

The Kansas City Southern Railway Company
Louisiana & Arkansas Railway Company

114 West 11th Street, Kansas City, Missouri 64105

RECEIVED
JAN 10 3 20 PM '78
CERTIFICATION UNIT

RICHARD P. BRUENING
General Counsel

January 9, 1978

Acting Secretary
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, DC 20423

RECORDATION NO. 91174 Filed & Recorded

JAN 10 1978 - 3 21 PM

INTERSTATE COMMERCE COMMISSION

Dear Sir:

Pursuant to the provisions of Section 20c of the Interstate Commerce Act, as amended, and the regulations of the Interstate Commerce Commission promulgated thereunder, there are herewith transmitted for filing and recording, eight executed counterparts of the Equipment Lease Agreement, dated as of December 1, 1977, between BWL, Inc., as Lessor, and The Kansas City Southern Railway Company, as Lessee, covering certain Units identified in Exhibit A appended to the Equipment Lease Agreement.

A check in the amount of \$50.00 in payment of the recordation fee is enclosed.

The name and address of the Lessor is:

BWL, Inc.
One IBM Plaza
Suite 2700
Chicago, IL 60611

8-610A073
JAN 10 1978
Date _____
Fee \$ 50.00
CC Washington, D.C.

The name and address of the Lessee is:

The Kansas City Southern Railway Company
114 West 11th Street
Kansas City, MO 64105

A general description of the equipment covered by the above identified Equipment Lease Agreement is as follows:

25 Bi-Level Open Top Fixed Auto Racks, and
30 Tri-Level enclosed Auto Racks as more fully described in Exhibit A, appended to the Equipment Lease Agreement.

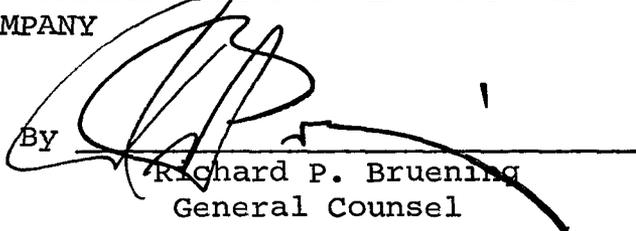
Gene A. Thorschell
Richard P. Bruening

The above identified Equipment Lease Agreement has not previously been recorded with the Interstate Commerce Commission.

It would be appreciated if all counterparts of the Equipment Lease Agreement not required for your files could be marked with the Commission filing and recordation stamps and returned to the party tendering same.

Very truly yours,

THE KANSAS CITY SOUTHERN RAILWAY
COMPANY

By 

Richard P. Bruening
General Counsel

EQUIPMENT LEASE AGREEMENT

Lease Agreement dated as of December 1, 1977, between BWL, Inc., a Delaware corporation (herein called "Lessor"), and THE KANSAS CITY SOUTHERN RAILWAY COMPANY, a Missouri corporation, (herein called "Lessee").

RECORDATION NO. 27 Filed & Recorded

SECTION 1. LEASE OF EQUIPMENT.

JAN 10 1978 - 3 01 PM

Subject to the terms and conditions of this Lease, ~~LESSOR~~ ~~STATE COMMERCE COMMISSION~~ hereby leases to Lessee and Lessee hereby leases from Lessor the units of equipment set forth in Exhibit A hereto (herein called the "Equipment" and herein sometimes called the "Units"). The Lessee, as speedily as may be, shall cause to be constructed and sold, assigned, transferred and set over unto the Lessor, the Equipment described in Exhibit A. To that end the Lessee hereby assigns the contract or contracts for the construction of such Equipment and agrees to assign to the Lessor all its rights, title and interest under said contract or contracts. The total cost of the Equipment to the Lessor shall not exceed \$1,600,000, including applicable sales, use or similar taxes and freight charges. Any increase in the total cost of the Equipment must be approved by Lessor, provided, however, in the event Lessor does not approve said increase, Lessor shall agree to exclude from this Lease such unit or units of Equipment as will, after giving effect to such exclusion, reduce the total cost of the Equipment then under this Lease to not more than \$1,600,000. The actual purchase price for each Unit paid by Lessor to the Manufacturer (as identified in Exhibit A hereto) is hereinafter defined as the Purchase Price.

The Manufacturer will cause the Equipment to be tendered to Lessee at a location or locations mutually agreed upon by Lessee and Lessor. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect same and if each unit of Equipment is found to conform to the specifications therefore, to accept delivery of such unit of Equipment and to execute and deliver to the Lessor a certificate of acceptance (herein called "Certificate of Acceptance") substantially in the form attached hereto as Exhibit B, whereupon such Equipment shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all of the terms and conditions of this Lease. Lessor shall have no obligation to purchase nor lease any unit of Equipment set forth of Equipment set forth in Exhibit A not delivered to and accepted by Lessee on or prior to June 30, 1978 ("Outside Delivery Date").

The term "Closing Date" shall mean for each unit of Equipment, the date on which said unit of Equipment was settled for and payment was made to the manufacturer by Lessor.

The Equipment may be settled for in more than one group of units of Equipment delivered to and accepted by the Lessee.

SECTION 2. RENTALS AND PAYMENT DATES.

2.1 (a) Rental for Group I Equipment. The Lessee agrees to pay to the Lessor as rental ("Rental") for each Unit listed as Group I Equipment on Exhibit A hereto subject to this Lease, one Interim Rental payment, if required, on the last Closing Date of Group I Equipment and thereafter 41 consecutive quarterannual payments, payable in arrears beginning three months after the last Closing Date of Group I Equipment. The Interim Rental shall be in an amount equal to the product of the Purchase Price of each Unit of Group I Equipment then subject to this Lease, multiplied by .03384% for each day elapsed from and including the Closing Date for each such Unit, to but not including the date such payment is made; provided, however, that if all the Units of Group I Equipment are closed upon on the same date then there shall not be an Interim Rental payment for Group I Equipment and in such case, the 41 consecutive quarterannual payments shall commence three months following the Closing Date of Group I Equipment.

The 41 quarterannual rental payments due as provided in the first paragraph herein shall each be in an amount equal to 3.04556% of the Purchase Price of each Unit listed as Group I on Exhibit A hereto subject to this Lease on the date of such payment.

(b) Rental for Group II Equipment. The Lessee agrees to pay to the Lessor as rental ("Rental") for each Unit listed as Group II Equipment on Exhibit A hereto subject to this Lease, one Interim Rental payment, if required, on the last Closing Date of Group II Equipment and thereafter 41 consecutive quarterannual payments, payable in arrears beginning three months after the last Closing Date of Group II Equipment. The Interim Rental shall be in an amount equal to the product of the Purchase Price of each Unit of Group II Equipment then subject to this Lease, multiplied by .03384% for each day elapsed from and including the Closing Date for each such Unit, to but not including the date such payment is made; provided, however, that if all the Units of Group II Equipment are closed upon on the same date then there shall not be an Interim Rental payment for Group II Equipment and in such case, the 41 consecutive quarterannual payments shall commence three months following the Closing Date of Group II Equipment.

The 41 quarterannual rental payments due as provided in the first paragraph herein shall each be in an amount equal to 3.04556% of the Purchase Price of each Unit listed as Group II on Exhibit A hereto subject to this Lease on the date of such payment.

2.2 Placement of Payment. All payments provided for in this Lease to be made to the Lessor shall be made to the Lessor by wire transfer of federal funds at its address set forth in Section 22.1 hereof, or at such other place or in such other form as the Lessor shall specify in writing. Until notified otherwise, Lessee may pay rental payments by check, which check is to be received not less than three (3) days before rental payment due dates.

2.3 Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent or reduction thereof, including, but not limited to, abatements or reductions due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise or against the 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 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 due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, 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 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 11 hereof, or until, pursuant to Section 13 hereof, the Equipment is placed and ready for delivery to the Lessor on the Lessee's lines or leaves the Lessee's lines for off-line delivery to the Lessor.

SECTION 3. TERM OF THE LEASE.

The term of this Lease as to each unit of Equipment listed as Group I Equipment on Exhibit A hereto shall begin on the date the Certificate of Acceptance is executed by the Lessee as to each such unit of Equipment and, subject to the provisions of Sections 11, 14 and 21 hereof, shall terminate on the date of the last payment of Rental hereunder for Group I Equipment on Exhibit A.

The term of this Lease as to each unit of Equipment listed as Group II Equipment on Exhibit A hereto shall begin on the date the Certificate of Acceptance is executed by the Lessee as to each such unit of Equipment and, subject to the provisions of Sections 11, 14 and 21 hereof, shall terminate on the date of the last payment of Rental hereunder for Group II Equipment on Exhibit A.

SECTION 4. TITLE TO THE EQUIPMENT.

4.1 Retention of Title. The Lessor is acquiring full legal title to the Equipment and it is understood that Lessee shall acquire no right, title or interest to the Equipment except hereunder notwithstanding the delivery of the Equipment to and the possession and use thereof by the Lessee.

4.2 Duty to Number and Mark Equipment. The Lessee shall cause each unit of Equipment to be kept numbered with the identifying number set forth in Exhibit A hereto, or such number as set forth in any amendment or supplement hereto, and will keep and maintain plainly, distinctly, permanently, and conspicuously marked by stencil printed in contrasting color upon each side of each unit of Equipment in letters not less than one inch in height, the name "BWL, Inc. a wholly-owned subsidiary of Borg-Warner Acceptance Corporation" followed by the word "Lessor" or other appropriate words designated by the Lessor with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such unit of Equipment and its rights under this Lease. The Lessee will not place any such unit 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 names and word or words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any unit of Equipment except with the consent of the Lessor and in accordance with a statement of new identifying numbers to be substituted therefor, which consent and statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

4.3 Prohibition Against Certain Designations. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee to use the Equipment under this Lease.

SECTION 5. REPRESENTATIONS AND WARRANTIES.

5.1 The Lessor warrants that it has received whatever title was conveyed to it by the seller and that the Equipment shall be free of liens and encumbrances which may result from claims against Lessor not related to the ownership of the Equipment. Lessor further warrants that during the term of the Lease, if no Event of Default has occurred, the Lessee's use of the Equipment shall not be interrupted by Lessor or anyone claiming solely through or under Lessor. Lessor's liability shall be limited to the value of the equipment and in no event shall the Lessor be liable for special, incidental or consequential damages, whatsoever or howsoever caused.

The warranties set forth in the preceding paragraph are in lieu of all other warranties of Lessor, whether written, oral or implied; Lessee acknowledges that Lessee has selected both the Equipment and the Manufacturer from whom the Lessor has purchased the Equipment, and THE LESSOR LEASES THIS EQUIPMENT, AS-IS, IN WHATEVER CONDITION IT MAY BE WITHOUT ANY OTHER AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, BY THE LESSOR, AND THE LESSOR HEREBY EXPRESSLY DISCLAIMS ANY OTHER WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OR ANY ITEM OR ITEMS OF EQUIPMENT INCLUDING BUT NOT LIMITED TO THEIR VALUE, CONDITION, DESIGN OR OPERATION, (B) THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, (C) THE DESIGN OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT, OR (D) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE.

The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease, so long as the Lessee is not in default hereunder, to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against the Manufacturer thereof.

5.2 The Lessee represents and warrants that:

(a) The Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of Missouri;

(b) The Lessee has the corporate or other power and authority to own its property and carry on its business as now being conducted and is duly qualified to do business as a foreign corporation in all states in which such qualification is necessary to carry out the terms of the Lease;

(c) This Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement of the Lessee enforceable in accordance with its respective terms;

(d) This Lease will be filed and recorded pursuant to Section 10.1 hereof, and no other filing, recording or depositing is necessary to protect the Lessor's title to the Equipment;

(e) No approval, consent of, or filing with, any public regulatory body is required with respect to the entering into or performance by the Lessee of this Lease;

(f) The execution and delivery by the Lessee of this Lease does not violate any provision of any law, any order of any court or governmental agency, the Charter or By-laws of the Lessee, or any indenture, agreement, or other instrument to which the Lessee is a party or by which it, or any of its property is bound, and will not be in conflict with, result in the breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Lessee, except upon the leasehold estate of the Lessee hereunder;

(g) This Lease will not be in violation or cause a default under the lease of flatcars, on which the units of Equipment will be installed, between Trailer Train Company and Lessee and Lessee has acquired Trailer Train Company's approval to attach the Units to the flatcars, their statement that the Units will not be deemed to be accessions to the flatcars, and their agreement that the Lessor may remove the Units from the flatcars in the event of default by Lessee hereunder;

(h) There are no suits or proceedings pending, or, to the knowledge of Lessee threatened, in any court or before any regulatory commission, board or other administrative governmental agency against or affecting Lessee, which, in Lessee's reasonable opinion, will have a material adverse effect on the financial condition or business of Lessee;

(i) No unit of Equipment shall constitute an accession to the flatcars on which it is or will be installed and no unit of Equipment is or shall be installed on any flatcar or other device in any manner which will give rights in or to such unit of Equipment to any person owning or having rights in the flatcar or other device on which such Unit is or will be installed and waives from all owners, interest holders, and secured creditors with respect to the flatcars, in form and content, satisfactory to the Lessor, shall be furnished by Lessee to Lessor.

SECTION 6.

6.1. Scope of Indemnity. The Lessee shall defend, indemnify and save harmless the Lessor, from and against:

(a) any and all loss or damage of or to the the Equipment, usual wear and tear excepted, and

(b) any claim, cause of action, damages, liability, cost or expense (including counsel fees and costs in connection therewith) which may be incurred in any manner by or for the account of any of them (i) relating to the Equipment or any part thereof, including without limitation, the construction, purchase, delivery, installation, ownership, leasing or return of the Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessor or by the Lessee), (ii) by reason or as the result of any act or omission of the Lessee for itself or as agent or attorney-in-fact for the Lessor hereunder, (iii) as a result of claims for patent infringements, or (iv) as a result of claims for negligence or strict liability in tort.

6.2 Continuation of Indemnities and Assumptions. The indemnities and assumptions of liability in this Section 6 contained shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more units of Equipment, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumption of liability shall not apply in respect of any matters referred to in subsection (a) or clause (i), (ii) or (iv) of subsection (b) of Section 6.1 hereof, occurring after the termination of this Lease, except for any such matters occurring, or arising out of events occurring, before the return of the Equipment to the possession of the Lessor as provided in Section 13 or 15 as the case may be. The Lessee shall be entitled to control, and shall assume full responsibility for, the defense of such claim or liability, provided that Lessee is not in default hereunder.

SECTION 7. RULES, LAWS AND REGULATIONS.

The Lessee agrees, for the benefit of the Lessor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit)

with all applicable laws of the jurisdictions in which its operations involving the Units may extend and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, 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 addition of or to any part on any Unit, the Lessee will conform therewith at its own expense and the Lessor will have title thereto; 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 reasonable opinion of the Lessor, adversely affect the property or rights of the Lessor under this Lease. The Lessee, at its own cost and expense, may furnish other additions, modifications and improvements to the Units during the term of this Lease provided that such additions, modifications and improvements are readily removable without causing material damage to the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee and shall be removed by it upon the return of the Units pursuant to Section 13 hereof. In the event the Lessee shall make any alteration, replacement, addition or modification ("Additional Expenditures") to any Unit pursuant to the first sentence of this paragraph, the Lessor agrees that it will include the value thereof in its gross income for Federal income tax purposes.

SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.

The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange. During any storage period or after the expiration of the term with respect to each unit of Equipment, the Lessee shall maintain the units of Equipment in such manner as the Lessee normally maintains similar equipment owned or leased by it in similar storage circumstances.

SECTION 9. LIENS ON THE EQUIPMENT.

Throughout the term of this Lease and during the period of any storage of the Equipment by the Lessee provided for in Section 13 or 15 hereof, the Lessee shall pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien, encumbrance or charge upon the Equipment, and any liens, encumbrances or charges which may be levied against or imposed upon any unit of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, but the Lessee shall not be required to pay or discharge any such claims so long as it shall give notice thereof to the Lessor, and in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner, and the nonpayment thereof does not, in the opinion of Lessor, adversely affect or endanger the title and interest of the Lessor to the Equipment. The Lessee's obligations under this Section 9 shall survive termination or expiration of this Lease.

SECTION 10. FILING, PAYMENT OF FEES AND TAXES.

10.1 Filing. Prior to the execution of the Certificate of Acceptance of the first unit of Equipment, the Lessee will, at its sole expense, cause this Lease to be duly filed, recorded or deposited as the Lessor may reasonably request for the protection of its title and will furnish the Lessor proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record (and will refile, reregister, redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor, for the purpose of protecting the Lessor's title to the Equipment to the satisfaction of the Lessor's counsel or for the purpose of carrying out the intention of this Lease and in connection with any such action, will deliver to the Lessor proof of such filings and an opinion of the Lessee's counsel that such action has been properly taken. The Lessee will pay all costs, charges and expenses incident to any such filing, refiling, recording, rerecording, depositing, redepositing, registering or reregistering of any such instruments or incident to the taking of such action.

10.2 Payment of Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal

or foreign taxes (other than any United States federal income tax or any value-added tax in lieu of or in substitution for any such income taxes [and, to the extent that the Lessor receives credit therefor against its United States federal income tax liability, any foreign income tax] payable by the Lessor in consequence of the receipt of payments provided herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts or gross receipts taxes [other than gross receipts taxes in the nature of sale or use taxes], up to the amount of any such taxes 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 or city, 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), assessments or license fees and any charges, interest, fines or penalties in connection therewith (all such expenses, taxes, assessments, license fees, charges, interest, 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, 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 of Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such unit of Equipment free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such unit of Equipment; provided, however, that the Lessee shall be under no obligation to pay any impositions so long as it shall notify Lessor thereof and is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor. 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 invoice therefor, provided, however, that the Lessee shall not be obligated to reimburse the Lessor for any impositions so paid unless the Lessor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Lessor) or unless the Lessee shall have approved the payment thereof, or unless the payment thereof by Lessor does not abridge Lessee's right to legally contest such impositions as provided for above, or unless the Lessor has notified the Lessee in writing of Lessor's intent to pay such impositions and the Lessee has not within seven days notified the Lessor that the Lessee desires to contest such imposition.

In the event any reports with respect to impositions are required to be made on the basis of individual units of Equipment, the Lessee will either make such reports in such manner as to show the interests of the Lessor in such units of Equipment or notify the Lessor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor. In either event, Lessee shall furnish copies of any such reports to the Lessor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any impositions, such liability shall continue, notwithstanding the expiration or termination of this Lease, until all such impositions are paid or reimbursed by the Lessee.

SECTION 11. INSURANCE; PAYMENT FOR CASUALTY OCCURRENCE.

11.1 Insurance. 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 and public liability insurance in respect of the Units at the time subject hereto, in amounts and against risks customarily insured against by railroad companies in respect of similar equipment, and, in any event, comparable in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, (as hereinafter defined) and so long as no event of default shall have occurred and be continuing under this Lease, the Lessor shall, subject to the Lessee having made payment of the Casualty Value (as hereinafter defined) 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. Lessor shall be named an additional insured under the applicable liability insurance policy or policies, and a loss payee as its interest may appear, under the applicable property insurance policy. Lessor shall be given certificates of insurance in connection herewith and all such certificates shall provide for 30 days' prior notice of material change or cancellation to be given to Lessor.

11.2 Duty of Lessee to Notify Lessor. In the event that any unit of Equipment shall be or become lost, stolen, destroyed, or, in the reasonable opinion of the Lessee, irreparably damaged during the term of this Lease, including any renewal term hereunder, or thereafter while the unit of Equipment is in the possession of the Lessee pursuant to Section 13 or 15 hereof, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise during the term of this Lease, including any renewal terms hereunder (any such occurrence, except for any requisition which by its terms is for an indefinite period or is for a stated period which does not

exceed the term of this Lease, being hereinafter called a Casualty Occurrence), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence), inform the Lessor in regard thereto and shall pay the Casualty Value of such Unit in accordance with the terms hereof.

11.3 Payment of Casualty Loss. The Lessee, on the next succeeding Rental payment date following a Casualty Occurrence with respect to any unit of Equipment, shall pay to the Lessor the rental installment due on such payment date for such unit of Equipment plus a sum equal to the Casualty Value of such unit of Equipment as of the date of such payment.

11.4 Rent Termination. Upon (and not until) payment of the Casualty Value in respect of any unit of Equipment and the rental installment due on such payment date, the obligation to pay rent for such unit of Equipment accruing subsequent to the Casualty Value payment date shall terminate, but the Lessee shall continue to pay rent for all other units of Equipment.

11.5 Disposition of Equipment. The Lessee shall, as agent for the Lessor, dispose of such unit of Equipment having suffered a Casualty Occurrence as soon as it is able to do so for the fair market value thereof. Any such disposition shall be on an "as is," where is" basis without representation or warranty, express or implied. As to each separate unit of Equipment so disposed of, the Lessee may so long as no event of default has occurred and is continuing retain all amounts of such price plus any insurance proceeds from insurance policies carried by Lessee and damages received by the Lessee by reason of such Casualty Occurrence up to the Casualty Value attributable thereto and shall remit the excess, if any, to the Lessor. In disposing of such unit of Equipment, the Lessee shall take such action as the Lessor shall reasonably request to terminate any contingent liability which the Lessor might have arising after such disposition from or connected with such unit of Equipment.

11.6 Casualty Value. The Casualty Value of each unit of Equipment shall be an amount determined as of the date the Casualty Value is paid as provided in this Section 11 (and not the date of the Casualty Occurrence) equal to that percentage of the Purchase Price of such unit of Equipment as is set forth in the Schedule of Casualty Values attached hereto as Exhibit C opposite such date of payment.

11.7 Risk of Loss. The Lessee shall bear the risk of loss and except as hereinabove in this Section 11 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any unit of Equipment from and after the date hereof and continuing until payment of the Casualty Value and the Rental installments due on and prior to the date of payment of such Casualty Value in respect of such unit of Equipment has been made, such Unit or the salvage thereof has been disposed of by the Lessee and the title to such Unit or the salvage thereof has been transferred to the purchaser of such Unit or the salvage thereof.

11.8 Eminent Domain. In the event that during the term of this Lease the use of any unit of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period which does not exceed the term of this Lease, the Lessee's obligation to pay rent shall continue for the duration of such requisitioning or taking. The Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

SECTION 12. REPORTS

12.1 Duty of Lessee to Furnish. On or before May 1 in each year, commencing with the year 1978, the Lessee will furnish to the Lessor an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the units of Equipment then leased hereunder, the amount, description and numbers of all the units of Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as Lessor may reasonably request; (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced and (c) describing the insurance coverage, if any, maintained by the Lessee pursuant to the first paragraph of Section 11.1 hereof.

12.2 Lessor's Inspection Rights. The Lessor shall have the right, at its sole cost and expense by its authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor the existence and proper maintenance thereof during the continuance of this Lease.

12.3 Financial Reports. Lessee agrees that it will furnish to the Lessor, the following:

- (a) to the extent not already delivered to Lessor under the terms of any other financing;
 - (i) As soon as available and in any event within 60 days after the end of each quarterly period, except the last, of each fiscal year, a balance sheet of Lessee as at the end of such period and a statement of income and retained

income of the Lessee for the period beginning on the first day of such fiscal year and ending on the date of such balance sheet, the income statement setting forth increases and decreases from the corresponding figures for the corresponding period of the preceding fiscal year, all in reasonable detail and certified by the principal financial officer of the Lessee.

- (ii) As soon as available and in any event within 120 days after the last day of each fiscal year, a copy of the Lessee's annual report to stockholders, including balance sheet, income statement and statement of retained income of the Lessee, which statements will have been certified by a firm of independent public accountants of recognized national standing, selected by the Lessee covering the operations of the Lessee. Additionally, the aforementioned financial information shall be supplied by Lessee for the year 1977.
 - (iii) As soon as available, copies of such financial statements, reports and proxy statements as the Lessee shall furnish to its stockholders.
 - (iv) As soon as available, copies of all financial or other reports filed by the Lessee with the Interstate Commerce Commission or the Securities and Exchange Commission.
- (b)
- (i) As soon as available and in any event within 120 days after the end of each fiscal year, a certificate signed by the principal financial officer of the Lessee, to the effect that the signer thereof has reexamined the terms and provisions of this Lease and that at the date of said certificate and throughout the duration of said period is not aware of any default in compliance by the Lessee with any of the covenants, terms and provisions of said agreement, or if the signer is aware of any such default, he shall disclose in such certificate the nature thereof.
 - (ii) Such additional information as the Lessor may reasonably request concerning the Lessee.

SECTION 13. Return of Units upon Expiration of Term.

The Lessor intends to retain the Units for re-lease at the expiration of the term of this Lease. As soon as practicable on or after the expiration of the original or extended term of this Lease, the Lessee will, at its own cost and expense, at the request of the Lessor, detach each Unit from the unit of railroad rolling stock to which it had been attached, and deliver possession of such Unit to the Lessor at such point or points on its lines 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 at such point or points on the Lessee's lines as it may select, in facilities furnished by the Lessee for a period not exceeding 180 days after the delivery of the last Unit to the Lessor and transport the same, at any time within such 180 day period, to any reasonable place on the lines of railroads operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee without charge to the Lessor for insurance, which shall be provided by Lessee until expiration of Lessee's obligations under this Section in amounts and pursuant to the requirements of Section 11 of this Lease. 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. Each Unit returned to the Lessor pursuant to this Section 13 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 any applicable rules of any governmental agency or other organization with jurisdiction. The detaching, 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 detach, deliver, store and transport the Units, and the Lessee shall defend and indemnify the Lessor against any damages, cost or liability incurred by the Lessor as a consequence of Lessee's

failure to perform in accordance with the terms of this Section. All gross amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee shall be promptly turned over to the Lessor but in no event shall such amounts be less than the Rentals for each month of such delay pro-rated for partial months. In the event any Unit is not detached, delivered and stored, as hereinabove provided, within 30 days after such termination, the Lessee, shall in addition, pay to the Lessor for each day thereafter an amount equal to .008333% of the Purchase Price of such Units.

SECTION 14. DEFAULT.

14.1 Events of Default. Any of the following events shall constitute an Event of Default hereunder:

- (a) Default shall be made in the payment of any part of the rental or other sums provided in Section 2 hereof or in Section 11 hereof and such default shall continue for ten days; or
- (b) The Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or of possession of the Equipment, or any portion thereof, and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties having any interest therein and to recover possession of such Equipment within 30 days; or
- (c) 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 and such default shall continue for 30 days after written notice from the Lessor to the Lessee, specifying the default and demanding the same to be remedied; or
- (d) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter 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 duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees within 30 days after such appointment or 60 days after such petition shall have been filed, whichever shall be earlier; or

- (e) Any other proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtor's readjustments or indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable 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 duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that 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 or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or
- (f) Any representation or warranty of the Lessee shall be breached or shall not have been true when made; or

- (g) A condition of default under that certain Guarantee Agreement between the Trustee named therein and the Lessee dated as of June 15, 1976 has occurred and is continuing.

When any Event of Default described above has, to the knowledge of the Lessee, occurred, the Lessee agrees to give notice thereof within three business days thereafter to the Lessor.

14.2 Remedies. If any Event of Default has occurred and is continuing, 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; or
- (b) By notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Equipment may be located and take possession of all or any of such Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Equipment for any purposes whatever but the Lessor, shall, nevertheless, have a right to recover from the Lessee any and all amounts 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 in such full rental period and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each unit of

Equipment, which represents the excess of the present worth, at the time of such termination, of all rentals for such unit 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 worth of the then fair rental value of such unit for such period computed by discounting from the end of such term to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the use of the unit during such period, such present worth to be computed in each case on a basis of a rate of 6% per annum, compounded quarterly 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 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; and

- (c) In the event of any such termination and whether or not the Lessor shall have exercised or shall thereafter exercise any of its other rights under paragraph (b) above, the Lessor shall have the right to recover from the Lessee an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to any portion of the 10% Investment credit attributable to 100% of the total Purchase Price of the Equipment (the "Investment Credit") allowed by Section 38 and related sections of the Internal Revenue Code of 1954, as amended to the date hereof (the "Code"), which was lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of the breach of one or more of the representations, warranties and covenants by the Lessee in Section 20 or any other provisions of the Lease, the termination of this Lease, the Lessor's loss of the right to use any unit of Equipment, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in any unit of Equipment after the occurrence of an Event of Default plus such sum as, in the reasonable opinion of the Lessor, will cause the Lessor's net after tax yield and deferred

income under this Lease to be equal to the net after tax yield and deferred income that would otherwise have been available to the Lessor if it had been entitled to utilization of all or such portion of the maximum depreciation deduction authorized with respect to a unit of Equipment under Section 167 of the Code (the "Depreciation Deduction") which was lost, not claimed, not available for claim, disallowed or recaptured in respect of a unit of Equipment as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in Section 20 or any provision of this Lease, the termination of this Lease, the Lessor's loss of the right to use such unit of Equipment, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such unit of Equipment after the occurrence of an Event of Default.

Anything in this Section 14 to the contrary notwithstanding, any default in the observance or performance of any covenant, condition or agreement on the part of the Lessee which results solely in the loss by the Lessor of, or the loss by the Lessor of the right to claim, or the disallowance with respect to the Lessor of all or any portion of the Investment Credit or the Depreciation Deduction shall be for all purposes of this Lease deemed to be cured if the Lessee shall, on or before the next rental payment date after written notice from the Lessor of the loss, or the loss of the right to claim, or the disallowance of the Investment Credit or the Depreciation Deduction, or such portion thereof, agree to pay to the Lessor a lump sum with respect to the Investment Credit and a revised rental rate with respect to said loss of the Depreciation Deduction so that, in the reasonable opinion of the Lessor, the Lessor shall have the same net after tax yield and deferred income as though the Lessor had the benefit of the Investment Credit and the Depreciation Deduction.

14.3 Cumulative Remedies. The remedies in this Lease provided in favor of the 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. The Lessee hereby 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. The Lessee hereby waives any and all existing or future claims of any right to assert any off-set against the rent payments due hereunder, and agrees to make the rent payments regardless of any off-set or claim which may be asserted by the Lessee on its behalf in connection with the lease of the Equipment.

14.4 Lessor's Failure to Exercise Rights. 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.

SECTION 15. RETURN OF EQUIPMENT UPON DEFAULT.

15.1 Lessee's Duty to Return. If the Lessor shall terminate pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of delivering possession of any unit of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

- (a) Forthwith place such Equipment in such reasonable storage place on the Lessee's lines of railroad as the Lessor may designate or, in the absence of such designation as the Lessee may select;
- (b) Permit the Lessor to store such Equipment in such reasonable storage place on the Lessee's lines of railroad at the risk of the Lessee; and
- (c) Transport the Equipment to any place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as the Lessor may reasonably direct upon not less than 30 days' written notice to the Lessee.

15.2 Specific Performance. 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, 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 Equipment.

15.3 Lessor Appointed Lessee's Agent. Without in any way limiting the obligations of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any units of Equipment to Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whosoever shall be at the time in possession of such Unit.

SECTION 16. ASSIGNMENTS BY LESSOR.

This Lease and the rentals and other sums due hereunder may be assignable by the Lessor, without Lessee's written consent.

SECTION 17. ASSIGNMENTS BY LESSEE: USE AND POSSESSION.

17.1 Lessee's Rights to the Equipment. So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment. 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 Equipment except to the extent permitted by the provisions of Section 17.2 hereof.

17.2 Use and Possession. The Lessee shall be entitled to the possession of the Equipment and to the use thereof upon the lines of railroad owned or operated by it (either alone or jointly) or by any corporation a majority of whose voting stock (i.e., having ordinary voting power for the election of a

majority of its Board of Directors) is owned directly or indirectly by the Lessee, or upon lines of railroad over which the Lessee or such corporation has trackage or other operating rights or over which Equipment of the Lessee is regularly operated pursuant to contract, and also to permit the use of the Equipment upon connecting and other carriers in the usual interchange of traffic and equipment, but only upon and subject to all of the terms and conditions of this Lease. The Lessee may receive and retain compensation for such use from other railroads so using any of the units of Equipment. Notwithstanding the foregoing or anything hereinafter provided, the Lessee will not assign any unit of Equipment to service including the regular operation and maintenance thereof outside the United States of America.

So long as the Lessee shall not be in default under this Lease, the Lessee, upon prior written consent of the Lessor, which consent shall not be unreasonably withheld, shall be entitled to sublease the Equipment to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia; provided, however, that the rights of any such sublessee are made expressly subordinate to the rights and remedies of the Lessor under the Lease and such sublease shall not alter in any way the Lessee's obligations to the Lessor which obligations shall be and remain those of a principal and not a guarantor.

SECTION 18. OPINION OF LESSEE'S COUNSEL

On or prior to each Closing Date, and as a condition precedent to the Lessor's obligations to close hereunder, the Lessee will deliver to the Lessor such number of counterparts of the written opinion of counsel for the Lessee as the Lessor may reasonably request, addressed to the Lessor, in scope and substance satisfactory to the Lessor, to the effect that:

- (a) The Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of Missouri;
- (b) The Lessee has the corporate or other power and authority to own its property and carry on its business as now being conducted and is duly qualified to do business as a foreign corporation in all states in which such qualification is necessary to carry out the terms of the Lease;

- (c) This Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement of the Lessee enforceable in accordance with its terms;
- (d) This Lease has been filed and recorded pursuant to Section 10.1 hereof, and no other filing, recording or depositing is necessary to protect the Lessor's title to the Equipment;
- (e) No approval, consent of, or filing with, any public regulatory body is required with respect to the entering into or performance by the Lessee of this Lease;
- (f) The execution and delivery by the Lessee of this Lease does not violate any provision of any law, any order of any court or governmental agency the Charter or By-Laws of the Lessee, or any indenture, agreement, or other instrument to which the Lessee is a party or by which it, or any of its property is bound, and will not be in conflict with, result in the breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Lessee, except upon the leasehold estate of the Lessee hereunder;
- (g) This Lease will not be in violation or cause a default under the lease of flatcars, on which the units of Equipment will be installed, between Trailer Train Company and Lessee and that Lessee has acquired Trailer Train Company's approval to attach the Units to the flatcars, their statement that the Units will not be deemed to be accessions to the flatcars, and their agreement that the Lessor may remove the Units from the flatcars in the Event of Default by Lessee hereunder.

SECTION 19. INTEREST ON OVERDUE RENTALS AND AMOUNTS PAID BY LESSOR.

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the additional obligation on the part of the Lessee to pay an amount equal to 120% of the then prime rate charged by the First National Bank of Chicago per annum to its best commercial customers on short term transactions (or the lawful rate, whichever is less) provided, however, if the First National Bank of Chicago ceases to publish such prime rate during the term of this Lease, the prime rate used shall be that of the largest banking institution in Chicago, Illinois, which is then publishing a prime rate, on the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid, but in no event shall the interest rate on such overdue amounts be less than 9% per annum.

SECTION 20. FEDERAL INCOME TAXES

20.1 Intended Federal Tax Benefits. In entering into this Lease and the transaction contemplated hereby (the "Transaction"), it is the intention of the Lessor and the Lessee that the Transaction will result in making available to the Lessor the following tax benefits (the "Tax Benefits") for the purpose of determining its liability for Federal Income tax:

- (a) The Lease constitutes a lease;
- (b) The Lessor is the lessor and Lessee is the lessee under the Lease;
- (c) The Lessor is entitled to the investment tax credit allowed under Section 38 and related Sections of the Code (the "Investment Credit"), equal to 10% of the entire Purchase Price of the Units; such Investment Credit to be available to the Lessor for the year 1977, with respect to those Units accepted by the Lessee pursuant to Section 1 of the Lease on or before December 31, 1977 (the "1977 Units") and to be available to the Lessor for the year 1978 with respect to those Units accepted by the Lessee pursuant to Section 1 of the Lease after December 31, 1977, (the "1978 Units");

- (d) In computing its taxable net income, the Lessor is entitled to depreciate the Units (i) over an "asset depreciation range" of twelve years for an asset described in Asset Guideline Class No. 00.25 as described in Rev. Proc. 77-10; (ii) employing initially the 200% declining balance method of depreciation with a change, not requiring the consent of the Commissioner of Internal Revenue, to the sum-of-the-years digits method or other method of depreciation when most beneficial to the Lessor, in accordance with Section 167 of the Code; (iii) adopting the half-year convention described in Regulation Section 1.167(a)-11(c)(2)(iii) with respect to the 1977 Units and the modified half-year convention described in Regulation Section 1.167(a)-11(c)(2)(ii) with respect to the 1978 Units; and (iv) taking into account an estimated gross salvage value of 10% of the Purchase Price of the Units which will be reduced by 10% of the Purchase Price of such Units as provided in Section 167(f) of the Code (the "ADR Deduction");
- (e) All amounts includible in gross income by the Lessor with respect to the Lease will be treated as income derived from or allocable to sources within the United States.

20.2 Federal Income Taxes Indemnification.

- (a) The Lessee agrees that the Lessor shall be entitled the Tax Benefits and that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time during the term of the Lease or any extended term thereof take any action or fail to take any action or file any returns, certificates or other documents inconsistent with the foregoing contemplated Tax Benefits except that the Lessee may take such action as may be deemed by the Lessee to be necessary in consequence of, and file returns in connection with, the de minimis use of the Units outside the United States, and that each of such corporations will file such returns and take such action and execute such documents, and keep and make available for inspection and copying by the Lessor such records (other than the Lessee's corporate income tax returns) as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

The Lessee further agrees that by not later than three days prior to each Closing Date, it will deliver or cause to be delivered, to the Lessor an opinion addressed to the Lessor of an appropriate officer or engineer of the Lessee satisfactory in form and substance to the Lessor that the Units will have a useful life of at least 13.50 years, that the Units will have a fair market value at the end of the original term of the Lease of at least 20 percent of the Purchase Price thereof without including in such value any increase or decrease for inflation or deflation during the term of the Lease and after subtracting from such value any cost to the Lessor for removal and delivery of possession of the Units to the Lessor at the end of the original term of the Lease and that at the expiration of such term of the Lease the Units will have a commercially feasible use to the Lessor and other potential users within the meanings of Rev. Proc. 76-30.

The Lessee represents and warrants that (i) no portion of the Units constitutes property, the construction, reconstruction or erection of which was begun before April 1, 1971; (ii) at the time the Lessor becomes the owner of the Units, the Units will qualify as "new Section 38 property" within, the meaning of Section 48(b) of the Code; (iii) at the time the Lessor becomes the 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 Lessor; (iv) at the time the Lessor becomes the owner of the Units, no investment credit, depreciation or other tax benefits will have been claimed by any person with respect to the Units; (v) at all times during the term of the Lease, the units will constitute "Section 38 property" within the meaning of Section 48(a) of the Code as in effect on the date hereof; and (vi) the Lessee will not claim that it is the owner of the Units at any time during which the Lessor is the owner of the Units.

- (b) If for any reason (except as a direct or indirect result of the occurrence of any Excluded Event set forth below), the Lessor 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, or the ADR Deduction, (hereinafter each called a Benefit) with respect to all or part of any Unit, then in any such case the Lessee shall pay to the Lessor, on each rental payment date under the Lease on and after written notice to the Lessee by the Lessor that such Benefit cannot be claimed by the Lessor, or (if claimed and then disallowed or required to be recaptured) on and after the next such succeeding rental date after payment of the tax attributable thereto, such additional amount for such Unit as, in the reasonable opinion of the Lessor, will cause the net after-tax yield and deferred income of the Lessor in respect of such Unit hereunder to equal the net after-tax yield and deferred income (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) in respect of such Unit under the Lease that would have been available if the Lessor had been entitled to utilization of all of the Benefits, and the Lessee shall forthwith pay to the Lessor the amount of any interest or penalty which may be assessed by the United States against the Lessor attributable to the disallowance, recapture or loss of all or any portion of the Benefit; provided, however, that such additional amounts and the amount of any interest or penalty will not be paid to the extent that the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or shall have suffered a disallowance of, or shall have been required to recapture all or any portion of any Benefit with respect to all or part of such Unit as a direct or indirect result of the occurrence of any of the following events (hereinafter called Excluded Event):

- (i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under Section 11,
- (ii) a voluntary transfer or other voluntary disposition by the Lessor of any interest in such Unit or the voluntary reduction by the Lessor of its interest in the rentals from such Unit unless, in each case, an Event of Default shall have occurred and be continuing;
- (iii) the failure of the Lessor to claim in a timely manner the Investment Credit or the ADR Deduction;
- (iv) the failure of the Lessor to have sufficient liability for Federal income tax against which to credit such Investment Credit or sufficient income to benefit from the ADR Deduction, as applicable.

In the event the Lessee is required to pay to the Lessor additional amounts under this Agreement as hereinbefore provided, the Lessee shall also pay to the Lessor on the date of payment of any Casualty Value set forth in Section 11 of the Lease or any damages and amounts set forth in Section 14 such amounts hereunder as will increase such Casualty Values or damages and amounts in accordance with the increased amounts payable on each rental date as set forth above.

- (c) The Lessee shall pay to the Lessor, on the next and each succeeding rental payment date after the date on which the Lessee is required to furnish written notice thereof to the Lessor pursuant to the second paragraph of this Paragraph (c) after said inclusion in the Lessor's gross income is required, such amount or amounts as shall, in the reasonable opinion of the Lessor cause the net after-tax yield and deferred income hereunder (calculated on the same basis as used by the Lessor in originally evaluating this transaction) to equal the net after-tax yield and deferred income that would have been realized by the Lessor if the cost of such Additional Expenditures had not been includible in the Lessor's gross income pursuant to Section 7 hereof and in the event that in any year the additional Federal income tax resulting from Lessor's inclusion in gross income of Additional Expenditures shall be less than \$25,000, such amount, upon demand, shall be paid in cash by Lessee to Lessor.

The Lessee agrees that, within 30 days after the close of any calendar year (or in the event the Lessor gives the Lessee written notice that the Lessor's taxable year closes on a date specified therein other than December 31, within 30 days after said date)

in which the Lessee has made Additional Expenditures which are required to be included in the gross income of the Lessor for Federal income tax purposes prior to the time such Unit is disposed of in a taxable transaction, the Lessee will give written notice thereof to the Lessor describing such Additional Expenditures in reasonable detail and specifying the cost thereof with respect to each Unit.

- (d) In the event that the Lessor shall suffer a Loss of any Benefit with respect to all or part of any Unit the Lessor agrees to take such action in connection with contesting or seeking the modification of the claim or ruling of the Internal Revenue Service upon which the Loss of such Benefit or the inclusion of the cost of such Additional Expenditures is based as the Lessee shall reasonably request from time to time; provided, however, that (i) the Lessee shall notify the Lessor within 30 days after notice by the Lessor to the Lessee of such claim or ruling that the Lessee requests that such claim or ruling be contested or that the modification thereof be sought, (ii) the Lessor, at its sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service in respect of contesting or seeking the modification of such claim or ruling and may, at its sole option, either pay the tax claimed and sue for a refund in the appropriate District Court or in the Court of Claims, as the Lessor shall elect, or contest such claim or ruling in the Tax Court, considering, however, in good faith such request as the Lessee shall make concerning the most appropriate forum in which to proceed, (iii) the Lessee shall furnish the Lessor with an opinion of independent tax counsel who shall be satisfactory to the Lessor to the effect that a meritorious defense exists to such claim or ruling, (iv) the Lessee shall agree to pay and shall indemnify the Lessor in a manner satisfactory to the Lessor against any liability or loss which the Lessor may incur in connection with contesting or seeking the modification of such claim or ruling, including without limitation (A) reasonable attorney's and accountants fees and disbursements and (B) the amount of any interest penalty and other sums which may ultimately be payable as the result of contesting or seeking the modification of such claim or ruling and (v) the Lessee shall furnish reasonable security for such indemnification as may be requested. In the case of any such claim or ruling, the Lessor agrees to notify promptly the Lessee in writing

of such claim or ruling and agrees not to make payment of the tax claimed for at least 30 days after the giving of such notice and agrees to cooperate with the Lessee in order to contest effectively or obtain the modification of any such claim or ruling. Notwithstanding anything herein contained to the contrary, if the Lessee elects to contest or seek the modification of such claim or ruling and is successful, the Lessee agrees to pay the Lessor's expenses, including reasonably attorney's fees, incurred in such contest or proceedings.

SECTION 21. RENEWAL OPTION

21.1 Lessee's Renewal Option.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, Lessee shall have the following renewal option:

(a) The Lessee may by written notice delivered to the Lessor not less than six (6) month prior to to the end of the original term of this Lease, or of each renewal term as hereinafter provided, elect to extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for (2) additional one-year periods commencing on the scheduled expiration of the original term of this Lease, and the rental payments shall each be in an amount equal to the then Fair Rental Value of each Unit then subject to this Lease. At the end of each one-year term, Lessee will have all the options set forth in this Section 21.

(b) The Fair Rental Value of a unit of Equipment 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 lessee-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) under no compulsion to lease and an informed and willing lessor under no compulsion to lease.

(c) The Fair Rental Value shall be computed four months prior to the end of the original term of this Lease and each successive term thereafter, and if on or before 180 days prior to the date of renewal, the Lessor and Lessee are unable to agree upon a determination of the Fair Rental Value of a unit of Equipment, such value shall be determined in accordance with the following definition by a qualified independent Appraiser at the expense of Lessee:

The term qualified independent appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraiser, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The qualified independent Appraiser shall determine the Fair Rental Value prior to four months before the Lease term ends.

21.2 Delivery of Equipment. Unless the Lessee has elected to renew this Lease, as provided in this Section 21, all of such units of Equipment shall be returned to the Lessor at the end of the term hereof in accordance with Section 13 hereof.

SECTION 22. MISCELLANEOUS.

22.1 Notices. Any notices required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first class postage prepaid, addressed as follows:

If to the Lessor:

BWL, Inc.
One IBM Plaza
Suite 2700
Chicago, Illinois 60611

Attention: Manager - Leveraged Leasing

If to the Lessee:

The Kansas City Southern Railway Company
114 West Eleventh Street
Kansas City, Missouri

Attention: General Counsel

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

22.2 Execution in Counterparts. This Lease, and any Lease supplemental hereto, may be executed in several counterparts each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument. Although this Lease is dated December 1, 1977 for convenience, the actual date or dates of execution here by the parties hereto is the date or dates stated on the acknowledgments hereto.

22.3 Law Governing. This Lease shall be construed in accordance with the laws of Illinois; provided, however, that the parties shall be entitled to all rights conferred by any applicable federal statute, rule or regulation.

22.4 Payment of Expenses. The Lessee will pay the reasonable costs and expenses involved in the documentation of this Lease and Lessor and Lessee will each bear the respective fees and disbursements of their respective counsel.

22.5 Lessor's Commitment Fee. If, for any reason not the fault of the Lessor, this Lease is not consummated or any unit of Equipment has not been delivered to or accepted by Lessee on or prior to June 30, 1978, the Lessee shall pay to Lessor on said date a commitment fee equal to 1% of the difference, if any, between \$1,349,262.75 and the original cost of the units or Equipment described herein which were delivered to and accepted by Lessee prior to June 30, 1978.

22.6 Lessor's and Mortgagee's Waiver. The Lessee shall notify the Lessor before any unit of Equipment is removed from the flatcar on which it is intalled. Lessee will inform Lessor concerning the flatcar on which said Unit will be reinstalled and will, within 30 days of such installation, provide Lessor with appropriate Lessor's and Mortgagee's waivers.

22.7 Any provision of this Lease which is prohibited and 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, any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

22.8 This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Equipment 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 officers of the Lessor and the Lessee.

22.9 Time is of the essence of this Lease.

22.10 Whenever used in this Lease the word "day" shall mean "calendar day" unless modified by the word "business". "Business day" means a day when the Lessor's Home Office is open for business with the public.

22.11 If, after an Event of Default, the Lessee shall fail to make payment or perform any act required by this Lease, the Lessor may, but shall not be obligated to make such payment or perform such act for the account of and at the expense of the Lessee, without demand upon the Lessee and without waiving or releasing any obligation or default. The Lessor intends to reasonably promptly provide the Lessee with written notice of its intention to make any such payment or perform any such act, but in no event shall said written notice be construed to be a condition precedent to the Lessor (i) so paying or performing, or (ii) being indemnified pursuant to the immediately following sentence. The Lessee shall indemnify and hold harmless the Lessor from and against all losses and expenses (including, but not limited to, attorneys' fees) suffered or incurred by the Lessor by reason of any acts performed by it pursuant to this section and the Lessee shall pay to the Lessor, upon demand, all sums so expended by the Lessor or with respect to which it shall be entitled to be indemnified, plus interest thereon, at the rate listed in Section 19 from the date on which such sums are expended by the Lessor to the date on which Lessee pays the same to the Lessor.

22.12 Limitations of Liability. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that no liability or responsibility in its individual corporate capacity is assumed by nor shall at any time be asserted or enforceable against the Lessor, or any incorporator or any past, present or future subscriber to the captial stock of, the Lessor, on account of this Lease or on account of any representation, covenant, undertaking or agreement of the Lessor in this Lease contained, either expressed or implied, all such individual corporate liability, if any, being expressly waived and released by the Lessee herein and by all persons claiming by, through or under the Lessee; excepting, however, that the Lessee or any person claiming by, through or under it, making claim hereunder, may look to the Equipment for satisfaction of the same.

(Corporate Seal)

BWL, Inc.

By *[Signature]*
Its Vice President

ATTEST:

[Signature]
Past Secretary

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

(Corporate Seal)

By *[Signature]*
Its Vice President

ATTEST:

[Signature]

STATE OF ILLINOIS)

COUNTY OF COOK)

On this 30 day of December, 1977, before me personally appeared R. J. Salamone, to me personally known, who, being by me duly sworn, says that he is the Vice President of BWL, INC., of Chicago, Illinois, 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.

[Handwritten Signature]
Notary Public

(SEAL)

My Commission Expires 3/27/80

STATE OF MISSOURI)

COUNTY OF JACKSON)

On this 7th day of JANUARY, 1978, before me personally appeared T. A. GILTNER, to me personally known, who, being by me duly sworn, says that he is the Vice President of THE KANSAS CITY SOUTHERN RY. CO., of KANSAS CITY, MISSOURI, 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.

[Handwritten Signature: E. R. Gibbins]
Notary Public

(SEAL)

My Commission Expires November 30, 1981

EXHIBIT A

to the Equipment Lease

MANUFACTURER: Paragon Division of
Portec, Inc.

DESCRIPTION OF EQUIPMENT:

Group I 25 Bi-Level auto racks for Ford Motor
Company service, partially enclosed,
without roof or end doors.

Group II 30 Tri-Level auto racks for Ford Motor
Company service; enclosed wide body
"B" deck, with sli-fold doors.

ESTIMATED BASE PRICE:

Group I \$459,492.75 for 25 units
including applicable sales,
use or similar taxes and
freight charges.

Group II \$889,770.00 for 30 units of
Equipment including applicable
sales, use or similar taxes
and freight charges.

DELIVER TO: Novi, Michigan

ESTIMATED DELIVERY DATES: January, 1978 through June 30, 1978

LESSEE SERIAL NUMBERS:

Group I KCS 78-01 through 78-25, inclusive

Group II KCS 78-26 through 78-55, inclusive

Exhibit B to Equipment Lease Agreement dated as of December 1, 1977 between BWL, Inc., as Lessor and Kansas City Southern Railway Company, as Lessee.

TO: Portec, Inc. ("Manufacturer")

BWL, Inc. ("Lessor")

I, a duly appointed inspector and authorized representative of Kansas City Southern Railway Company ("Lessee"), do hereby certify that I have received, approved and accepted delivery, on behalf of the Lessee under the Equipment Lease dated as of December 1, 1977 between the Lessor and the Lessee, of the following units of Equipment ("Equipment") which units have been inspected prior to or concurrently with such acceptance:

TYPE OF EQUIPMENT:

MANUFACTURER:

PLACE ACCEPTED:

DATES ACCEPTED:

NUMBER OF ITEMS:

NUMBERED:

I do further certify that the foregoing Equipment is in good order and condition, and conforms to the Specifications applicable thereto, and to all Department of Transportation requirements and specifications for new equipmen and to all standards recommended by the Association of American Railroads, and at the time of delivery to the Lessee there was plainly, distinctly, permanently and conspicuously marked in contrasting colors upon each side of each unit of Equipment the following legend in letters not less than one inch in height, the name of the Lessor followed by the word "Lessor".

The execution of this Certificate will in no way relieve or decrease the responsibility of the Manufacturer for warranties it has made with respect to the Equipment.

Inspector and Authorized
Representative of Lessee.

Exhibit C to Equipment Lease Agreement dated as of
December 1, 1977 between BWL, Inc. as Lessor and
Kansas City Southern Railway Company, as Lessee

SCHEDULE OF CASUALTY VALUES

<u>Quarterly Rental Payment Number</u>	<u>Percentage of Purchase Price</u>
0	108.06%
1	107.84%
2	107.45%
3	106.92%
4	106.25%
5	105.48%
6	104.64%
7	103.75%
8	102.79%
9	101.78%
10	100.72%
11	99.60%
12	98.43%
13	90.79%
14	89.51%
15	88.17%
16	86.78%
17	84.33%
18	83.84%
19	82.29%
20	80.68%
21	72.61%
22	70.90%
23	69.14%
24	67.32%
25	65.45%
26	63.53%
27	61.55%
28	59.53%
29	50.04%
30	48.91%
31	46.73%
32	44.50%
33	42.21%
34	39.88%
35	37.50%
36	35.07%
37	32.58%
38	30.05%
39	27.47%
40	24.34%
41 and during storage	20.00%

Interstate Commerce Commission
Washington, D.C. 20423

1/10/78

OFFICE OF THE SECRETARY

Richard P. Bruening
The Kansas City Southern RYW. Co.
Louisiana & Arkansas RYW. Co.
114 West 11th St.
Kansas City, Missouri 64105

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on **1/10/78** at **3:25pm** and assigned recordation number(s)

9174

Sincerely yours,


H.G. Homme, Jr.
Acting Secretary

Enclosure(s)

SE-30-T
(6/77)