remaining shall belong to Lessee.

#### SECTION 9. INDEMNIFICATION

Lessee does hereby assume liability for and does hereby agree to indemnify, protect, save and keep harmless Lessor, its successors and assigns, from and against any and all liabilities, losses, damages, penalties, claims, actions, suits, costs, expenses, and disbursements, including, but not limited to, court costs, and legal expenses, of whatever kind and nature, imposed on, incurred by or asserted against Lessor or its successors and assigns, representatives, agents and servants (whether or not also indemnified against by any other person) in any way relating to or arising out of this Lease or any document contemplated thereby, or the performance or enforcement of any of the terms hereof or in any way relating to or arising out of the manufacture, re-manufacture, purchase, acceptance, rejection, ownership, delivery, lease,

possession, use, operation, condition, return or other disposition of the Equipment by Lessor or Lessee, or any accident in connection therewith (including without limitation, latent and other defects, whether or not discoverable by Lessor or Lessee); any claim for patent, trademark, or copyright infringement; and any claims arising out of strict liability in tort. Lessee agrees to give Lessor and Lessor agrees to give Lessee and any guarantor of Lessee's obligations hereunder, prompt written notice of any claim or liability hereby indemnified against, and Lessee agrees to undertake full responsibility for the defense thereof if requested to do so by Lessor.

All of Lessor's rights and privileges arising from the indemnities are expressly made for the benefit of, and shall be enforceable by Lessor, its successors and assigns and shall continue in full force and effect notwithstanding the termination of this Lease, whether by expiration of time or otherwise, as to any act or omission in any manner relating to the Equipment occurring during the continuance of this Lease which at any time is claimed to have created a cause of action against Lessor. The indemnities and assumptions of liability set forth in this paragraph do not guarantee a residual value.

#### SECTION 10. LESSOR'S INSPECTION

Lessor or its authorized representatives shall at any and all times, convenient to the Lessee, have the right to enter into and upon its premises where the Equipment may be located for the purposes of inspecting the Equipment or observing its use and the maintenance thereof. Lessee shall give Lessor prompt notice of any attachment or other judicial process affecting any Items of Equipment and shall whenever requested by Lessor, advise Lessor of the exact location of the Equipment insofar as practicable.

#### SECTION 11. SURRENDER

Upon the expiration or sooner termination of this Lease with respect to any Item of Equipment, Lessee shall (unless Lessee has paid Lessor in cash the Stipulated Loss Value of such Item of Equipment pursuant to Section 7 hereof) at its own cost and expense, deliver possession of such Item of Equipment to Lessor upon such storage tracks of the Lessee or its sublessee as Lessor may designate, or in the absence of such designation, as the Lessee may reasonably select, and permit the Lessor to store such Item of Equipment on such tracks for a period not exceeding ninety (90) days and transport the same at any time within such 90-day period to any reasonable place on the lines of the railroad operated by Lessee or to any connection carrier for shipment, all as directed by Lessor upon not less than thirty (30) days written notice to Lessee. All movement and storage of each such Item is to be at the risk and expense of the Lessee. During any such storage period, Lessee will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Item, to inspect the same; provided, however, that the Lessee shall not be liable except in the case of negligence or intentional

act of the Lessee or of its employees or agents and, except to the extent otherwise provided by law, for any injury to, or the death of any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee to so assemble, deliver, store and transport the Equipment.

Without in any way limiting the obligations of the Lessee under the foregoing provision of this Section 11, Lessee hereby irrevocably appoints Lessor as the agent and attorney of Lessee with full power and authority, at any time while Lessee is obligated to deliver possession of an Item of Equipment to Lessor, to demand and take possession of any Item of Equipment in the name of and on behalf of Lessee from whomsoever shall be at the time in possession of such Item of Equipment.

#### SECTION 12. LESSOR'S PAYMENT

In the case of the failure of Lessee to perform any of its obligations hereunder, including but not limited to, a failure to pay any fees, assessments, charges, insurance premiums, taxes or any other expenses required of Lessee hereunder, Lessor may thereafter, without thereby waiving any obligation of Lessee or right of Lessor hereunder, make the payment or perform or comply with the obligation, and the amount of such payment and the amount of the reasonable expenses of Lessor incurred in connection with such payment or such performance of or compliance with such agreement, as the case may be, together with interest thereon at a rate equal to 2% per annum in excess of the prime rate then charged by the Continental Illinois Bank in Chicago on short term loans to substantial commercial borrowers with the highest credit standing or the maximum applicable lending rate permitted by law, if any, whichever is less, shall be payable by Lessee to Lessor upon demand.

#### SECTION 13. TAX INDEMNIFICATION

Lessor as owner of the Equipment, 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 (the "Code"), to an owner of property, excluding only any Investment Tax Credit with respect to the Equipment. Lessee agrees that neither it, nor any corporation controlled by it, or in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any return or other document inconsistent with the foregoing and that each of said corporations will take such action and execute such documents as may be necessary to facilitate accomplishment.

of the intent hereof. Lessee agrees to keep and make available for inspection and copying by Lessor such records as will enable Lessor to determine whether it is entitled to the benefits of any amortization or depreciation deduction(s) which may be available with respect to the Equipment from time to time under the Code.

If, with respect to any Item(s) of Equipment, Lessor shall lose, or shall not have, or shall lose the right to claim, or if there shall be disallowed, with respect to Lessor, or if there shall be recaptured, all or any portion of the depreciation deduction(s) in reporting its taxable income, for each year that this Lease is in effect, beginning in 1975, based on an assumed ability (i.e., assumed only for purposes of computing the amount and/or the extent of the indemnity provided for in this Section 13) on the part of Lessor, whether or not the applicable laws provide therefor, to:

- (a) use one hundred percent (100%) of Lessor's Cost of each Item of Equipment as shown in Schedule 1 as the depreciable base of each said Item of Equipment;
- (b) depreciate each Item of Equipment at an initial rate of one hundred and fifty percent (150%) of the applicable straight line rate under Section 167(a) of the Code and thereafter, beginning at such time as it believes advantageous to change the method of depreciation, to the straight line rate; and
- (c) use a depreciable life of twenty and one-half (20.5) years and a salvage value of zero, provided, however, that in the event that Lessor shall lose, or shall not have, or shall lose the right to claim, or if there shall be disallowed, with respect to Lessor, or if there shall be recaptured, all or any portion of the depreciation deduction(s) in reporting its taxable income, for each year that this Lease is in effect, beginning in 1975, which event is caused by a determination by the Internal Revenue Service or by any court having jurisdiction over the matter, that, notwithstanding the intent of the parties hereto, this Lease constitutes a security agreement and Lessor is not the owner of the Equipment, said assumed ability on the part of Lessor shall be the ability to use a depreciable life of fifteen (15) years and four (4) months and a salvage value of zero;

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then Lessee shall forthwith pay Lessor the following amounts:

- (a) a sum which, after deduction of all income taxes required to be paid by Lessor in respect of the receipt thereof under the laws of the United States or any state, city or other political subdivision thereof, shall be equal to the amount of the benefit with respect to Lessor's income tax obligation,

which in Lessor's reasonable opinion would have been available to it had it been entitled to utilization of the depreciation so lost, disallowed, recaptured or which could not be claimed;

- (b) the reasonable costs (including, without limitation, court costs and reasonable attorneys' fees) and expenses of the Lessor in connection with the payment, or defense against an action for non-payment, of the amounts corresponding to the depreciation deduction lost, disallowed, recaptured or which could not be claimed, provided, however, that court costs, attorneys' fees and all costs of defending against an action for non-payment of taxes shall not be payable unless the Lessor shall have incurred such costs pursuant to subparagraph (f) hereafter; and
- (c) the amount of all interest and penalties which may be assessed by the United States Government, and all other political entities, against Lessor in connection with such loss, disallowance or recapture.

The immediately foregoing amounts shall be paid to Lessor at its offices within ten(10) days after Lessee's receipt of Lessor's invoice. Each such invoice shall be accompanied by an explanation of the amount thereof prepared by an officer of Lessor charged with such matters.

Additionally, beginning with the next succeeding Rent Payment Date following written notice thereof to Lessee by Lessor, the rent hereunder applicable to such Item(s) of Equipment shall thereafter be increased by an amount which, in the reasonable opinion of Lessor, will cause Lessor's net after tax annual cash flow and net after tax rate of return in respect of such Item(s) of Equipment to equal the net after tax annual cash flow and net after tax rate of return, respectively, that would have been available if the Lessor had been entitled to utilize all of said depreciation deduction(s).

Lessor and Lessee recognize that Lessor's depreciation deductions may not be permanently lost or disallowed by the Internal Revenue Service but postponed or deferred to later tax years. In such event, notwithstanding the method of calculation specified above, Lessee's payment to the Lessor hereunder shall not exceed an amount sufficient to cause Lessor's net after tax return on a seven percent (7%) discounted present value basis over the term of this Lease to equal the net return on such basis that would have been available if Lessor had been entitled to utilization of the depreciation deduction originally contemplated to be used.

The Lessee shall not be required to make any payment pursuant to this Section 13 if Lessor shall have lost, shall not have or shall have lost the right to claim, or if there shall have been disallowed with respect to Lessor, all or any portion of the

depreciation deduction as a result of the occurrence of any of the following events:

- (a) a Casualty Loss with respect to an Item of Equipment if Lessee shall have paid to Lessor the Casualty Value thereof;
- (b) at any time while no event of default has occurred and is continuing, Lessor, without the written consent of Lessee (it being understood that this language in no way indicates that Lessor need acquire Lessee's consent to any such transfer), shall voluntarily transfer legal title to an Item of Equipment (as opposed to a security interest therein) to anyone;
- (c) the failure of Lessor to claim the depreciation deduction, or to follow proper procedure in claiming the depreciation deduction, on its income tax return for the appropriate year unless a court or administrative agency having jurisdiction shall have determined that Lessor is not entitled to claim the full amount of the depreciation deduction for a prior year in which Lessor shall have claimed the depreciation deduction upon a basis applicable to subsequent years and such determination is no longer being contested by Lessor or Lessee;
- (d) the failure of Lessor (including for the purposes of this subparagraph any entity with whom Lessor files a consolidated return) to have sufficient income to benefit from the depreciation deduction;
- (e) the failure of Lessor to give Lessee timely written notice of any claim in writing made by the Internal Revenue Service with respect to the disallowance or other loss of the depreciation deduction;
- (f) the failure of Lessor to take timely action in contesting a claim made by the Internal Revenue Service with respect to the disallowance or other loss of the depreciation deduction in accordance with the reasonable written directions of Lessee, provided (a) Lessee shall have requested in writing that Lessor so contest such claim, (b) Lessee shall have furnished Lessor with an opinion of counsel (reasonably satisfactory to Lessor) to the effect that such contest is not spurious and (c) such contest shall be conducted at the expense of Lessee and Lessee shall have provided Lessor with indemnity;

- (g) the release, waiver, compromise or settlement by Lessor of any action or proceeding taken in accordance with clause (f) without the prior written consent of Lessee, which consent shall not unreasonably be withheld; and
- (h) any other default of Lessor which directly causes the loss of the depreciation deduction, provided that the execution and delivery of this Lease and the carrying out of the transactions contemplated hereby shall not in any event be deemed to have caused the loss of the depreciation deduction under this clause (h).

Any payments required to be made by Lessee pursuant to this Section 13 shall be reduced by all tax savings which have theretofore been realized by or are then actually available to the Lessor on account of any change or amendment in the Code or any change in any rule or regulation promulgated by the Internal Revenue Service under the Code or any change by the Internal Revenue Service in the interpretation of either thereof resulting in federal income tax consequences to Lessor more favorable than the tax benefits presently existing on the date hereof.

The obligations and liabilities of Lessee hereunder shall survive the expiration or earlier termination of this Lease.

#### SECTION 14. DEFAULT

Any of the following events or conditions shall constitute an event of default ("Event of Default") hereunder:

- (a) Lessee's failure to pay when due any payment of rent, which failure shall continue for seven (7) days after the due date thereof;
- (b) non-payment of any other amount provided for in this Lease when the same becomes due or payable, or other failure of Lessee to perform any obligations, terms or conditions of this Lease, or any agreement between Lessor and Lessee executed concurrently herewith, or failure of Illinois Central Gulf Railroad Company ("Guarantor") to perform any of the covenants in the guaranty agreement of even date herewith ("Guaranty"); provided in any case that such non-payment or failure shall have continued uncured for thirty (30) days after notice thereof to Lessee or Guarantor as the case may be, except as provided in (c) and (d) below;

- (c) Lessee's failure to perform its obligations under Section 8 above;
- (d) any writ or order of attachment or execution or other legal process is levied on or charged against any Item of Equipment and is not released or satisfied within ten (10) days;
- (e) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or shall itself or permit any other to sell, transfer, encumber or part with possession of or sublet the Equipment, or any Item thereof (except as otherwise expressly permitted by the provisions hereof);
- (f) a final judgment for the payment of money in excess of \$100,000 being rendered by a court of record against Lessee which judgment Lessee does not discharge or make provision for discharge of in accordance with the terms thereof within ninety (90) days after the date of entry hereof;
- (g) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition 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 appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within thirty (30) days after such appointment, if any, or sixty (60) days after such petition shall have been filed, whichever shall be earlier;
- (h) the commission by Lessee of any act of bankruptcy;
- (i) any other proceedings 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 under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder) 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 trustee or trustees or receiver or receivers, within thirty (30) days after such appointment, if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier;

- (j) the occurrence of any event described in parts (f), (g), (h), (i), or (k) of this Section with respect to the Guarantor or any other party liable for payment under or performance of this Lease; or
- (k) any certificate, statement, representation, warranty or audit heretofore or hereafter furnished by or on behalf of Lessee proves to have been false in any material respect at the time as of which the facts therein set forth were stated or certified or has omitted any substantial contingent or unliquidated liability or claim against Lessee.

If and so long as this Lease shall be deemed to be a divisible and severable contract between Lessor and Lessee, as a result of separate assignments by the Lessor pursuant to Section 17 hereof, an Event of Default which occurs and is continuing beyond the applicable period of grace, if any, in any of the said assigned and separate portions of this Lease shall constitute an Event of Default in all other assigned and separate portions of this Lease, all as if such Event of Default occurred in such other assigned and separate portion.

#### SECTION 15. REMEDIES

Upon the happening of an Event of Default, Lessor at its sole discretion, may:

- (a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to Lessee, terminate this Lease, whereupon all right of Lessee to use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but Lessee shall remain liable as hereinafter provided; and thereupon, Lessor may by its agents enter upon premises of Lessee or other premises where any of the Equipment may be located without judicial process if this can be done without breach of the peace and take possession of all or any of such Equipment and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Equipment for any purpose whatever; but Lessor shall, nevertheless, have a right to recover from 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 a fraction of which the numerator is such accrued number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from Lessee:

(i) as damages for loss of the bargain and not as a penalty, a sum which, with respect to each Item of Equipment, represents the excess of the present value at the time of such termination of all rentals for such Item which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease, over the then present value of the then fair rental value of such Item for such period computed by discounting from the end of such term to the date of such termination the rent which Lessor reasonably estimates to be obtainable for the use of such Item during such period, such present value to be computed in each case on a basis of a 7% per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated; and

(ii) any damages and expenses, including but not limited to reasonable attorney's fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease, other than for the payment of rental.

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

The failure of the Lessor to exercise the rights granted it hereunder upon any 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.

Lessee shall pay Lessor all costs and expenses, including attorneys' fees and court costs, incurred by Lessor in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions or provisions of this Lease.

#### SECTION 16. LESSEE'S ASSIGNMENT

Without the prior written consent of Lessor, Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment, except as provided in Section 4.1 hereof. Lessee's interest herein is not assignable and shall not be assigned or transferred by operation of law. Consent to any of the foregoing prohibited acts applies only in the given instance and is not a consent to any subsequent like act by Lessee or any other person.

Nothing in this Section 16 shall be deemed to restrict the right of Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation which shall have duly assumed the obligations hereunder of Lessee into or with which Lessee shall have become merged or consolidated or which shall have acquired the property of Lessee as an entirety or substantially as an entirety.

#### SECTION 17. LESSOR'S ASSIGNMENT

All rights of Lessor hereunder may be assigned, pledged, transferred, or otherwise disposed of, either in whole or in part, without notice to Lessee, but Lessee shall be under no obligation to any assignee of Lessor except upon written notice of such assignment from the Lessor. In the event that separate assignments are executed by Lessor in respect of this Lease and the rental and other sums due and to become due hereunder, Lessor and Lessee agree that, so long as such separate assignments remain in force and effect, this Lease shall be deemed to be and shall be construed

as a divisible and severable contract between Lessor and Lessee for the leasing of Equipment covered by each such separate assignment, all to the same extent and with the same force and effect as though a separate lease had been entered into by Lessor and Lessee in respect of such Equipment; provided, however, Lessor and Lessee agree that an Event of Default as to any such assigned and separate portion of this Lease shall nevertheless constitute an Event of Default in all other assigned and separate portions of this Lease, pursuant to the provisions of Section 14 hereof. Upon notice to the Lessee of any assignment, the rent and other sums payable by Lessee which are the subject matter of the assignment shall be paid to the assignee. Without limiting the foregoing, Lessee further acknowledges and agrees that:

- (a) the rights of any such assignee in and to the sums payable by Lessee under any provisions of this Lease shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever whether by reason of defect in Lessor's title, or any interruption from whatsoever cause (other than from a wrongful act of the assignee) in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, to Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of the assignee, Lessee shall be unconditionally and absolutely obligated to pay the assignee all of the rents and other sums which are the subject matter of the assignment; and
- (b) the assignee shall have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of the assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor.

#### SECTION 18. INTEREST

Should Lessee fail to pay any part of the rent herein reserved or any other sum required by Lessee to be paid to Lessor, within ten (10) days after the due date thereof, Lessee shall pay Lessor interest on such delinquent payment from the due date until paid at the rate equal to 2% per annum in excess of the prime rate then charged by the Continental Illinois Bank in Chicago on short term loans to substantial commercial borrowers with the highest credit standing or the maximum applicable lending rate permitted by law, if any, whichever is less. Interest shall be computed on the basis of a 360-day year for the number of days elapsed, from said due date to the date paid.

SECTION 19. FINANCIAL AND OTHER COVENANTS

Lessee hereby represents, warrants and agrees that:

- (a) it has been duly organized and is validly existing under the laws of the state of its incorporation and is duly qualified, licensed and in good standing in all jurisdictions in which the nature of its business or the ownership of its property makes such qualification or licensing necessary or advisable;
- (b) the execution and delivery by Lessee of this Lease and all documents entered into in connection with this Lease have been duly authorized by all necessary corporate or other action and, except for the approval of the Illinois Commerce Commission, which approval has been obtained, do not require the consent, approval or withholding of objection by any person, party or governmental agency, and this Lease and such other documents constitute the legal, valid and binding obligations of Lessee enforceable against Lessee in accordance with their respective terms;
- (c) the execution by Lessee of this Lease and all documents entered into in connection with this Lease and the performance thereof does not and will not violate any agreement to which Lessee is a party or by which its property may be bound or affected;
- (d) all financial and other information furnished by Lessee to Lessor is true and correct as of the date of submission thereof and, as of the date hereof, there has not been any adverse change in such information or the financial condition of Lessee since the date of such submission;
- (e) Lessee maintains a standard and modern system of accounting in accordance with regulations promulgated by the Interstate Commerce Commission and will furnish to Lessor (and, with respect to (i) below, to the Securities Valuation Office of the National Association of Insurance Commissioners, 67 Wall Street, New York, New York 10005) or to such other person as Lessor shall designate:
  - (i) as soon as available, but in no event more than one hundred twenty (120) days after the close of each fiscal year of Lessee, Lessee's complete Annual Financial Report for the preceding fiscal year, all in reasonable detail, prepared and certified by Lessee's chief financial officer;

- (ii) as soon as available, but in no event more than fifteen (15) days after issuance, copies of all notices, reports and other materials containing financial information relative to Lessee which are filed annually on Form R-2 and quarterly on Form CBS and Form RE & I with the Interstate Commerce Commission or which are distributed to the public and, upon Lessor's reasonable request, such other materials as Lessee may file with the Securities and Exchange Commission or with any other governmental agency having jurisdiction over Lessee excepting only such portions of those materials as are granted confidential status by such agencies;
- (iii) such other reports and information as Lessor may reasonably require concerning the Equipment, including, but not limited to, the status of its maintenance, use and condition, the financial condition of Lessee and the compliance by Lessee with the terms and conditions of this Lease; and
- (f) for the purposes of enabling Lessor to file timely and accurate tax returns and to continue protection of its interest in the Equipment, Lessee shall advise Lessor of the location of all Items of Equipment upon the request of Lessor.

The foregoing representations, warranties and agreements shall continue throughout the term of the Lease, except as otherwise provided herein.

#### SECTION 20. FILING AND RECORDING

Lessee agrees and covenants that prior to the delivery and acceptance of the first Item of Equipment, it will, at its sole expense, cause this Lease to be duly filed, registered or recorded in conformity with Section 20c of the Interstate Commerce Act and in such other places within or without the United States as Lessor may reasonably request and will furnish the Lessor or its assigns proof of such filing, registration or recordation. Lessee will, from time to time, do and perform such other act(s) and will execute, acknowledge, deliver, file, register and record (and will re-file, re-register, or re-record wherever and whenever required) any and all further instruments required by law or reasonably requested by Lessor or its assigns, for the purpose of protecting Lessor's title to the Equipment, to the satisfaction of Lessor's counsel that such action has been properly taken. Lessee will pay all costs, charges and expenses incident to any such filing, re-filing, registering, re-registering, recording, re-recording of any such instruments or incident to the taking of such action.

#### SECTION 21. PURCHASE OPTION

Unless an Event of Default shall have occurred and then be continuing hereunder, Lessee may elect to purchase all, but not

less than all, of the Equipment then leased hereunder by delivering written notice to Lessor at least one hundred and eighty (180) days prior to the end of the term of this Lease. The Equipment to be purchased hereunder shall be purchased AS-IS-WHERE-IS, without recourse, representation or warranty whatever, for cash, at a price equal to its then fair market value, as determined by the Lessor and Lessee. If Lessor and Lessee are unable to agree upon the Equipment's fair market value, a determination of the fair market value shall be made in accordance with the procedure for appraisal set forth immediately below.

Appraisal shall mean a procedure whereby two independent appraisers, neither of whom shall be the manufacturer or re-manufacturer of the Equipment, one chosen by Lessee and one by Lessor, shall mutually agree upon the amount in question. Lessor or Lessee, as the case may be, shall deliver written notice to the other party appointing its appraiser within fifteen (15) business days after receipt from the other party of a written notice appointing that party's appraiser. If within fifteen (15) days after appointment of the two appraisers as described above, the two appraisers are unable to agree upon the amount in question, a third independent appraiser, who shall not be the manufacturer or re-manufacturer of the Equipment, shall be chosen within five (5) business days thereafter by the mutual consent of such first two appraisers or, if such first two appraisers fail to agree upon the appointment of a third appraiser, such appointment shall be made by an authorized representative of the American Arbitration Association or any organization successor thereto. The decision of each appraiser so appointed and chosen shall be given within ten business days after the selection of such third appraiser. The average of the three appraisals arrived at by said three appraisers shall be binding and conclusive on Lessor and Lessee. Lessee shall pay all fees and expenses associated with appraisal.

#### SECTION 22. NON WAIVER

No covenant or condition of this Lease can be waived except by the written consent of Lessor. Forbearance or indulgence by Lessor in any regard whatever shall not constitute a waiver of the covenant or condition to be performed by Lessee to which said forbearance or indulgence may apply, and, until complete performance by Lessee of said covenant or condition, Lessor shall be entitled to invoke any remedy available to it under this Lease or by law or in equity despite said forbearance or indulgence.

#### SECTION 23. ENTIRE AGREEMENT

This Lease together with all Schedules attached hereto, constitutes the entire agreement between Lessor and Lessee with respect to the lease of the Equipment and it shall not be amended, altered or changed except by a written agreement signed by the parties hereto.

**SECTION 24. NOTICES**

Any demands, notices and other communications provided for in this Lease shall be in writing and shall be deemed to have been duly given when:

- (a) delivered personally; or
- (b) deposited in a receptacle for receipt of United States mail, postage prepaid or when sent by prepaid telegraph or telex and addressed as follows:

If to the Lessor:                      New England Mutual Life Insurance Company  
501 Boylston Street  
Boston Massachusetts 02117  
Attention: Securities Department  
(except that communications with respect to payments hereunder shall be addressed to the attention of the Investment Accounting Department)

If to the Lessee:                      Chicago & Illinois Western  
Railroad  
233 North Michigan Avenue  
Chicago, Illinois 60601  
  
Attention: Treasurer

or such other place as either party may designate to the other by notice given in accordance with this Section.

**SECTION 25. GENDER; NUMBER**

Whenever the context of this Lease requires, the masculine gender includes the feminine or neuter and the singular number includes the plural; and, whenever the word "Lessor" is used herein, it shall include all assignees of Lessor.

**SECTION 26. TITLES**

The titles to the paragraphs of this Lease are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

**SECTION 27. GOVERNING LAW**

This Lease shall be governed by and construed in accordance with the law of the state of Illinois.

**SECTION 28. SURVIVAL OF TERMS OF LEASE**

Lessee's obligations and liabilities hereunder shall not be affected by the expiration of this Lease and shall continue in full force and effect notwithstanding the expiration of this Lease or the termination of the term hereof, whether by expiration of time, by operation of law or otherwise, unless and until expressly released by the Lessor.

SECTION 29. EXECUTION AND COUNTERPARTS

Five (5) counterparts of this Lease have been executed by the parties hereto, one of which is prominently marked "Lessor's Copy".

SECTION 30. SUCCESSORS AND ASSIGNS

This Lease shall inure to the benefit of Lessor, Lessee, the Lender and their respective successors and assigns.

SECTION 31. OTHER DOCUMENTS

Lessee shall deliver to Lessor such other documents, financial statements, opinions of counsel or certificates relating to Lessee's financial condition or the execution and performance of this Lease as Lessor shall from time to time reasonably request.

SECTION 32. SEVERABILITY; EFFECT AND MODIFICATION OF LEASE

Any provision of this Lease which is prohibited or enforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of 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.

SECTION 33. STATEMENT OF LEASE

It is expressly understood and agreed by and between the parties hereto that this instrument constitutes a lease of the Items of Equipment and nothing herein shall be construed as conveying to Lessee any right, title or interest in the Items of Equipment except as a lessee only. Neither the execution or the filing of any financing statement with respect to this Lease or recording hereof shall in any manner imply that the relationship between Lessor and Lessee is anything other than Lessor and Lessee, respectively. Any such filing of financing statements or recording of this Lease is accomplished solely to protect the interests of Lessor, Lessee and any lender in the event of any unwarranted assertions by any person not a party to this Lease transaction.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

LESSOR:

(SEAL)

ATTEST:

Richard S. [Signature]  
Assistant Secretary

By [Signature]  
Its Vice President  
Senior Investment Officer

LESSEE:

By

J. D. Grade  
Its Vice President ~~and Treasurer~~

(SEAL)

ATTEST:

R. J. Smith  
Assistant Secretary

EXHIBIT A

ACCEPTANCE SUPPLEMENT NO. 1  
To That Certain  
RAILROAD EQUIPMENT LEASE AGREEMENT DATED AS OF  
DECEMBER 19, 1975  
By and Between  
New England Mutual Life Insurance Company  
As Lessor  
And  
Chicago & Illinois Western Railroad  
As Lessee

The undersigned Lessor and Lessee under the Railroad Equipment Lease Agreement described in the caption hereof (the "Lease") hereby acknowledge and agree that the Items of Equipment described in this Acceptance Supplement have been delivered to and are now in the possession of and have been unconditionally accepted by the Lessee under and pursuant to and subject to all the terms and conditions of the Lease and that the following is the description and location of delivery of said Items, the expiration date of the Lease term for said Items, the rent, the Stipulated Loss Value with respect to said Items.

DESCRIPTION AND LOCATION OF EQUIPMENT

The description and the location of delivery of the Items of Equipment covered by this Schedule are set forth in Exhibit "A" attached hereto and incorporated by this reference. The Lessor and the Lessee acknowledge and agree that the cost of each separate Item of Equipment for purposes of computing the Stipulated Loss Value thereof is the cost set forth in said Description.

EXPIRATION DATE OF TERM

March 31, 1991

RENT

Base Rent in the amount of \$10,722,820.71 payable in (60) quarterly payments, each in the amount of \$178,713.68 and payable in arrears, commencing on the 1st day of July, 1976 and on the 1st day of each third month thereafter.

Daily Interim Rent in the amount of \$1,985.71 for each day of the period beginning on the date the Lease is executed and delivered and terminating on March 31, 1976. The aggregate Daily Interim Rent shall be due and payable on April 1, 1976.

STIPULATED LOSS VALUE

The Stipulated Loss Value of the Equipment shall be the sum of (i) the product in dollars of the amount shown on Exhibit A to this Schedule as the Cost of the Item or Items of Equipment with respect to which the Stipulated Loss Value is payable under the Lease and the percentage set forth on Schedule 2 to the Lease which is appropriate to the number of rent installments Lessee has actually paid to Lessor, and (ii) all taxes, fees, interest and other charges, if any, imposed or assessed in connection with or under the Lease with respect to said Item or Items of Equipment.

DATED:

LESSOR:

NEW ENGLAND MUTUAL LIFE INSURANCE  
COMPANY

LESSEE:

CHICAGO & ILLINOIS WESTERN  
RAILROAD

By

Its

  
Senior Investment Officer

By

Its

SCHEDULE NO. 1  
to the  
RAILROAD EQUIPMENT LEASE AGREEMENT  
DECEMBER 19, 1975  
between  
NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY  
and  
CHICAGO & ILLINOIS WESTERN RAILROAD

DESCRIPTION OF EQUIPMENT:

- (1) Type A Equipment  
2 Switch Engines (1,600 horsepower)  
bearing identifying numbers  
ICG 1310 and ICG 1311
- (2) Type B Equipment  
3 GP 40 Line Haul  
Locomotives (3,000 horsepower)  
bearing identifying numbers  
ICG 2550, ICG 3076 and ICG 3077
- 1 SD 40A Line Haul  
Locomotive (3,000 horsepower)  
ICG 6024
- (3) Type C Equipment  
1 GP8 General Purpose  
Locomotive (1,600 horsepower)  
ICG 7736
- 13 GP10 General Purpose  
Locomotive (1,850 horsepower)  
bearing identifying numbers  
ICG 8090 8359 8028 8095  
8131 8361 8202  
8354 8138 8249  
8132 8317 8117

LESSOR'S COST OF EQUIPMENT TO BE PURCHASED FROM CHICAGO & ILLINOIS WESTERN RAILROAD:

(1) Type A Equipment		
Unit Cost		Total Cost
\$ 274,000		\$ 548,000
(2) Type B Equipment		
Unit Cost		Total Cost
297,000		1,188,000

DECEMBER 19, 1975

(3) Type C Equipment  
Unit Cost  
265,000

Total Cost  
3,710,000

TOTAL LESSOR'S COST:

\$ 5,446,000  
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STIPULATED LOSS SCHEDULE

Payments are quoted as a percent of equipment cost and are to be made on the payment date shown in lieu of the rental payment due on that date.

Settlement Payable on Payment Date	Amount	Settlement Payable on Payment Date	Amount	Settlement Payable on Payment Date	Amount	Settlement Payable on Payment Date	Amount
April 1, 1976	104.745%						
Base Rent							
Payment #							
1	108.104	16	97.284%	31	81.100%	46	56.127%
2	107.225	17	97.530	32	79.501	47	53.699
3	106.325	18	96.335	33	73.654	48	51.830
4	105.401	19	95.116	34	76.987	49	50.024
5	105.977	20	93.657	35	75.293	50	47.758
6	105.028	21	93.631	36	73.565	51	45.476
7	104.055	22	92.321	37	72.495	52	43.140
8	103.055	23	90.988	38	70.696	53	41.090
9	103.473	24	89.625	39	68.856	54	38.608
10	102.443	25	89.191	40	67.000	55	35.205
11	101.399	26	87.759	41	65.698	56	33.699
12	100.323	27	85.322	42	63.755	57	31.384
13	100.683	28	84.845	43	61.781	58	28.782
14	99.576	29	84.208	44	59.769	59	26.150
15	98.445	30	82.667	45	58.221	60	23.282

EXHIBIT B

OFFICER'S CERTIFICATE

The undersigned [*officer's name* ], does hereby certify that:

1. He is the duly elected, qualified and acting [*officer's title* ] of Chicago & Illinois Western Railroad (the "Company") and that as such [*officer's title* ] he has custody of the records of the Company respecting insurance coverage on the personal property owned or leased by the Company.

2. The Company maintains in full force and effect property insurance with respect to the equipment which is the subject of an Equipment Lease Agreement (the "Lease") between the Company and New England Mutual Life Insurance Company dated as of \_\_\_\_\_, 1975 (the "Equipment") and general public liability insurance with respect to the use and operation of the Equipment with the following company(ies):

which he believes to be (an) insurer(s) of recognized responsibility.

3. Said insurance is against risks and in amounts as required by the terms of Section 8 of the Lease and has applicable thereto deductible provisions to no greater extent than the lesser of the amount provided for by insurance maintained by the Company in respect of similar equipment presently owned or leased by it or the amount which he believes, having made due inquiry, is provided for by insurance maintained by Other Railroad Companies, as that Term is defined in said Section 8.

IN WITNESS WHEREOF, the undersigned as hereunto set his hand  
this \_\_\_\_\_ day of \_\_\_\_\_, 1975.

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