

9-066A210

10176
RECORDATION NO. Filed 1425

Date MAR 05 1979

Fee \$ 50.00

MAR 7 1979 - 12 00 PM

Washington, D. C.

Interstate Commerce Commission
Washington, D.C.

Gentlemen:

Enclosed for recordation under the provisions of 49 USC Section 11303(a), as amended, are the original and two counterparts of an Equipment Lease dated as of January 1, 1979.

The general description of the railroad equipment covered by the enclosed document is set forth in Schedule A attached to this letter and made a part hereof.

The names and addresses of the parties are:

Lessor: Gould Leasing Services, Inc.
10 Gould Center
Rolling Meadows, Illinois 60008

Lessee: William M. Gibbons, Trustee of
the Property of Chicago, Rock
Island and Pacific Railroad
Company
332 South Michigan Avenue
Chicago, Illinois

The undersigned is the Lessee mentioned in the enclosed document and has knowledge of the matters set forth therein.

Please return the original of the Equipment Lease to Gary Green, Esq., Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Also enclosed is a check in the amount of \$50.00 covering the required recording fee.

Very truly yours,

WILLIAM M. GIBBONS, Trustee of
the Property of Chicago, Rock
Island and Pacific Railroad
Company

By W. M. Gibbons

General, LESSEE AS AFORESAID

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I.C.C.

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RECEIVED

Enclosures

Chapman and Cutler
W. M. Gibbons

DESCRIPTION OF ITEMS OF EQUIPMENT

Manufacturer of Equipment: Greenville Steel Car Company

Description and Mark and
Number of Items of
Equipment: 220 Open Top Hopper Cars
Marked and Numbered ROCK 700800
to ROCK 701019, both inclusive

Base Purchase Price of
Equipment: \$32,000 per Item

Maximum Aggregate Purchase
Price of Equipment: \$7,040,000

Place of Delivery: Greenville, Pennsylvania

Outside Delivery Date: June 30, 1979

(CRI #79-1)

SCHEDULE A
(to Equipment Lease)

RECORDATION NO. 10176 Filed 1425

MAR 7 1979 - 12 00 PM

INTERSTATE COMMERCE COMMISSION

EQUIPMENT LEASE

Dated as of January 1, 1979

Between

GOULD LEASING SERVICES, INC.

LESSOR

And

WILLIAM M. GIBBONS, TRUSTEE OF THE PROPERTY
OF CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

LESSEE

(CRI #79-1)
(220 Open Top Hoppers)

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ATTACHMENTS TO EQUIPMENT LEASE:

SCHEDULE A -- Description of Items of Equipment

SCHEDULE B -- Certificate of Acceptance Under Equipment Lease

SCHEDULE C -- Schedule of Casualty Value

EQUIPMENT LEASE

THIS EQUIPMENT LEASE ("this Lease" or "Equipment Lease") dated as of January 1, 1979 between GOULD LEASING SERVICES, INC. (the "Lessor"), a Delaware corporation, and WILLIAM M. GIBBONS, TRUSTEE OF THE PROPERTY OF CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, a Delaware corporation, as lessee (said William M. Gibbons, Trustee of the Property of Chicago, Rock Island and Pacific Railroad Company, together with any additional successor Trustee or Trustees of such property, and upon assignment, transfer or succession to the interest therein by the reorganized debtor pursuant to Section 77 of the Federal Bankruptcy Act, such reorganized company and its successors and assigns, being hereinafter referred to as the "Lessee", and Chicago, Rock Island and Pacific Railroad Company in its individual corporate capacity being hereinafter sometimes referred to as "Rock Island Railroad");

R E C I T A L S:

A. On March 17, 1975, Rock Island Railroad filed a Petition for Reorganization under Section 77 of the Federal Bankruptcy Act in the United States District Court for the Northern District of Illinois (the "Court"), such Petition was duly approved as properly filed by an order signed on said date by the Court (said Petition and any and all other proceedings with respect thereto filed with the Court being hereinafter called the "Reorganization Proceedings") and the Lessee was duly qualified as Trustee of the Property of Rock Island Railroad on April 4, 1975.

B. Pursuant to a Purchase Order Assignment dated as of January 1, 1979 (the "Purchase Order Assignment"), the Lessee has assigned to the Lessor its right to purchase the Equipment referred to below.

C. Subject to the representations, warranties and covenants of the Lessee herein (including but not limited to those representations, warranties and covenants made in Section 20 herein), the Lessor will provide the funds necessary to purchase the equipment (collectively the "Equipment" and individually an "Item of Equipment") described in Schedule A hereto and made a part hereof. The Lessor will purchase the Items of Equipment from the manufacturer thereof on not more than three dates (the "Closing Dates") not later than June 30, 1979, as the Lessee shall designate to the Lessor by not less than five business days' written or telegraphic notice for the purchase price (the "Purchase Price") designated in an invoice of said manufacturer and certified as correct by the Lessee to be delivered pursuant to the Consent and Agreement attached to the Purchase Order Assignment. Said notice for each Closing Date shall specify the Purchase Price of the Items of Equipment to be settled for on such date.

SECTION 1. LEASE AND DELIVERY OF EQUIPMENT.

1.1. Intent to Lease and Hire. Upon delivery of each Item of Equipment by the manufacturer thereof identified in Schedule A hereto (hereinafter referred to as the "Manufacturer"), the Lessee shall lease and let and, subject to the representations, warranties and covenants of the Lessee herein (including but not limited to those representations, warranties and covenants made in Section 20 herein), the Lessor shall hire to the Lessee such Item of Equipment for the rental and on and subject to the terms and conditions herein set forth.

1.2. Inspection and Acceptance. The Lessor will cause each Item of Equipment to be tendered to the Lessee at the place of delivery set forth in Schedule A. Upon such tender, the Lessee will cause an inspector designated and authorized by the Lessee to inspect the same, and, if such Item of Equipment is found to be in good order, to accept delivery of such Item of Equipment and to execute and deliver to the Lessor and the Manufacturer thereof a Certificate of Acceptance (the "Certificate of Acceptance") in the form attached hereto as Schedule B with respect to such Item of Equipment, such date of acceptance hereinafter called the "Delivery Date"; provided, however, that the Lessee shall not accept and the Lessor shall have no obligation to lease any Item of Equipment delivered after the Outside Delivery Date set forth in Schedule A.

1.3. Certificate of Acceptance. The Lessee's execution and delivery of a Certificate of Acceptance with respect to each Item of Equipment pursuant to Section 1.2 hereof shall conclusively establish that, as between the Lessor and the Lessee, but without limiting or otherwise affecting the Lessee's or the Lessor's rights, if any, against the Manufacturer thereof, such Item of Equipment is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and that such Item of Equipment is in good order and condition and appears to conform to the specifications applicable thereto and to all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and to all standards recommended by the Association of American Railroads applicable to new railroad equipment of the character of the Equipment as of the date of this Lease. By execution and delivery of such Certificate of Acceptance, the Lessee represents that it has no knowledge of any such defect.

SECTION 2. RENTALS AND PAYMENT DATES.

2.1. Rent for Equipment. The Lessee agrees to pay the Lessor the following rent for each Item of Equipment:

(a) Interim Rental. For each Item of Equipment, an amount per day (the "Interim Rental") equal to 0.0305556% of the Purchase Price thereof for the period, if any, from

the Delivery Date for such Item, but not including, January 1, 1980 (the "Term Lease Commencement Date"), the total amount of Interim Rental for all Items of Equipment included under this Lease shall not be less than 9.4534% of the Purchase Price of such Items of Equipment; and

(b) Fixed Rental. For each Item of Equipment, thirty semiannual installments of fixed rental (the "Fixed Rental"), payable in advance, each in an amount equal to 5.05538% of the Purchase Price thereof.

2.2. Rent Payment Dates. The Interim Rental for each such Item shall be paid on the first day of the month following the Delivery Date therefor and on the first day of each month thereafter with a final installment of Interim Rental to be paid on the Term Lease Commencement Date, which payment shall include the amount, if any, necessary to bring the total amount of Interim Rental to an amount equal to 9.4534% of the Purchase Price of of the Items of Equipment included under the Lease; provided that if such Delivery Date shall occur on one of the final ten days in a month, then the first such installment of Interim Rental shall not be paid on the first day of said next following month but on the first day of the month thereafter. The first such installment shall include daily rentals for each day from and including said Delivery Date to but not including such payment date, and each installment thereafter shall include daily rental from and including the prior payment date to but not including said payment date. The first installment of Fixed Rental for each Item of Equipment shall be due and payable on the Term Lease Commencement Date and the balance of said installments shall be payable at six month intervals thereafter with the final such installment payable fourteen and one half years following the Term Lease Commencement Date. If any of the rent payment dates is not a business day, the rent payment otherwise payable on such date shall be payable on the next succeeding business day. For purposes of this Lease, the term "business day" means calendar days, excluding Saturdays, Sundays and holidays on which banks in the State of Illinois are authorized or required to close.

2.3. Place and Manner of Rent Payment. The payments to be made by the Lessee under this Lease shall be made as follows:

(a) The installment of Interim Rental and each installment of Fixed Rental (including any increases thereof) shall be paid to the Lessor by wire transfer to the account of the Lessor at the address thereof provided for payments in Section 22.1 hereof; provided that in the event the Lessor shall notify the Lessee in writing that the right to receive payment of such installment shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment by wire transfer to the place designated in such notice or as otherwise designated from time to time in writing by such assignee;

(b) The entire amount of any payment of Casualty Value pursuant to Section 11 hereof shall be paid to the Lessor by a check drawn on a bank located in the continental United States (identifying the same as a payment of Casualty Value relating to CRI #79-1) and forwarded to the Lessor in the manner provided for notice in Section 22.1 hereof; provided that in the event the Lessor shall notify the Lessee in writing that the right to receive payment of such Casualty Value shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment by such check in the manner designated in such notice or as otherwise designated from time to time in writing by such assignee;

(c) The amount of any payment owing to the Lessor pursuant to Sections 6, 10.2, 11.1 (with respect to public liability insurance) and 21.2 hereof shall be made directly to the party to receive the same without regard to the assignment of this Lease pursuant to Section 16 hereof;

(d) The amount of any interest due in respect of the late payment of any rentals or other amounts pursuant to Section 19 hereof shall be paid to the party and in the manner herein provided to receive said rental or other amount; and

(e) All payments other than those above specified shall be made by the Lessee directly to the party to receive the same unless any such payment has previously been made by the Lessor or its assignee, in which case the Lessee shall reimburse the Lessor or its assignee, as the case may be, directly for such payment.

The Lessee agrees that it will make payments due hereunder by wire transfer where specified above at 10:00 A.M. at the office of the transferring bank on the due date of such payment of Federal or otherwise immediately available funds to the party to whom such payment is to be made, and where not so specified, such payment shall be made by check of the Lessee drawn on a bank located in the continental United States and mailed to the party to receive the same at the address herein provided or at such other address as the Lessee shall have been previously advised in writing.

2.4. Net Lease. This Lease is a net lease and the Lessee's obligation to pay all Interim Rental and Fixed Rental and other amounts payable hereunder shall be absolute and unconditional under any and all circumstances and, without limiting the generality of the foregoing, the Lessee shall not be entitled to any abatement of rent or reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise or against any assignee of the Lessor pursuant to Section 16 hereof; 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 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 11 hereof, or until, pursuant to Section 13 hereof, the Equipment has been returned to the possession of the Lessor (for all purposes of this Lease any Item of Equipment shall not be deemed to have been returned to the Lessor's possession until all of the Lessee's obligations with respect to the return, transportation and storage thereof have been performed). To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Items of Equipment except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor or any assignee pursuant to Section 16 hereof for any reason whatsoever.

SECTION 3. TERM OF THE LEASE.

The term of this Lease as to each Item of Equipment shall begin on the date of the delivery to and acceptance by the Lessee of such Item of Equipment and, subject to the provisions of Sections 11, 14 and 18 hereof, shall terminate as to such Item of Equipment upon the earlier of (a) the date occurring 15 years following the Term Lease Commencement Date provided for in Section 2.1(a) hereof, or (b) in the event the Court orders the termination of this Lease as to all Items of Equipment then leased hereunder in connection with the discontinuance of substantially all service and/or the liquidation of the assets of the Rock Island Railroad (the "Early Termination Order"), or (c) in the event that this Lease is disaffirmed or rejected (the "Early Termination Rejection") as to any or all Items of Equipment pursuant to a plan of reorganization confirmed by the Court; provided, however, that this Lease may not be so disaffirmed or rejected unless the Lessee files with the Court and delivers to the Lessor a Certificate of Lessee stating that (i) the Items of Equipment under this Lease to be subjected to such disaffirmance or rejection are "economically surplus to the Lessee's needs" (which for this purpose shall mean that such Items of Equipment are surplus to Lessee's needs for its own service and that the realizable per diem applicable to such Items of Equipment [in the condition and

maintained as required under the Lease] is inadequate to cover the Fixed Rental for such Items under this Lease), and (ii) that the number of Items of Equipment to be subjected to such disaffirmance or rejection expressed as a percentage of the total number of Items of Equipment then under this Lease does not exceed the percentage obtained by dividing the total number of all railcars under leases, subjected to an early termination (any Early Termination Rejection substantially similar as set forth in Section 3 hereof) pursuant to a confirmed plan of reorganization, by the total number of all railcars leased by Lessee under leases, which may be disaffirmed or rejected pursuant to a confirmed plan of reorganization (which Certificate shall support the above statements with such detailed information and computations as shall be reasonably satisfactory to the Lessor), the date of return pursuant to clause (b) or clause (c), as the case may be (the "Early Termination Date") of such Item of Equipment by the Lessee in the manner contemplated by Section 13.2 hereof. Upon the return of an Item of Equipment to the Lessor pursuant to said Section 13.2, the obligation of the Lessee or the Reorganized Company (as defined in Section 14.1 hereof) to pay rentals in respect of such Item accruing subsequent to the Early Termination Date shall terminate and the Lessor shall have no claim against the Lessee, the estate of Rock Island Railroad or the Reorganized Company for such unaccrued rental; provided that the Lessee or the Reorganized Company shall thereafter continue to be liable in respect of any obligation which accrues hereunder prior to such termination until payment or performance of such obligation in full and the Lessee or the Reorganized Company shall in any event remain liable for each of its obligations under this Section and under Section 13.2 hereof for the period provided therein, such obligations to be determined in accordance with the following paragraph.

In the event the Court shall enter an Early Termination Order or an Early Termination Rejection shall occur, the Lessee shall pay the Lessor a daily amount equal to 0.0280854% of the Purchase Price of each Item of Equipment subject to such Early Termination Order or Early Termination Rejection for 30 days after the entry by the Court of the Early Termination Order or the occurrence of the Early Termination Rejection; provided, however, if the Lessor within such period sells or relets any such Item, no payment is due for any day subsequent to the effective date of such reletting or sale (the total amount of such payment hereinafter referred to as the "Termination Payment"). Following the end of such 30-day period, the Lessee shall make all payments pursuant to Section 13.2 hereof.

The amount due the Lessor or the Lessee, as the case may be, following an Early Termination Order or an Early Termination Rejection shall be calculated as follows:

(1) the number of days from and including the Early Termination Date to but not including the next rental payment date shall be multiplied by 0.0280854% of the Purchase Price of each Item of Equipment for all Items subject to termination on the Early Termination Date;

(ii) the resulting amount calculated in (i) above (the "Prepaid Rent") less the Termination Payment and less any payments required to be made by the Lessee pursuant to Section 13.2 hereof shall be due from the Lessor to the Lessee upon return of all Items of Equipment pursuant to Section 13.2; and

(iii) if the Prepaid Rent shall be less than the sum of the Termination Payment and the amounts due under Section 13.2, then the Lessee shall pay to the Lessor the difference, five days following receipt of notice from the Lessor of such difference, and the Lessee shall pay any other amounts due under Section 13.2 thirty days following such initial payment and at 30-day intervals thereafter, until all Items of Equipment are returned under Section 13.2.

SECTION 4. OWNERSHIP AND MARKING OF EQUIPMENT.

4.1. Retention of Title. The Lessor, as between the Lessor and the Lessee, shall and hereby does retain full legal title to the Equipment notwithstanding the delivery thereof to and possession and use thereof by the Lessee.

4.2. Duty to Number and Mark Equipment. The Lessee will cause each Item of Equipment to be kept numbered with its road number as set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height as follows:

"LEASED FROM GOULD LEASING SERVICES, INC."

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 Item of Equipment, its rights under this Lease and the rights of any assignee under Section 16 hereof. The Lessee will not place any such 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 names and word or words which may be removed, defaced or destroyed. The 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 delivered to 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. DISCLAIMER OF WARRANTIES.

THE LESSOR LEASES THE EQUIPMENT, AS-IS, IN WHATEVER CONDITION IT MAY BE, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AND THE LESSOR EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT, (B) THE LESSOR'S TITLE THERETO, (C) THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, (D) THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT, OR (E) 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 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, provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense (subject to an Early Termination Order or an Early Termination Rejection), such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Item of Equipment or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Item of Equipment or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Item of Equipment. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that all Items of Equipment described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

SECTION 6. LESSEE'S INDEMNITY.

6.1. Scope of Indemnity. The Lessee shall defend, indemnify and save harmless the Lessor and any assignee of the Lessor pursuant to Section 16 hereof and their respective successors and assigns from and against:

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

(b) any claim, cause of action, damages, liability, cost or expense (including, without limitation, 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 any Item of Equipment or any part thereof, including, without limitation, the construction, purchase, delivery, acceptance, rejection, ownership, sale, leasing, return or storage of any Item of Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessee or any indemnified party), (ii) by reason or as the result of any act or omission (whether negligent or otherwise) of the Lessee for itself or as agent or attorney-in-fact for the Lessor hereunder, (iii) as a result of claims for patent, trademark or copyright 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 Items of Equipment, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumptions 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 after the termination arising in connection with the Lessee's assembling, delivering, storing or transporting of the Equipment 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.

SECTION 7. RULES, LAWS AND REGULATIONS.

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including, without limitation, the rules of the United States Department of Transportation, the Interstate Commerce Commission and the current Interchange Rules or supplements thereto of the Mechanical Division, Association of American Railroads as the same may be in effect from time to time) (the "Interchange Rules") with respect to the use and maintenance of each Item of Equipment subject to this Lease. In case any equipment or appliance is required to be altered, added, replaced or modified on any Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, additions, replacements and/or

modifications at its own expense and title thereto shall be immediately vested in the Lessor. The Lessee agrees that, within 30 days after the close of any calendar quarter in which the Lessee has made alterations, the Lessee will give written notice thereof to the Lessor describing, in reasonable detail, the alterations and specifying the cost thereof with respect to each Item of Equipment and the date or dates when made.

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 in accordance with the Interchange Rules. Except as required by the provisions of Section 7 hereof, the Lessee shall not modify any Item of Equipment without the prior written authority and approval of the Lessor and any assignee pursuant to Section 16 hereof which shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon any Item of Equipment pursuant to Section 7 hereof or pursuant to its obligation to maintain and keep the Equipment in good order, condition and repair under this Section 8 shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor without cost or expense to the Lessor. The Lessee shall make no other additions or improvements to any Item of Equipment unless the same are readily removable without causing material damage to such Item of Equipment. Title to any such readily removable additions or improvements shall remain with the Lessee. If the Lessee shall at its cost cause such readily removable additions or improvements to be made to any Item of Equipment, the Lessee agrees that it will, prior to the return of such Item of Equipment to the Lessor hereunder, remove the same at its own expense without causing material damage to such Item of Equipment.

SECTION 9. LIENS ON THE EQUIPMENT.

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 or a charge upon any Item of Equipment, and any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease and any other liens or charges which arise by virtue of claims against, through or under any other party other than the Lessor, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor or the security interest or other rights of any assignee under Section 16 hereof in and to the Equipment. The Lessee's obligations under this Section 9 shall survive the termination of this Lease.

SECTION 10. FILING; PAYMENT OF STATE AND LOCAL TAXES.

10.1. Filing. Prior to the delivery and acceptance of the first Item of Equipment hereunder, the Lessee will cause this Lease to be duly filed, registered or recorded with the Interstate Commerce Commission in accordance with 49 USC Section 11303(a) and in such other places within or without the United States as the Lessor may reasonably request 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 and record (and will refile, reregister or rerecord whenever required) any and by the Lessor, for the purpose of protecting the Lessor's title to any Item of 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 reasonably satisfactory to the Lessor that such action has been properly taken. The Lessee will pay all costs, charges and expenses incident to any such filing, refiling, recording and rerecording or depositing and redepositing of any such instruments or incident to the taking of such action.

10.2. Payment of State and Local Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor, and any assignee of the Lessor pursuant to Section 16 hereof and their respective successors and assigns (the "Indemnitees") for collection or other charges and will be free of expense to the Indemnitees with respect to any Impositions as hereinafter defined. As used in this Section 10.2 "Impositions" shall mean the amount of any local, state, Federal or foreign taxes, assessments or license fees and any charges, fines or penalties in connection therewith which are imposed on or measured by this Lease or the receipt of sums pursuant hereto or any sale, rental, use, payment, shipment, delivery or transfer of title in respect of the Equipment under the terms hereof, including Impositions in respect of the receipt of indemnification payments pursuant to this Lease or payments pursuant to this Section 10.2; provided that (except with respect to indemnification payments hereunder or payments pursuant to this Section 10.2) Impositions shall not include as to each respective Indemnitee: (i) United States Federal income tax liability and, to the extent that any respective Indemnitee receives credit therefor against its United States Federal income tax liability, any foreign income tax of such Indemnitee, payable by any respective Indemnitee in consequence of the receipt of payments provided herein; and (ii) the aggregate of all franchise taxes measured by net income based on such receipts, up to the amount in the aggregate of any such income and franchise taxes which would be payable to the state and city in which such Indemnitee has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided. The Lessee agrees to pay, on demand, any and all Impositions. The

Lessee will also pay promptly all Impositions which may be imposed upon any Item of Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon any Indemnitee solely by reason of its interest with respect thereto and will keep at all times all and every part of such Item of Equipment free and clear of all Impositions which might in any way affect the interest of any Indemnitee therein or result in a lien upon any such Item of Equipment; provided, however, that the Lessee shall be under no obligation to pay any Impositions so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the reasonable opinion of the Indemnitee, adversely affect the interest of any Indemnitee hereunder. If any Impositions shall have been charged or levied against any Indemnitee directly and paid by such Indemnitee after such Indemnitee shall have given written notice thereof to the Lessee and the same shall have remained unpaid for a period of ten business days thereafter, the Lessee shall reimburse such Indemnitee on presentation of invoice therefor. Prior to making such payment, such Indemnitee shall promptly notify the Lessee of the Impositions charged or levied, and the Lessee shall have the opportunity to contest in good faith and by appropriate legal proceedings such Impositions, at its sole expense.

In the event any reports with respect to Impositions are required to be made on the basis of individual Items of Equipment, the Lessee will either prepare and file such reports in such manner as to show as required the interests of each Indemnitee in such Items of Equipment or, if it shall not be permitted to file the same, it will notify each Indemnitee of such reporting requirements, prepare such reports in such manner as shall be satisfactory to each Indemnitee and deliver the same to each Indemnitee within a reasonable period prior to the date the same is to be filed.

In the event that, during the continuance of this Lease, any Imposition accrues or becomes payable or is levied or assessed (or is attributable to the period of time during which this Lease is in existence) which the Lessee is or will be obligated to pay or reimburse, pursuant to this Section 10.2, such liability shall continue, notwithstanding the expiration 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 agrees that it will at all times during the term of this Lease and during any return and storage period hereunder and at its own cost and expense keep each Item of Equipment insured against loss by fire, windstorm and explosion and with extended coverage and against such other risks as are customarily insured against by railroad companies at not less than the full insurable value (actual replacement value less actual physical depreciation) thereof and in any event not less than the Casualty Value of such Item of Equipment as of the next following date of payment thereof and will maintain general public liability insurance with

respect to the Equipment against damage because of bodily injury, including death, or damage to property of others, such insurance to afford protection to the limit of not less than \$29,000,000 in the aggregate in any single occurrence. Any such property insurance may have deductible provisions to no greater extent than \$1,000,000 in the aggregate in any single occurrence, and any public liability insurance may have deductible provisions to no greater extent than \$2,000,000 in the aggregate in any single occurrence. All such insurance shall cover the interest of the Lessor and the Lessee in the Equipment or, as the case may be, shall protect the Lessor and the Lessee in respective risks arising out of the condition, maintenance, use, ownership and operation of the Equipment and shall provide that losses, if any, in respect to the Equipment shall be payable to the Lessee and the Lessor as their respective interests may appear; provided, however, that upon receipt by the Lessee of notice of the assignment of this Lease and the rents and other sums payable hereunder pursuant to Section 16 hereof the Lessee shall cause the property insurance on the Equipment to provide that the losses, if any, shall be payable (except as provided below) to said assignee under a standard mortgage loss payable clause satisfactory to the Lessor and the Lessee. All policies of insurance maintained pursuant to this Section shall provide that 30 days' prior written notice of cancellation shall be given to the Lessor and that such insurance as to the interest of the Lessor therein shall not be invalidated by any act or neglect of the Lessee or by any foreclosure or other remedial proceedings or notices 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 than is permitted by such policy. No such policy shall require co-insurance. The Lessee shall be deemed to have complied with the requirement to maintain property insurance as above set forth if it shall maintain a blanket policy covering all of the Items of Equipment then subject to this Lease for an aggregate amount of not less than \$10,000,000 per occurrence with deductible provisions to no greater extent than \$1,000,000 in the aggregate in any single occurrence, which policy may also insure all other rolling stock of the Lessee, so long as such blanket policy shall otherwise comply with the provisions of this Section 11.1. The loss, if any, shall be adjusted only with the approval of the Lessee and the Lessor. All such policies shall provide that the loss, if any, thereunder shall be adjusted and paid as provided in this Lease. The Lessee shall further furnish the Lessor with certificates or other satisfactory evidence of maintenance of the insurance required hereunder and with respect to any renewal policy or policies shall furnish certificates evidencing such renewal prior to the expiration date of the original policy or policies. All insurance provided for in this Section shall be effective with insurance companies approved by the Lessor, which approval shall not be unreasonably withheld.

The proceeds of any property insurance received by the Lessor will be paid to the Lessee either (i) upon a written application signed by the Lessee for payment of, or to reimburse the Lessee for payment

of, the costs of repairing, restoring, or replacing the Item of Equipment which has been lost, damaged or destroyed (which application shall be accompanied by satisfactory evidence of such cost and the completion of such repair, restoration or replacement) or (ii) if this Lease is terminated with respect to such Item of Equipment because of the destruction thereof promptly upon payment by the Lessee of the Casualty Value; provided that, if the Lessee is at the time of the application in default in payment of any other liability of the Lessee to the Lessor hereunder, such proceeds may be applied against such liability.

11.2. Duty of Lessee to Notify Lessor. In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged during the term of this Lease or thereafter while such Item 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 for a stated period which exceeds the then remaining term of this Lease (any such occurrence being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence) inform the Lessor and any assignee of the Lessor pursuant to Section 16 hereof in regard thereto and shall pay the Casualty Value (as defined in Section 11.6 hereof) of such Item in accordance with the terms of Section 11.3 hereof.

11.3. Sum Payable for Casualty Loss. The Lessee, on the next succeeding rent payment date following its notice of a Casualty Occurrence with respect to any Item or Items of Equipment, shall pay to the Lessor the Interim or Fixed Rental installment due on such payment date for such Item of Equipment plus any rentals or other sums due on or prior to such date then remaining unpaid plus a sum equal to the Casualty Value of such Item of Equipment as of the date of such payment.

11.4. Rent Termination. Upon (and not until) payment of all sums required to be paid pursuant to Section 11.3 hereof in respect of any Item or Items of Equipment, the obligation to pay rent for such Item or Items of Equipment accruing subsequent to the Casualty Value payment date shall terminate, but the Lessee shall continue to pay rent for all other Items of Equipment.

11.5. Disposition of Equipment. The Lessee shall, as agent for the Lessor, dispose of such Item or Items 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 Item of Equipment so disposed of, so long as no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would

constitute such an Event of Default shall have occurred and be continuing, the Lessee after payment of such Casualty Value by Lessee may retain all amounts arising from such disposition plus any insurance proceeds 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 Item 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 Item of Equipment.

11.6. Casualty Value. The Casualty Value of each Item of Equipment shall be an amount determined as of the date the Casualty Value is required to be 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 Item of Equipment set forth in the Schedule of Casualty Value attached hereto as Schedule C opposite such required 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 Item of Equipment from and after the date hereof and continuing until payment of the Casualty Value and all rental installments and other sums due on and prior to the date of payment of such Casualty Value in respect of such Item of Equipment has been made, such Item or the salvage thereof has been disposed of by the Lessee and the title to such Item or the salvage thereof and all risk of loss and liabilities incident to ownership have been transferred to the purchaser of such Item or the salvage thereof.

11.8. Eminent Domain. In the event that during the term of this Lease the use of any Item 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 all installments of rental and other sums shall continue for the duration of such requisitioning or taking. So long as no Event of Default, or event which with the lapse of time or giving of notice, or both, shall have occurred and be continuing, 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. ANNUAL REPORTS.

12.1. Duty of Lessee to Furnish. On or before the first May 1 which occurs more than four months following the date of this Lease, the Lessee will furnish to the Lessor and any assignee of the Lessor pursuant to Section 16 hereof an accurate statement,

as of the preceding December 31 (a) showing the amount, description and numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the 12 months ending on such December 31 (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 the Lessor may reasonably request, and (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.

12.2. Lessor's Inspection Rights. The Lessor and any assignee of the Lessor pursuant to Section 16 hereof each shall have the right, at their respective sole cost and expense, by their respective authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such time as shall be reasonably necessary to confirm thereto the existence and proper maintenance of the Equipment during the continuance of this Lease.

SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM OR EARLY TERMINATION.

13.1. Return upon Expiration of Term. Upon the expiration of the term of this Lease with respect to any Item of Equipment, the Lessee will, at its own cost and expense, deliver possession of such Item of Equipment to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Item of Equipment on such tracks for a period not exceeding 90 days and transport the same at any time within such 90-day period to any reasonable place on any railroad lines operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor upon not less than 30 days' written notice to the Lessee. All movement and storage of each such Item is to be at the risk and expense of the Lessee and in the event any Item of Equipment shall suffer a Casualty Occurrence during any such period of movement and storage the Lessee shall pay the Lessor the Casualty Value therefor set forth in Section 11.6. During any such period of movement and storage the Lessee will continue to maintain the insurance coverage required pursuant to Section 11.1 hereof. 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 of any such Item, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Each Item of Equipment returned to the Lessor pursuant to this Section 13.1 shall (i) be in the same operating order,

repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) have attached or affixed thereto any part, addition or improvement title to which is vested in the Lessor pursuant to Section 7 or Section 8 hereof and have removed therefrom, at the expense of the Lessee, any readily removable addition or improvement title to which is vested in the Lessee pursuant to Section 8 hereof, and (iii) meet the applicable standards then in effect for such Item of Equipment under all governmental laws, regulations, requirements and rules (including, without limitation, rules of the United States Department of Transportation, the Interstate Commerce Commission and interchange rules or supplements thereto of the Association of American Railroads). At any time prior to 90 days after Lessor receives written notice from the Lessee of the return of all Items of Equipment, the Lessor may retain an independent inspector, selected by the Lessor, to inspect the Equipment and to determine whether the Equipment has been subject only to ordinary wear and tear such as could be reasonably expected for cars not used in unit train service and meets all the applicable standards required under clause (iii) of the immediately preceding sentence. Should such inspector determine that any Item of Equipment has been subject to excessive wear and tear due to any reason, including extensive high mileage usage, or that any Item does not meet such applicable standards, the Lessee shall, at its own cost and expense, repair, recondition, rehabilitate, or perform such other similar work necessary to put the Equipment in the condition that it would have been in had it been subject only to ordinary wear and tear and in compliance with all such applicable standards. The obligations of the Lessee pursuant to the immediately preceding sentence do not guarantee a residual value in the Equipment.

Until the earlier of (i) the date on which an Item of Equipment is assembled, delivered and stored as hereinabove provided or (ii) the 30th day after the date of the expiration of the term of this Lease or the Early Termination Date, the Lessee shall pay the Lessor an amount per day equal to 0.035556% of the Purchase Price of each such Item. If any such Item of Equipment is not assembled, delivered and stored as hereinabove provided within 30 days after the date of the expiration of the term of this Lease or the Early Termination Date, the Lessee shall, in addition, pay the Lessor the greater of an amount equal to (i) 0.035556% of the Purchase Price of such Item from said 30th day to the date of its assembly, delivery or storage as hereinabove provided or (ii) all rental, per diem or other similar charges for the Equipment received therefor until such date of assembly, delivery and storage.

13.2. Return in Connection with Early Termination. In the event the Court shall enter an Early Termination Order, or an Early Termination Rejection shall occur, the Lessee will, at its own cost and expense, deliver possession of each Item of Equipment to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or in the absence of such designation, as the

Lessee may select, and permit the Lessor to store such Item of Equipment of such tracks for a period not exceeding 180 days and transport the same at any time within such 180-day period to any reasonable place on any railroad lines operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor upon not less than 30 days' written notice to the Lessee. All movement and storage of each such Item is to be at the risk and expense of the Lessee. During any such period of movement and storage the Lessee will continue to maintain the insurance coverage required pursuant to Section 11.1 hereof. 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 of any such Item, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Each Item of Equipment returned to the Lessor pursuant to this Section 13.2 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) have attached or affixed thereto any part, addition or improvement title to which is vested in the Lessor pursuant to Section 7 or Section 8 hereof and have removed therefrom, at the expense of the Lessee, any readily removable addition or improvement title to which is vested in the Lessee pursuant to Section 8 hereof, and (iii) meet the applicable standards then in effect for such Item of Equipment under all governmental laws, regulations, requirements and rules (including, without limitation, rules of the United States Department of Transportation, the Interstate Commerce Commission and interchange rules or supplements thereto of the Association of American Railroads). At any time within 90 days after Lessor receives written notice from the Lessee of the return of all Items of Equipment, the Lessor may retain an independent inspector, selected by the Lessor, to inspect the Equipment and to determine whether the Equipment has been subject only to ordinary wear and tear such as could be reasonably expected for cars not used in unit train service and meets all the applicable standards required under clause (iii) of the immediately preceding sentence. Should such inspector determine that any Item of Equipment has been subject to excessive wear and tear due to any reason, including extensive high mileage usage, or that any Item does not meet such applicable standards, the Lessee shall, at its own cost and expense, repair, recondition, rehabilitate, or perform such other similar work necessary to put the Equipment in the condition that it would have been in had it been subject only to ordinary wear and tear and in compliance with all such applicable standards. The obligations of the Lessee pursuant to the immediately preceding sentence do not guarantee a residual value in the Equipment.

If any such Item of Equipment is not assembled, delivered and stored as hereinabove provided within 30 days after the date of the entry by the Court of the Early Termination Order, or the occurrence of the Early Termination Rejection, the Lessee shall, in addition, pay the Lessor the greater of an amount equal to (i) 0.0280854% of the Purchase Price of such Item from said 30th day to the date of its assembly, delivery or storage as hereinabove provided, or (ii) all rental, per diem or other similar charges for the Equipment received therefor until such date of assembly, delivery and storage.

In the event any Item of Equipment shall suffer a Casualty Occurrence while being returned or stored pursuant to this Section 13.2, the Lessee shall pay to the Lessor, on the payment date hereinafter provided, the sum of (i) an amount equal to 0.0280854% of the Purchase Price for such Item of Equipment for the period from and including the rent payment date next preceding the effective date of the Early Termination Order or the Early Termination Rejection to but not including such payment date and (ii) the Casualty Value of such Item of Equipment as of the rent payment date next preceding the effective date of the Early Termination Order or the Early Termination Rejection. Such amounts shall be payable on the first day of the calendar month next following the Lessee's knowledge of such Casualty Occurrence.

13.3. Specific Performance. The assembling, delivery, storage and transporting of the Equipment as provided in Sections 13.1 and 13.2 hereof 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.

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 Casualty Value provided in Section 2 or 11 hereof and such default shall continue for five days;

(b) The Lessee or any Reorganized Company shall make or permit any unauthorized assignment or transfer of this Lease, or of possession of the Equipment, or any portion thereof;

(c) Default shall be made in the observance or performance of any of the covenants, conditions and agreements on the part of the Lessee or any Reorganized Company contained in Section 11.1 of this Lease;

(d) Default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee or any Reorganized Company contained herein or in the Purchase Order Assignment and such default shall continue for 20 days after written notice from the Lessor to the Lessee, specifying the default and demanding the same to be remedied;

(e) Any representation or warranty made by the Lessee herein or in the Purchase Order Assignment or in any statement or certificate furnished to the Lessor pursuant to or in connection with this Lease, or the Purchase Order Assignment is untrue in any material respect as of the date of issuance or making thereof;

(f) Any provision of this Lease is revised, modified, amended, terminated or superseded in any respect in connection with the Reorganization Proceedings or, in the event any plan or reorganization is adopted in connection with the Reorganization Proceedings, said plan shall fail to provide for the payment of the Lessee's obligations hereunder as an expense of administration or shall afford any other equipment obligations, whether entered into prior to the commencement of the Reorganization Proceedings or during the pendency thereof, any priority in right of payment or otherwise over the Lessee's obligations under this Lease and the rights of the Lessor or any assignee thereof pursuant to Section 16 hereof except as to the right of termination expressed in Section 3 hereof;

(g) The Court shall dismiss the Reorganization Proceedings without any plan or reorganization having been adopted in connection therewith, and prior to such dismissal, this Lease shall not have been terminated pursuant to clause (b) of Section 3 hereof;

(h) 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 any Reorganized Company (as hereinafter defined), and 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 or otherwise given a status comparable to the obligations incurred by such trustee or trustees within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

(i) Any other proceedings shall be commenced by or against the Reorganized Company for any relief under the bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments or indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and 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 Reorganized Company or for the property of the Reorganized Company in connection with any such proceedings or otherwise given a status comparable to obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

(j) Any of the Lessee's obligations hereunder shall not be accorded first priority for expenses of administration in the Reorganization Proceedings or the order of the Court entered in the Reorganization Proceedings authorizing the execution and delivery of this Lease shall otherwise not be effected in accordance with its terms or be revised, modified, amended, terminated or superseded in any respect (other than a termination of this Lease pursuant to the Early Termination Order or the Early Termination Rejection) which would involve the possibility of materially and adversely affecting the rights, powers, privileges or remedies of the Lessor or any assignee thereof pursuant to Section 16 hereof under this Lease; or

(k) Any Reorganized Company shall be in default under any material obligation for the payment of borrowed money or for the deferred purchase price of, or for the payment of any rent under any lease agreement covering material real or personal property, and the applicable grace period with respect thereto shall have expired.

The term "Reorganized Company" as used in this Lease shall mean any corporation and its successors and assigns, including, without limitation, Rock Island Railroad, which holds, acquires or otherwise succeeds to all or substantially all of the property and business of Rock Island Railroad upon adoption of a plan of reorganization with respect to Rock Island Railroad and the termination of the Reorganization Proceedings.

14.2. Remedies. If any Event of Default has occurred and is continuing, the Lessor or, in the event this Lease shall be assigned to an assignee pursuant to Section 16 hereof, such assignee, at its option, may:

(a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, including reasonable attorneys' fees; 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 the Items of Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use such Items for any purpose 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 multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum with respect to each Item of Equipment which represents the excess of the present worth, 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 worth 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, such present worth to be computed in each case on a basis of a 5% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, or (y) an amount equal to the excess if any of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the Fair Market Value thereof at such time; provided, however, that in the event the Lessor shall have sold any Item of Equipment, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (i) with respect thereto may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the net proceeds of such sale, and (ii) any damages and expenses, other than for a failure to pay rental, in addition thereto, including reasonable attorneys' fees, 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.

For purposes of Section 14.2 above, the Fair Rental Value and Fair Market Value for any Item of Equipment shall be determined in the manner provided for appraisal arrangements specified in Section 18.2(b) hereof; provided that any sale in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Market Value of such Item and any rental in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Rental Value of such Item.

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 offset against the rent payments due hereunder, and agrees to make the rent payments regardless of any offset 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.

14.5. Notice of Event of Default. The Lessee also agrees to furnish to the Lessor promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section 14.5 a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

SECTION 15. RETURN OF EQUIPMENT UPON DEFAULT.

15.1. Lessee's Duty to Return. If the Lessor or any assignee of the Lessor pursuant to Section 16 hereof shall terminate this Lease 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 Item 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; provided that, in the event the Lessor shall designate storage tracks which are then unavailable either because such tracks are then being used to store equipment owned by a third party pursuant to a contractual obligation of the Lessee to provide storage therefor or because the storage of the Items of Equipment on such tracks would materially impair the ability of the Lessee to meet its obligations to perform services as a common carrier to the public, then the Lessee agrees to so store the Items of Equipment upon such other storage tracks as shall then be so available and nearest to such storage tracks designated by the Lessor;

(b) Permit the Lessor to store such Equipment in such reasonable storage place on the Lessee's lines of railroad without charge for insurance, rent or storage until such Equipment has been sold, leased or otherwise disposed of by the Lessor and during such period of storage the Lessee shall continue to maintain all insurance required by Section 11.1 hereof; 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 direct in writing.

All amounts earned in respect of the Equipment after the date of termination of this Lease, but not exceeding the rental, per diem, or other similar charge for equipment received therefor, shall belong to the Lessor or in the event this Lease has been assigned pursuant to Section 16 hereof, to such assignee, and, if received by the Lessee, shall be promptly turned over to the Lessor, or in the case of such assignment, to such assignee. In the event any Item of Equipment is not assembled, delivered and stored as hereinabove provided within 30 days after the termination of this Lease, the Lessee shall, in addition, pay to the Lessor or, in the case of such assignment, to such assignee for each day thereafter an amount equal to the amount, if any, by which the higher of (i) an amount equal to 0.0305556% of the Purchase Price of such Item of Equipment, or (ii) the Fair Rental Value (determined in the manner provided in Section 18 hereof) for such Item of Equipment for each such day, exceeds the amount, if any, received by the Lessor or such assignee (either directly or from the Lessee) for such day for such Item pursuant to the preceding sentence.

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 obligation of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Items of Equipment to the Lessor, to demand and take possession of such Item in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Item.

SECTION 16. ASSIGNMENTS BY LESSOR.

This Lease and all rent and all other sums due or to become due hereunder may be assigned in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. Upon notice to the Lessee of any such assignment, the rent and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to or upon the written order of the assignee. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of any such assignee in and to the sums payable by the Lessee under any provision of this Lease shall not be subject to any abatement whatsoever and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever whether by reason of failure of or defect in the Lessor's title, or any interruption from whatsoever cause 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, of the Lessor to the 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 such assignee, the Lessee shall be unconditionally and absolutely obligated to pay such assignee all of the rents and other sums which are the subject matter of the assignment, (ii) said assignee shall, if an Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, 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 said assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor (except those rights, privileges and remedies

relating to amounts payable to the Lessor pursuant to Sections 6, 10.2, 11.1 [with respect to public liability insurance] and 21.2 hereof which shall remain enforceable by the Lessor), but if no Event of Default or event which with the lapse of time or giving of notice, or both, would constitute an Event of Default, shall have occurred and be continuing, said assignee and the Lessor may each exercise their respective rights, privileges and remedies stated in this Lease to be provided for their respective benefits, and (iii) all obligations of the Lessor to the Lessee under this Lease shall be and remain enforceable by the Lessee against, and only against, the Lessor.

It is understood and agreed that the right, title and interest of any such assignee in, to and under this Lease and the rents and other sums due and to become due hereunder shall by the express terms granting and conveying the same be subject to the interest of the Lessee in and to the Equipment.

SECTION 17. ASSIGNMENTS BY LESSEE; USE AND POSSESSION.

17.1. Lessee's Rights to the Equipment. So long as no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, 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 in Railroad Operations. So long as the Lessee shall not be in default under this Lease, 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 any Item of Equipment upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease. Notwithstanding the foregoing, the Lessee shall at no time throughout the term of this Lease assign or permit the assignment of any Item of Equipment to service (including, without limitation, the regular operation or maintenance thereof) outside

the continental United States, and the Lessee agrees that the use of the Equipment outside the continental United States shall be de minimus. No assignment or sublease entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligation hereunder which shall be and remain those of a principal and not a surety.

17.3. Merger, Consolidation or Acquisition of Lessee. Nothing in this Section 17 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to (i) any corporation into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all of the lines of railroad of the Lessee, provided that such assignees, successors or transferees shall have duly assumed the obligations of the Lessee hereunder and that they will not, upon the effectiveness of such merger or consolidation or acquisition of properties and the assumption of such obligations, be in default under any provision of this Lease and that such merger or consolidation or acquisition of Properties shall not alter in any way the Lessee's obligations to the Lessor hereunder which shall be and remain those of a principal and not a guarantor, and (ii) any railroad corporation organized under the laws of the United States or any state thereof which, at the time such assignment or transfer thereto shall become effective (1) qualifies as a Class I railroad under the rules and regulations of the Interstate Commerce Commission, and (2) has outstanding at such time equipment obligations rated "A" (or the equivalent thereof) or better by Moody's Investors Service or Standard & Poor's Corporation or a successor thereto, which rating shall have been provided thereby during the year preceding such assignment or transfer either in connection with a sale of equipment obligations or by a private letter; provided that the right of assignment and transfer set forth in this clause (ii) will not result in a default by the assuming or transferee railroad under any instrument or agreement to which it is a party, and may be exercised only by William M. Gibbons, Trustee of the Property of Chicago, Rock Island and Pacific Railroad Company or a successor trustee under the Reorganization Proceedings. Upon the due assumption of the obligations of the Lessee hereunder by said qualifying railroad pursuant to the preceding clause (ii), William M. Gibbons, Trustee of the Property of Chicago, Rock Island and Pacific Railroad Company, Debtor, shall be relieved of all obligations to pay rental hereunder accruing from and after the date of such assignment or transfer and all other such obligations hereunder as shall arise after said date of assignment or transfer.

SECTION 18. RIGHT OF FIRST REFUSAL; RENEWAL OPTIONS.

18.1. Right of First Refusal. Unless an Event of Default, or any event which with the lapse of time or giving of notice, or both, would constitute an Event of Default, shall

have occurred and be continuing, the Lessor shall not, at any time prior to six months after the end of the original term of this Lease (or, if the Lessee has renewed this Lease for a renewal term pursuant to Section 18.2 hereof, prior to six months after the end of such renewal term) sell, transfer or otherwise dispose of an Item of Equipment unless:

(a) the Lessor shall have received from a responsible purchaser or purchasers a bona fide offer or offers in writing to purchase such Item of Equipment;

(b) the Lessor shall have given the Lessee notice (i) setting forth in detail the identity of such purchaser or purchasers, the Item or Items of Equipment to be purchased, the proposed purchase price or prices, the proposed date of purchase and all other material terms and conditions of such purchase, including, without limitation, any arrangements for the financing of such purchase known to the Lessor, and (ii) offering to sell such Item of Equipment to the Lessee upon the same terms and conditions as those set forth in such notice; provided that in the event such proposal is in respect of more than one Item of Equipment, the Lessee must purchase all such Items of Equipment as a group; and

(c) the Lessee shall not have notified the Lessor, within 15 days following receipt of such notice, of its election to purchase such Item or Items of Equipment upon such terms and conditions.

If the Lessee shall not have so elected to purchase such Item or Items of Equipment, the Lessor may sell such Item or Items of Equipment at a price and upon other terms and conditions no less favorable to the Lessor than those specified in such notice. Notwithstanding the foregoing provisions of this Section 18.1, the Lessor may, if the Lessee has not renewed this Lease pursuant to Section 18.2 hereof, lease any or all Items of Equipment at any time after the end of the original term of this Lease (or, if the Lessee has renewed this Lease for a renewal term pursuant to Section 18.2 hereof, at the end of such renewal term) without first offering to lease the Equipment to the Lessee.

18.2. Renewal Options. Provided that no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall have the following renewal options:

(a) The Lessee shall have the option to renew and extend this Lease as to all, but not less than all, of the Items of Equipment then leased hereunder for two additional renewal terms of two years each upon

and subject to the terms and conditions herein contained for the original term of this Lease; provided that the Fixed Rental payable for and during any such renewal term shall be an amount equal to the Fair Rental Value (as hereinafter defined) of such Items of Equipment and that the Casualty Value payable for and during any such renewal term in respect of any Item of Equipment suffering a Casualty Occurrence during such term shall be an amount equal to the higher of (i) the Fair Market Value of such Item of Equipment as of the beginning of such renewal term, or (ii) an amount equal to 20% of the Purchase Price of such Item of Equipment. Each renewal term shall commence immediately upon the expiration of the preceding term. The Lessee shall give the Lessor written notice of its intention to renew, which election shall be irrevocable (subject to a satisfactory determination of the amount of the rental to be payable as hereinbelow provided) 270 days prior to the commencement of any renewal term provided for in this Section 18.2. In the event it shall become necessary for an Appraiser to determine Fair Rental Value pursuant to Section 18.2(b) hereof, then the Lessee may revoke its election to renew by written notice to the Lessor given at any time on or prior to the tenth day following the giving of notice by the Appraiser of the determination of Fair Rental Value or the notification that agreement has not been reached by the independent appraisers selected by the Lessee and the Lessor and before selection of an appraiser by the American Arbitration Association; and

(b) The Fair Rental Value or Fair Market Value, as the case may be, of the Items of Equipment shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee or buyer, as the case may be (other than a lessee or buyer, as the case may be, currently in possession) and an informed and willing lessor or seller, as the case may be, under no compulsion to lease or sell, as the case may be. If on or before 210 days prior to the date of commencement of the renewal term elected by the Lessee, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value or the Fair Market Value of such Items of Equipment, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term "Appraiser" shall mean any independent appraiser mutually agreed upon by the Lessor and the Lessee or if no such mutual agreement is reached within 15 days after the beginning of such 210-day period, two independent appraisers, one chosen by the Lessor and one chosen by the Lessee, or, if such appraisers cannot agree on the amount of such value within 150 days prior to the date of commencement of the renewal term elected by the Lessee, an independent appraiser to

be chosen by the American Arbitration Association promptly thereafter. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

18.3. Delivery of Equipment. Unless the Lessee has elected to purchase the Items of Equipment then leased hereunder or to renew this Lease in respect of such Items of Equipment as provided in this Section 18, all of such Items of Equipment shall be returned to the Lessor at the end of the original term, or the then current renewal term, as the case may be, in accordance with Section 13 hereof.

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

Anything to the contrary herein contained notwithstanding any nonpayment of rent 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 also an amount equal to 12% per annum (or the maximum lawful rate, whichever is less) on the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid.

SECTION 20. SPECIAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE LESSEE.

The Lessee hereby represents, warrants, covenants and agrees as follows:

(a) William M. Gibbons has been duly appointed and is validly acting as Trustee of the property of Rock Island Railroad, has all requisite power and authority to carry on the business of the Rock Island Railroad as now being conducted and by a specific order duly authorized, executed and delivered by the Court has received all requisite power and authority to enter into, execute and deliver this Lease, the purchase agreement entered into by the Lessee with the Manufacturer providing for the construction and delivery of the Equipment (said purchase agreement as heretofore amended, supplemented or modified is hereinafter referred to as the "Purchase Agreement") and the Purchase Order Assignment;

(b) This Lease, the Purchase Agreement and the Purchase Order Assignment have been duly authorized, executed and delivered by the Lessee and constitute

the valid, legal and binding agreements of the Lessee enforceable in accordance with their terms and during the continuance of the Reorganization Proceedings the obligations of the Lessee under this Lease, the Purchase Agreement and the Purchase Order Assignment including without limitation the obligation to pay Rent and any other sums due and owing hereunder, ~~constitutes~~ ^{except as limited by § 3 hereof.} an expense of administration payable on a parity with other such expenses and no other equipment obligation assumed or incurred by the Lessee has priority over this Lease and the rights of the Lessor therein and in the Equipment and upon the occurrence of an Event of Default any claim for damages hereunder will constitute an expense of administration as aforesaid;

(c) No approval, consent or withholding of objection is required from any public regulatory body with respect to the entering into or performance by the Lessee of this Lease, the Purchase Agreement and the Purchase Order Assignment or in the event that any such approval, consent or withholding of objection is required, it has been obtained;

(d) Execution and delivery by the Lessee of this Lease, the Purchase Agreement and the Purchase Order Assignment do not violate any provision of the Charter or By-laws of Rock Island Railroad or of any law, any order of any court or governmental agency, or any indenture, agreement or other instrument to which the Lessee or Rock Island Railroad is a party or by which either of them, or any of their 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 or Rock Island Railroad, except as contemplated and permitted hereby;

(e) Each Item of Equipment will be new and unused on the date title thereto is acquired by the Lessor and will not have been put into use or operation by the Lessee prior to the date of acceptance set forth in the Certificate of Acceptance delivered with respect thereto;

(f) The balance sheet, statement of income and statement of changes in financial position of the Lessee, heretofore delivered to the Lessor, have been prepared in accordance with generally accepted accounting principles and fairly present the financial position of the Lessee, on and as of the date thereof and the results of its operations for the period or periods covered thereby.

Since the date of such balance sheet, there has been no material adverse change in the financial condition of the Lessee nor has any determination been made or event or circumstance occurred which would make it more likely that in the future the Lessee will be unable to transport the traffic offered him, his continued operations will become impossible or the Lessee will discontinue services and/or liquidate his assets;

(g) The Lessee agrees to furnish to the Lessor (at the address thereof contained in the Lease):

(i) within 120 days after the close of each fiscal year of the Lessee occurring after the date hereof, an audited balance sheet and statement of changes in financial position of the Lessee, at and as of the end of such fiscal year, together with an audited statement of income of the Lessee for such fiscal year;

(ii) within 60 days after the close of each quarterly period, except the last, of each fiscal year of the Lessee occurring after the date hereof, a balance sheet and statement of changes in financial position of the Lessee, at and as of the end of such quarterly period, together with a statement of income for such quarterly period;

(iii) within the period set forth in (i) above, a certificate of an authorized officer of the Lessee stating that he has reviewed the activities of the Lessee and that, to the best of his knowledge, there exists no Event of Default, as such term is defined in the Lease, and no event which with the giving of notice or the lapse of time, or both, would become such an Event of Default, or, if such event or Event of Default shall exist, specifying the nature and status thereof and indicating the intention or expectation of the Lessee as to the disposition thereof; and

(iv) copies of all reorganization plans filed with the Court by the Lessee and all material court orders related thereto and upon the written request of any such party, copies of all financial statements, reports or notices as the Lessee shall distribute or mail to interested parties in the Reorganization Proceedings;

Without limiting the foregoing, the Lessee, unless prevented by a Court order, will permit the Lessor and

its successors and assigns (or such persons as any such party may designate) to visit and inspect, under the Lessee's guidance, any of the properties of the Lessee or any subsidiary, to examine all their books of account, records, reports and other papers, to make copies and extracts therefrom, and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants (and by this provision, the Lessee authorizes said accountants to discuss with any such party the finance and affairs of the Lessee and its subsidiaries) all at such reasonable times and as often as may be reasonably requested; provided that each such visit, inspection and examination shall be conducted during normal business hours and the Lessee shall have been previously notified thereof in writing. The Lessee shall not be required to pay or reimburse any such party for expenses which it may incur in connection with any such visitation or inspection.

(h) The Lessee agrees to furnish to the Lessor, before the acceptance of any Item of Equipment pursuant to Section 1.2 hereof and as a condition of the Lessor's obligation to lease the Equipment to the Lessee hereunder: (i) a copy of each Court order referred to in paragraph (a) of Section 20 hereof authorizing the execution and delivery of this Lease in the form thereof attached to the petition requesting such order, the Purchase Agreement and the Purchase Order Assignment, and copies of said petitions; and (ii) an opinion of Nicholas G. Manos, Esq., counsel for William M. Gibbons as said Trustee, satisfactory in form and substance to Lessor as to the matters referred to in paragraphs (a), (b), (c) and (d) of this Section 20 and, in the event that any required approval, consent or withholding of objection referred to in paragraph (c) of this Section 20 has been obtained, such opinion shall also specify the same; and

(i) The Lessee will execute and deliver such additional documents and furnish such additional information and assurances (verified by opinions of counsel and certificates of officers of the Lessee) as the Lessor may require in connection with the closings under this Lease and from time to time during the term of this Lease.

SECTION 21. INDEMNITY FOR INCOME TAXES.

The Lessor, as the owner of the Equipment, shall be entitled to the maximum depreciation deduction authorized with respect to the Equipment under Section 167 of the Internal Revenue Code of 1954, as amended to the date hereof (the "Code") calculated according to the most accelerated method of the

depreciation as provided in Section 167(b) of the Code (hereinafter referred to as the "Depreciation Deduction"), the investment tax credit pursuant to Section 38 and related Sections of the Code in an amount equal to 10% of the Purchase Price of the Equipment (the "Investment Credit") and such other Federal, state and local income tax benefits as are provided to an owner of property.

The Lessee agrees that neither it nor any person, partnership or corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents, inconsistent with the foregoing and that each of such persons, partnerships and corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Lessor such records as will enable the Lessor to determine it is entitled to the full benefit of all tax benefits to which it is entitled.

The Lessee represents and warrants that (i) at the time the Lessor becomes the owner of each Item of Equipment, such Item will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 167(c)(2) and 48(b) of the Code from commencing with the Lessor, and the Lessor shall be able to depreciate such Item as provided in Section 167(b) of the Code and to take the Investment Credit with respect to such Item; and (ii) at the time the Lessor becomes the owner of such Item, no investment credit, depreciation or other tax benefits will have been claimed by any person with respect to such Item.

For Federal, state or local income tax purposes, in the event that any of the expected Depreciation Deduction or Investment Credit shall be lost by, recaptured or disallowed to the Lessor for any reason (hereinafter a "Loss of Depreciation" or a "Loss of Investment Credit", respectively), then the Lessee shall pay to the Lessor such additional rentals as are hereinafter provided.

For Federal, state or local income tax purposes, if all or any part of any alterations, modifications, additions, maintenance, repairs or any other expenditures of, or to, or in respect of any Item of Equipment by the Lessee (whether or not pursuant to the terms of this Lease) is included or includable in the gross income of the Lessor, or if the Lessor shall be required to recognize an amount of rental income greater than the amount specified to be payable under this Lease on the dates due hereunder (each such inclusion or includability being hereinafter referred to as an "Item of Additional Income"), the Lessee shall pay such Lessor additional rentals as hereinafter set forth; provided, however, that, in determining the amount of such additional rentals, the determination of such amount will then take into consideration any tax benefits which will be

realized by the parties hereto as a result of any such alteration, modification or addition, provided, further, that if such tax benefits realized by the parties hereto as a result of any such alteration, modification or addition is greater than that necessary to maintain the Lessor's net return on investment and total net cash flow, such rentals shall not be reduced.

If as a result of the use of any Item of Equipment outside the United States, the Lessor shall lose the benefit of, shall not have, shall lose the right to claim, or shall suffer a disallowance of, any foreign tax credits ("Foreign Tax Credit") (each such loss, disallowance, or unavailability of foreign tax credits being hereinafter referred to as a "Loss of Foreign Tax Credit"), the Lessee shall pay such additional rentals as are hereinafter provided.

On each occasion that there shall be an occurrence of any Loss of Depreciation, any Loss of Investment Credit, any Item of Additional Income, or any Loss of Foreign Tax Credit (such Loss of Depreciation, Loss of Investment Credit, Item of Additional Income, or Loss of Foreign Tax Credit being hereinafter collectively referred to as "Item of Tax Effect"), then the Lessee shall pay to the Lessor a revised rental or a lump sum (in the event that this Lease has earlier terminated or expired) in the respect of the Equipment so that the Lessor, in the reasonable opinion of the Lessor, shall have the same net after-tax rate of return as would have been realized by the Lessor if the Item of Tax Effect had not occurred. The obligation to pay such sums shall be in addition to all other obligations of the Lessee under this Lease, including, without limitation, obligations under Section 14; provided, however, that such rental rate shall not be so increased or such lump payment shall not be made upon the occurrence of an Item of Tax Effect in respect to any Item of Equipment as a direct result of the occurrence of any of the following events:

(i) A Casualty Occurrence with respect to such Item, if the Lessee shall have paid to the Lessor the amounts stipulated under the Lease;

(ii) A voluntary transfer or other voluntary disposition by the Lessor of any interest in such Item or the voluntary reduction by the Lessor of its interest in the rentals from such Item under the Lease, 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 or proper manner the Investment Credit or the Depreciation Deduction;

(iv) The failure of the Lessor to have sufficient income or United States Federal income tax liability to benefit from the Investment Credit or the Depreciation Deduction;

(v) Entry of an Early Termination Order or the occurrence of an Early Termination Rejection as defined in Section 3 of the Lease; or

(vi) Any amendment to, or change in, the Code or the Regulations which is enacted after June 30, 1979 (whether or not such amendment or change is retroactively effective for any period on or prior to June 30, 1979).

For the purpose of this Lease, the date that the increased rentals shall commence or such lump sum shall be paid is thirty days from written notice by the Lessor of the Item of Tax Effect, or thirty days prior to the time the Lessor pays the additional tax, interest, and penalties, whichever occurs later. In the event that the rental payable hereunder is revised as described above so that the Lessor shall have the same net after-tax rate of return as would have been realized by the Lessor if the Item of Tax Effect had not occurred, then the applicable Casualty Values set forth in Schedule C hereto shall also be adjusted by such amount as will, in the reasonable opinion of the Lessor, cause the Lessor's net after-tax rate of return to equal that which would have been realized had the Item of Tax Effect not occurred.

If a change in the Federal income tax rate applicable to corporations becomes effective, whether by prospective or retroactive application, prior to the delivery date of any Item or Items of Equipment, the Lessee shall pay additional rentals on such Items at a rate which will maintain the Lessor's net benefit due to deductions on its income arising from the purchase and lease of such Items, as that net benefit was calculated by the Lessor in originally evaluating the lease transaction.

As used in this Section, the term "Lessor" shall be deemed to include the members of the affiliated group, as defined in Section 1504 of the Code, of which the Lessor may be a member and which files a consolidated return for Federal income tax purposes.

SECTION 22. MISCELLANEOUS.

22.1. Notices. Any notice 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: Gould Leasing Services, Inc.
 10 Gould Center
 Rolling Meadows, Illinois 60008

 Attention: Controller

Payments to the Lessor hereunder
to be made as follows:

If by check:

Gould Leasing Services, Inc.
P.O. Box 96937
Chicago, Illinois 60693

If by wire transfer:

Continental Illinois National Bank
and Trust Company of Chicago
Account No. 73-43159

In either case with notice of payment
to the attention of Controller, Gould
Leasing Services, Inc.

If to the Lessee: William M. Gibbons, Trustee for
the Property of Chicago, Rock Island
and Pacific Railroad Company
332 South Michigan Avenue
Chicago, Illinois 60604

Attention: Chief Financial Officer

or addressed to any such party at such other address as such party
shall hereafter furnish to such other parties in writing.

22.2. Right of Lessor to Perform. If the Lessee shall fail to comply with any of its covenants herein contained, either the Lessor, or, in the case of an assignment by the Lessor pursuant to Section 16 hereof, the assignee thereunder may, but shall not be obligated to, make advances to perform the same and to take all such action as may be necessary to obtain such performance. Any payment so made by any such party and all cost and expense (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by the Lessee to the party making the same upon demand as additional rent hereunder, with interest at the rate of 12% per annum (or the maximum lawful rate, whichever is less).

22.3. Expenses. If the transactions contemplated by this Lease are consummated, it is the expectation of the parties hereto that Babcock and Brown, Incorporated (out of the fees payable to it by the Lessor) will pay the cost of reproducing this Lease and the Purchase Order Assignment, and the disbursements and reasonable fees of Messrs. Chapman and Cutler. If no part of the transactions contemplated by this Lease are consummated, the Lessee agrees to pay all of the above-described expenses.

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 5th day of March, 1979, before me personally appeared W.L. Crowley, to me personally known, who being by me duly sworn, says that he is the Executive Vice President of GOULD LEASING SERVICES, INC., that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

Barbara Ann Sestak
Notary Public

NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXPIRES SEPT. 29 1982
ISSUED THRU ILLINOIS NOTARY ASSOC.

My commission expires:

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 5th day of March, 1979, before me personally appeared WILLIAM M. GIBBONS, to me personally known, who, being by me duly sworn, says that he is Trustee of the Property of CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, and that the foregoing instrument was signed by him as Trustee of the Property of Chicago, Rock Island and Pacific Railroad Company pursuant to specific orders of the United States District Court for the Northern District of Illinois in Proceedings bearing No. 75B2697.

[NOTARIAL SEAL]

John M. Senior
Notary Public

My commission expires:

Oct. 26, 1981

DESCRIPTION OF ITEMS OF EQUIPMENT

Manufacturer of Equipment: Greenville Steel Car Company

Description and Mark and
Number of Items of
Equipment: 220 Open Top Hopper Cars
Marked and Numbered ROCK 700800
to ROCK 701019, both inclusive

Base Purchase Price of
Equipment: \$32,000 per Item

Maximum Aggregate Purchase
Price of Equipment: \$7,040,000

Place of Delivery: Greenville, Pennsylvania

Outside Delivery Date: June 30, 1979

(CRI #79-1)

SCHEDULE A
(to Equipment Lease)

CERTIFICATE OF ACCEPTANCE
UNDER EQUIPMENT LEASE

TO: Gould Leasing Services, Inc.,
(the "Lessor")

Greenville Steel Car Company (the
"Manufacturer")

I, a duly appointed and authorized representative of William M. Gibbons, Trustee of the Property of Chicago, Rock Island and Pacific Railroad Company (the "Lessee") under the Equipment Lease dated as of January 1, 1979 between the Lessor and the Lessee, do hereby certify that I have inspected, received, approved and accepted delivery under the Lease of the following Items of Equipment:

TYPE OF EQUIPMENT: 220 Open Top Hopper Cars

PLACE ACCEPTED: Greenville, Pennsylvania

DATE ACCEPTED:

NUMBER OF UNITS:

MARKED AND NUMBERED:

I do further certify that the foregoing Items of Equipment are in good order and condition, have not been used or placed in service prior to the execution of this Certificate of Acceptance and appear to conform to the specifications applicable thereto, that the Lessee has no knowledge of any defect in any of the foregoing Items of Equipment with respect to design, manufacture, condition or in any other respect, and that each Item has been labeled by means of a plate or a stencil printed in contrasting colors upon each side of the Item in letters not less than one inch in height as follows:

"Leased from Gould Leasing Services, Inc."

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

Dated: _____, 19__

(CRI #79-1)

Inspector and Authorized
Representative of the Lessee

SCHEDULE B
(to Equipment Lease)

SCHEDULE OF CASUALTY VALUE

The Casualty Value for an Item of Equipment payable on any payment date for Interim Rental, the Term Lease Commencement Date or any Fixed Rental payment date thereafter shall mean an amount equal to the percent of the Purchase Price of such Item set forth opposite such date in the following schedule:

<u>Number of Fixed Rental Payment Date on which Casualty Value is Paid</u>	<u>Percentage of Purchase Price Payable as Casualty Value</u>
Any payment date for Interim Rental or First Fixed Rental Payment Date	105.418848
2	104.954175
3	105.182076
4	105.207129
5	105.035782
6	98.302073
7	97.737145
8	96.978192
9	96.030151
10	88.535106
11	87.217028
12	85.721483
13	84.043863
14	75.833691
15	73.807820
16	71.619752
17	69.257777
18	66.741901
19	64.056894
20	61.226771
21	58.232797
22	55.103019
23	51.815218
24	48.401486
25	44.835497
26	41.148294
27	37.306797
28	33.347721
29	29.270308
30	25.055354
At the end of the Lease Term period and thereafter	20.000000

(CRI #79-1)

SCHEDULE C
(to Equipment Lease)