

EQUIPMENT LEASE AGREEMENT

SEP 11 1979-9 25 AM

INTERSTATE COMMERCE COMMISSION

THIS LEASE AGREEMENT, made as of the 31st day of August, 1979, by and between EDWARD A. DAHLKA, JR., and LARRY D. UNGER, not individually but solely as trustees under MNLCT TRUST NO. 79-2 ("Lessor"), and ILLINOIS CENTRAL GULF RAILROAD COMPANY, a Delaware corporation ("Lessee").

A. In consideration of the mutual covenants, terms and conditions hereinafter contained, Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from Lessor, the equipment, personal property and other property, together with all components, parts, additions, accessions and attachments incorporated therein comprising the following described three hundred five (305) freight cars (all such property hereinafter collectively referred to as the "Equipment"; more fully specified on Exhibit A attached hereto), described as follows:

<u>Quantity</u>	<u>Type</u>
14	70 ton & 100 ton, 60' box
23	100 ton covered hoppers
30	50 ton, 50' box
167	70 ton, 50' box
34	70 ton Rbl.
23	70 ton pulpwood
14	70 ton woodchip

B. Lessor has agreed under a Rehabilitation Agreement dated as of the date hereof (the "Rehabilitation Agreement") between Lessee and Lessor to purchase from the owners thereof, in order to secure reusable components, the following used equipment (the "used equipment") at purchase prices not to exceed the following maximum amounts:

<u>Quantity</u>	<u>Type</u>	<u>Maximum Purchase Price</u>
14	70 ton & 100 ton, 60' box	\$149,800

STATE OF MARYLAND  
CITY OF BALTIMORE, ss:

RECORDATION NO. 10806-A Filed 1425

SEP 11 1979-9 25 AM

INTERSTATE COMMERCE COMMISSION

I hereby certify that I am a Notary Public of the State of Maryland, in and for the City aforesaid, and that I have compared the annexed copy with the original document and that it is a true and correct copy in all respects.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal this 10th. day of September, 1979.

Margaret A. Green  
Notary Public

My commission expires:

7/1, 1982



23	100 ton covered hoppers	195,500
30	50 ton, 50' box	171,000
167	70 ton, 50' box	1,102,200
34	70 ton Rbl.	290,700
23	70 ton pulpwood	102,925
14	70 ton woodchip	<u>90,650</u>
		<u>\$2,102,775</u>

The actual purchase prices of the used equipment shall hereinafter be referred to as the "Acquisition Cost". Such reusable components will be conveyed to Lessor by bills of sale (the "Bills of Sale").

C. Lessee has also agreed under the Rehabilitation Agreement to rehabilitate for Lessor equipment using, where possible, such parts as may be obtained from the used equipment referred to in the immediately preceding paragraph in order to produce the following equipment at rehabilitation costs not to exceed the following maximum amounts:

<u>Quantity</u>	<u>Type</u>	<u>Maximum Rehabilitation Cost</u>
14	70 ton & 100 ton, 60' box	\$ 348,600
23	100 ton covered hoppers	485,300
30	50 ton, 50' box	585,000
167	70 ton, 50' box	3,356,700
34	70 ton Rbl.	697,000
23	70 ton pulpwood	255,300
14	70 ton woodchip	<u>193,900</u>
		<u>\$5,921,800</u>

The actual rehabilitation costs for the equipment shall hereinafter be referred to as the "Rehabilitation Cost." The aggregate cost for the acquisition, rehabilitation and delivery of all of the Equipment (the "Total Invoice Cost") shall not exceed \$8,024,575.

This Lease is made upon the following terms and conditions:

1. TERM. The term of this Lease with respect to any item of the Equipment shall consist of

(a) an interim term as to each item of the Equipment which shall commence on the date Lessor purchases such item of the used equipment from the owners thereof pursuant to the Rehabilitation Agreement and shall end on the Commencement Date (as hereinafter defined); and

(b) a basic term as to each item of the Equipment which shall begin on the Commencement Date and shall end sixty (60) quarters after the date (the "Commencement Date") which is the earlier of (i) the date as of which all of the used equipment has been rehabilitated in accordance with the Rehabilitation Agreement and accepted by Lessee for lease hereunder, or (ii) December 31, 1979;

provided, however, that this Lease shall be effective from and after the date of execution hereof.

2. RENT. Lessee covenants and agrees to pay Lessor, as rent for the Equipment, without any deduction or setoff and without prior notice or demand,

(a) interim rent, payable ~~quarterly~~ <sup>ON THE COMMENCEMENT DATE</sup> in arrears, for the period commencing with the date of payment by Lessor of any part of the Total Invoice Cost and ending on the Commencement Date. Such interim rent shall also be payable for used equipment which is repurchased as provided in Section 6. Interim rent shall be in an amount equal to 0.02935% per day of any part of the Total Invoice Cost paid by Lessor prior to the Commencement Date computed from the dates so paid to the date of payment of such interim rent, and computed for the actual number of days elapsed; and

(b) rent during the basic lease term, payable quarterly in arrears, for the Equipment in sixty (60) installments, each of which shall be in an amount equal to 2.6412% of the Total Invoice Cost. The first installment of rent shall be payable on the first quarterly anniversary of the Commencement Date. Subsequent installments of rent shall be payable thereafter on each successive quarterly anniversary of the Commencement Date.

This Lease is a net lease, and Lessee shall not be entitled to any abatement of rent or other payments due hereunder or any reduction thereof under any circumstances or for any reason whatsoever. Lessee hereby waives any and all existing or future claims to 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 Lessee or on its behalf in connection with the lease of the Equipment.

Installments of rent are to be paid in the manner and at the times herein specified by mailing the same to Lessor at the address specified in Section 23 hereof; and shall be effective upon receipt.

Time is of the essence of this Lease. In the event that any rent or other payment due hereunder shall not have been paid on the date on which it becomes due and payable, Lessor may collect, and Lessee hereby agrees to pay, a charge computed as one (1) percent per month of the amount in arrears for the period such amount remains unpaid. Lessee agrees that in the event that Lessee is in Default and this Lease is placed for collection in the hands of an attorney who is not a salaried employee of Lessor, to pay reasonable attorney's fees plus court costs.

3. REPORTS. Lessee will furnish or cause to be furnished to Lessor: (a) within one hundred twenty (120) days after the end of each fiscal year of Lessee, a copy of the annual audited report of Lessee and any consolidated subsidiaries, prepared in conformity with generally accepted accounting principles and signed by nationally recognized independent certified public accountants; (b) within one hundred twenty (120) days after each fiscal year of Lessee, a copy of the ICC Rail Form R1 of Lessee for such year, prepared on an unconsolidated basis and in conformity with the Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission ("ICC") applied on a basis consistent with that of the preceding fiscal year, and signed by a proper accounting officer of Lessee; (c) within sixty (60) days after each quarter (except the last quarter) of each fiscal year of Lessee, a copy of its unaudited unconsolidated financial statement, prepared in conformity with the Uniform System of Accounts for Railroad Companies prescribed by the ICC and consisting of at least a balance sheet as at the close of such quarter and a profit and loss statement and analysis of surplus for such quarter and for the period from the beginning of such fiscal year to the close of such quarter, and signed by a proper accounting officer of Lessee; (d) with the annual audited report each year, a certificate of a responsible officer of Lessee to the effect that, except as otherwise specified therein, (i) all items of Equipment are in existence and, except for those items of Equipment designated as in bad order status, are in good operating condition and have been marked as required by Section 7 hereof and (ii) no event of default, or event which might mature into an event of default, has occurred and is continuing under this Lease; and (e) from time to time, such other information as Lessor may reasonably request.

4. CONDITIONS TO LESSOR'S OBLIGATIONS. The obligations of Lessor hereunder are expressly subject to the satisfaction of, or the satisfactory compliance by Lessee with, the following conditions precedent:

(a) Prior to the first date on which Lessor is requested to make payment for an item of the used equipment, Lessor shall receive the following, in form and substance satisfactory to Lessor:

(1) Certificate of the Secretary or an Assistant Secretary of Lessee certifying: (i) resolutions of the Board of Directors or validly authorized Executive Committee of Lessee duly authorizing the leasing of the Equipment hereunder and the execution, delivery and performance of this Lease and all Certificates of Acceptance to be executed pursuant hereto and all related instruments and documents; and (ii) the incumbency and signature of the officers of Lessee authorized to execute such documents;

(2) Evidence satisfactory to Lessor as to due compliance with the insurance provisions of Section 12 hereof;

(3) An opinion of counsel for Lessee satisfactory to Lessor as to each of the matters set forth in sub-parts (a) through (h), (j) and (n) of Section 5 hereof and as to such other matters as Lessor may reasonably request; and

(4) An appraisal certificate (required with the first payment requested hereunder for used equipment) issued by Mr. Alexander D. Kerr, an independent appraiser, to the effect that the fair market value of the reusable component parts included in the used equipment to be purchased by Lessor under the Rehabilitation Agreement does not exceed the Acquisition Cost for such used equipment (set forth in paragraph B).

(b) Lessor shall not be obligated to make payment for any item of used equipment hereunder unless on the date such payment is requested by Lessee:

(1) All of Lessee's representations and warranties in Section 5 of this Lease shall be true and correct as though made as of such date;

(2) No litigation or governmental proceedings shall be threatened or pending against Lessee or any material subsidiary of Lessee which in Lessor's reasonable opinion will to a material extent adversely affect the financial condition or continued operation of Lessee and its subsidiaries on a consolidated basis;

(3) No event of default, or event which might mature into an event of default, shall have occurred or be continuing hereunder;

(4) An invoice covering the items of used equipment for which such payment is requested, shall have been provided to Lessor;

(5) An opinion of Lessee's counsel, satisfactory to Lessor, that acceptance by Lessor of the items of used equipment for which such payment is requested and payment therefor by Lessor shall be effective to transfer to Lessor good title to such items of used equipment, free of all claims, liens or encumbrances of any nature, shall have been provided to Lessor; and

(6) Such other releases, financing statements, waivers and other documents as Lessor may reasonably request to insure that the items of used equipment will not be subject to any lien, charge, encumbrance, security interest or other similar interest, shall have been provided to Lessor.

(c) On or prior to the Commencement Date, Lessee shall furnish to Lessor in form and substance satisfactory to Lessor:

(1) A Certificate of Acceptance (in substantially the form attached hereto as Exhibit B) signed by an officer of Lessee (as the authorized representative of Lessor hereunder and under the Rehabilitation Agreement) confirming delivery to, and acceptance by, Lessor of the items of the Equipment as to which rehabilitation has been completed in accordance with the Rehabilitation Agreement;

(2) An invoice covering the items of the Equipment specified on the Certificate of Acceptance, for which payment of the Rehabilitation Cost is requested;

(3) A certificate of the President or a Vice President of Lessee, dated such Commencement Date, as to each matter referred to in sub-parts (1), (2) and (3) of paragraph (b) hereof, and to the effect that:

(i) Since the date of this Lease, there has been no material adverse change in the financial condition of Lessee from that shown by the financial statements referred to in Section 5(i) hereof; and

(ii) The items of the Equipment have been delivered to and accepted by Lessee for lease under this Lease and the Lease is in full force and effect;

(4) An opinion of counsel for Lessee, acceptable to Lessor, dated such Commencement Date and addressed to Lessor, to the same effect as the opinion given to Lessor pursuant to paragraph (a) (3) hereof, and to the effect that:

(i) There are to the knowledge of such counsel no pending or threatened actions or proceedings before any court or administrative agency which will, in the opinion of such counsel, to a material extent adversely affect the financial condition or continued operation of Lessee and its subsidiaries on a consolidated basis; and

(ii) Uniform Commercial Code financing statements have been executed and filed as required under the laws of the State of Illinois, and this Lease has been duly filed and recorded with the ICC pursuant to 49 U.S.C. §11303, and such filings and recordings will protect Lessor's interests in and to the Equipment, and no further filing or recording (or giving of notice) with any other federal, state or local governmental agency or office is necessary in order to protect the interests of Lessor in and to the Equipment.

(iii) Upon delivery to, and acceptance by, Lessor of the items of Equipment as to which rehabilitation has been completed in accordance with the Rehabilitation Agreement, Lessor shall have clean title to said items of Equipment, free and clear of any and all encumbrances, liens, charges and defects whatsoever.

(5) A certificate of a qualified engineer that the Equipment is in satisfactory compliance with all applicable AAR standards for the interchange of equipment.

(6) An appraisal certificate issued by Mr. Alexander D. Kerr, an independent appraiser, to the effect that (i) the fair market value of the Equipment upon completion of rehabilitation under the Rehabilitation Agreement will be at least equal to the following:

<u>Type</u>	<u>Fair Market Value Upon Completion of Rehabilitation</u>
70 ton & 100 ton, 60' box	\$ 498,400
100 ton covered hoppers	680,800

50 ton, 50' box	756,000
70 ton, 50' box	4,458,900
70 ton Rbl.	987,700
70 ton pulpwood	358,225
70 ton woodchip	284,550
	<u>\$8,024,575</u>

(ii) the Equipment on the date of delivery thereof to Lessor upon completion of rehabilitation under the Rehabilitation Agreement will have an estimated useful life of at least four (4) years beyond the expiration of the lease term (excluding any renewal terms) for the Equipment under this Lease and an estimated fair market value at the end of such lease term of at least twenty percent (20%) of the Total Invoice Cost of the Equipment, without including in such fair market value any increase or decrease for inflation or deflation during such term of the Lease, and (iii) setting forth the manner in which such fair market value and useful life were determined.

(7) Such other documents and evidence with respect to the Rehabilitation Agreement, the Bills of Sale and this Lease as Lessor may reasonably request in order to establish the consummation of the transactions contemplated by the Rehabilitation Agreement, the Bills of Sale and this Lease, the taking of all corporate proceedings in connection herewith and compliance with all conditions set forth in the Rehabilitation Agreement, the Bills of Sale and this Lease.

5. LESSEE'S REPRESENTATIONS AND WARRANTIES. Lessee hereby represents and warrants that:

(a) Lessee is a corporation duly organized, existing and in good standing under the laws of the State of Delaware; and is duly qualified as a foreign corporation authorized to transact business in, and is in good standing under the laws of, each other state in which the Equipment is to be located or, if not so qualified or authorized, the failure to be so qualified or authorized will not materially or adversely affect its ability to carry on its present business and operations as presently conducted and to own or hold under lease its properties and to perform its obligations under this Lease.

(b) The leasing of the Equipment from Lessor by Lessee, the execution and delivery of this Lease, all Certificates of Acceptance to be executed pursuant hereto, and all related instruments and documents, and compliance by Lessee with the terms hereof, (i) have been duly and legally authorized by appropriate corporate action taken by Lessee; and

(ii) are not in contravention of, and will not result in a breach of, any of the terms of Lessee's Charter or its By-Laws, or of any provisions relating to shares of the stock of Lessee, or any loan agreements or indentures of Lessee, or any other contract, agreement or instrument to which Lessee is a party or under which it is bound. Lessee has adequate corporate power to lease the Equipment from Lessor under this Lease.

(c) This Lease, the Certificates of Acceptance, and all related instruments and documents, when executed by the duly authorized officers of Lessee and delivered to Lessor, will constitute valid and legally binding obligations of Lessee, enforceable against Lessee in accordance with the terms thereof, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar applicable laws (including any applicable common law and equity) or judicial decisions which may affect the remedies provided therein; however, none of such laws now in force and none of such judicial decisions will make the rights and remedies provided in the Lease, the Certificates of Acceptance and the related instruments and documents, as the case may be, taken as a whole, inadequate for enforcing payment of the rent and for enforcing the rights created therein.

(d) The execution and delivery of the Rehabilitation Agreement, the Bills of Sale and this Lease, and the performance by Lessee and the owners of the used equipment of their obligations hereunder and thereunder do not and will not conflict with any provision of law (including without limitation the provisions of 15 U.S.C. §20) or of the charter or bylaws of such owners or of any indenture, mortgage, deed of trust or agreement or instrument binding upon such owners or to which such owners are a party.

(e) The execution, delivery and performance of the Rehabilitation Agreement, the Bills of Sale and this Lease and the consummation by Lessee and the other parties thereto of the transaction contemplated hereby and thereby does not require the consent, approval or authorization of, or notice to, any Federal or state governmental authority or public regulatory body.

(f) The Rehabilitation Agreement, the Bills of Sale, and all other related documents with respect to the acquisition and rehabilitation of the Equipment, when executed by the duly authorized officers of the parties thereto and delivered to Lessor, will constitute valid and legally binding obligations of the parties thereto, enforceable against the parties thereto in accordance with the terms thereof, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and by applicable laws (including any applicable common law and

equity) and judicial decisions which may affect the remedies provided therein; provided, however, that none of such laws now in force and none of such judicial decisions will make the rights and remedies provided in the Rehabilitation Agreement, the Bills of Sale and the related documents, as the case may be, taken as a whole, inadequate for enforcing the rights created therein; and the Bills of Sale will transfer to Lessor valid title to the items of used equipment to be described on the schedules to be attached thereto free and clear of any and all encumbrances, liens, charges or defects.

(g) The right, title and interest of Lessor in and to the Equipment described in this Lease and the Certificates of Acceptance, and the rent therefrom, will not be materially adversely affected or impaired by the terms of any loan agreement or indenture or any other contract, agreement or instrument to which Lessee is a party, or under which it is bound. The leasehold interest of Lessee hereunder is subject to the lien of certain mortgages to which Lessee is a party covering substantially all of Lessee's railroad property. There are no suits now pending or threatened against Lessee which will directly or indirectly materially adversely affect or impair the title of Lessor to the Equipment.

(h) Under the laws of the states in which the Equipment is to be located, the Equipment consists solely of personal property and chattels; and the parties agree that in no event shall it be classified otherwise, in whole or in part, irrespective of its use.

(i) The financial statements of Lessee, dated March 31, 1979, (copies of which have been furnished to Lessor), fairly present Lessee's financial condition and the results of its operations as of the date thereof; have been prepared in conformity with generally accepted accounting principles consistently applied; and since the date of such statements there has been no material adverse change in such conditions or operations.

(j) There are no pending or threatened actions or proceedings before any court or administrative agency which will to a material extent adversely affect the financial condition or continued operation of Lessee and its subsidiaries on a consolidated basis (except as previously disclosed in writing by Lessee to Lessor).

(k) The fair market value of the reusable component parts included in each item of the used equipment to be purchased by Lessor under the Rehabilitation Agreement and the Bills of Sale is not in excess of the Acquisition Cost for such item of the used equipment and the fair market value of each item of the used equipment after the rehabilitation thereof

shall be at least equal to the total of the Acquisition Cost plus Rehabilitation Cost for such item of the used equipment.

(l) It is currently reasonable to expect that each item of the Equipment on the date of delivery thereof will have a useful life of at least four (4) years beyond the expiration of the term of lease under this Lease for such item of the Equipment and an estimated fair market value at the end of such lease term of at least twenty percent (20%) of the Total Invoice Cost for such item of the Equipment without including in such fair market value any increase or decrease for inflation or deflation during the term of this Lease for such item of the Equipment.

(m) The Equipment will not be used in connection with the performance of any prime government contract, or subcontract or purchase order thereunder, with respect to which the provisions of the Renegotiation Act of 1951, as amended, are applicable.

(n) Upon the purchase by Lessor of the used equipment, no mortgage, deed of trust, indenture, lease or other lien or security interest of any nature whatsoever which now covers or affects any property or interest will attach or thereafter will attach to the Equipment or in any manner affects or will affect adversely Lessor's right, title and interest herein, provided, that this representation and warranty shall not be considered breached by any lien attaching to the leasehold interest of Lessee under this Lease by reason of any existing or future mortgage to which Lessee is a party covering substantially all of Lessee's railroad property.

6. PAYMENTS FOR USED EQUIPMENT; INSPECTION AND ACCEPTANCE BY LESSEE. Lessor shall prior to the Commencement Date make payment for the purchase of the used equipment in accordance with the Rehabilitation Agreement. Lessor shall also from time to time, but not more than once in any week, prior to the Commencement Date make such payments for rehabilitation and delivery as Lessee may request under a Certificate of Acceptance in the form of Exhibit B attached hereto (a "Certificate of Acceptance"). Each such Certificate of Acceptance (except the last) shall cover not less than ten (10) items of the Equipment.

Acceptance of an item of Equipment by Lessee under a Certificate of Acceptance shall constitute Lessee's acknowledgement that the item of Equipment is in good order and condition; is of the manufacture, design and capacity selected by Lessee; and is suitable for Lessee's purposes. If Lessee has not accepted all of the Equipment by the Commencement Date, then this Lease shall cover only those items of Equipment which have theretofore been so accepted and on the Commencement Date

Lessee shall purchase from Lessor (i) all items of used equipment which have not theretofore been so accepted at a price equal to the Acquisition Cost for such items of used equipment and (ii) all unused materials purchased and paid for by Lessor for rehabilitation pursuant to the Rehabilitation Agreement.

Lessor shall not be liable for loss or damage occasioned by any cause, circumstance or event of whatsoever nature, including, but not limited to, failure of or delay in delivery, damage to the Equipment, governmental regulations, strike, embargo or other cause, circumstance or event, whether of like or unlike nature. Except as expressly provided in the Rehabilitation Agreement, all packing, crating, freight, express, cartage, installation, service, use, sales, excise and import charges, expenses and taxes, recordation, filing and titling fees and charges, and all other charges, expenses and taxes incurred by Lessor in connection with Lessor's acquisition of the Equipment and the shipment, delivery, installation, rehabilitation, and servicing of the Equipment by the manufacturer or supplier thereof or by any other party shall be the responsibility of Lessee and may, at the sole option of Lessor, be capitalized or expensed by inclusion in the rent payments to be made by Lessee hereunder.

7. IDENTIFICATION OF EQUIPMENT. Lessee will place and maintain on each side of each item of Equipment a notice (in letters not less than one (1) inch in height) conspicuously disclosing Lessor's ownership thereof as follows:

"MNLC TRUST NO. 79-2, OWNER-LESSOR  
AND SUBJECT TO A SECURITY INTEREST  
RECORDED WITH THE INTERSTATE COMMERCE  
COMMISSION"

or other appropriate words designated by Lessor, with appropriate changes thereof and additions thereto as from time to time may be required in order to protect the title of Lessor to, and any security interest of any assignee of Lessor in, each item of the Equipment and its rights under this Lease. Lessee shall maintain on each item of Equipment the serial and other identifying numbers, if any, set forth on the applicable Certificate(s) of Acceptance. Lessee will not change the identifying number of any item of Equipment except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with Lessor by Lessee and filed, recorded or deposited by Lessee in all public offices where this Lease shall have been filed, recorded or deposited. Lessee will not place any item of the Equipment in operation until such name and words and numbers shall have been so marked thereon and will replace promptly any such name, words and numbers which

may be removed, defaced or destroyed. In any event, Lessee will not allow the name of any person, firm or association other than that of Lessor to be placed on any item of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their right to use the Equipment as permitted under this Lease.

8. USE AND MAINTENANCE. Lessee shall use the Equipment solely in the conduct of its business and in a careful and proper manner, and will comply in all respects with all laws of the jurisdictions in which the Equipment may be operated, with the interchange rules of the Association of American Railroads, and with all lawful rules of the Department of Transportation and the ICC and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment.

Lessee, at its own expense, will keep and maintain, or cause to be kept and maintained, the Equipment in as good operating condition as when delivered to Lessee hereunder, ordinary wear and tear resulting from proper use thereof alone excepted, and will provide all maintenance and service and make all repairs necessary for such purpose.

In addition, if any parts or accessories forming part of the Equipment shall from time to time become worn out, lost, destroyed, damaged beyond repair or otherwise permanently rendered unfit for use, or if any applicable laws or rules require the alteration of the Equipment, Lessee, at its own expense, will within a reasonable time alter or replace such parts or accessories, or cause the same to be replaced, by replacement parts or accessories which are free and clear of all liens, encumbrances or rights of others and have a value and utility at least equal to the parts or accessories replaced; provided, however, that Lessee may, in good faith, contest the validity or application of any such law, regulation, requirement or rule in any reasonable manner which does not adversely affect the property or rights of Lessor hereunder; and further provided, that any such additions to the Equipment made by Lessee which can be removed without material damage to the Equipment shall become the property of Lessee on the termination of this Lease. All equipment, accessories, parts and replacements for or which are added to or become attached to the Equipment which are essential to the operations of the Equipment or which cannot be detached from the Equipment without materially interfering with the operation of the Equipment or adversely affecting the value and utility which the Equipment would have had without the addition thereof,

shall immediately become the property of Lessor, and shall be deemed incorporated in the Equipment and subject to the terms of this Lease as if originally leased hereunder. Lessee shall not make any voluntary material alterations to the Equipment without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

Upon reasonable advance notice, Lessor shall have the right to inspect the Equipment and all maintenance records with respect thereto, if any, at any reasonable time.

9. **DISCLAIMER OF WARRANTIES.** LESSOR, NOT BEING THE MANUFACTURER OF THE EQUIPMENT, NOR THE MANUFACTURER'S AGENT, HEREBY EXPRESSLY DISCLAIMS AND MAKES TO LESSEE NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO: THE FITNESS FOR USE, DESIGN OR CONDITION OF THE EQUIPMENT; THE QUALITY OR CAPACITY OF THE EQUIPMENT; THE WORKMANSHIP IN THE EQUIPMENT; THAT THE EQUIPMENT WILL SATISFY THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO; AND ANY GUARANTY OR WARRANTY AGAINST PATENT INFRINGEMENT OR LATENT DEFECTS, it being agreed that all such risks, as between Lessor and Lessee, are to be borne by Lessee. Lessor is not responsible or liable for any direct, indirect, incidental or consequential damage to or losses resulting from the installation, operation or use of the Equipment or any products manufactured thereby. All assignable warranties made by the manufacturer or supplier of materials acquired for the rehabilitation of the used equipment to Lessor are hereby assigned to Lessee for and during the term of this Lease and Lessee agrees to settle all such claims directly with the manufacturer or supplier. Any such claim shall not affect in any manner the unconditional obligation of Lessee to make rent payments hereunder.

10. **FEES AND TAXES.**

(a) To the extent permitted by law, Lessee shall file any necessary report for, and pay promptly when due, and shall otherwise be liable to reimburse Lessor for, and agrees to indemnify and hold Lessor and any assignee of Lessor harmless from, all titling, filing, recordation and other fees; taxes, including but not limited to sales, use, excise, personal property, franchise or other taxes (exclusive of any net income or excess profits tax levied against Lessor on or measured by rents payable hereunder or the net income therefrom, unless such taxes are in substitution for or relieve Lessee from the payment of any taxes which Lessee would otherwise be required to pay pursuant hereto); assessments and all other charges or withholdings of any nature (together with any penalties, fines or interest thereon); arising at any time prior to or during the term of this Lease, or upon the return of

the Equipment to Lessor, upon or relating to the Equipment or this Lease or with respect to the acquisition, rehabilitation, ownership, use, operation, leasing, delivery, return or other disposition of the Equipment, or upon the rentals payable hereunder, whether the same be assessed to Lessor or Lessee.

(b) In the event that any report for, or property listing in connection with, or any, fee, tax or assessment described in sub-part (a) hereof is, by law, required to be filed by, assessed or billed to, or paid by, Lessor, Lessee at its own expense will do any and all things required to be done by Lessor in connection with the filing, levy, assessment, billing or payment of such report or charge and is hereby authorized by Lessor to act for and on behalf of Lessor in any and all respects, including (but not limited to) the contest or protest, in good faith and by appropriate proceedings, of the validity of any such levy, fee, tax or assessment described in sub-part (a) hereof, or the amount thereof. Lessor agrees fully to cooperate with Lessee in any such contest, and Lessee agrees promptly to indemnify Lessor for all reasonable expenses incurred by Lessor in the course of such cooperation. A claim for tax or other imposition shall be paid, subject to refund proceedings, if failure to pay would adversely affect the title, property or rights of Lessor hereunder. Provided that Lessee is not then in Default hereunder, if Lessor shall obtain a refund of any such tax or imposition which has been paid (by Lessee, or by Lessor and for which Lessor has been reimbursed by Lessee), Lessor shall promptly pay such refund to Lessee.

Lessee will cause all billings of such charges to Lessor to be made to Lessor in care of Lessee and will, in preparing any report or return required by law, show the ownership of the Equipment in Lessor, and shall send a copy of any such report or return to Lessor.

If Lessee fails to pay any such charges when due, except any levy or assessment being contested in good faith and by appropriate proceedings as above provided for a reasonable period of time, and such failure could adversely affect the title of Lessor to the Equipment, then Lessor at its option may do so, in which event the amount so paid (including any penalty or interest incurred as a result of Lessee's failure), plus interest thereon at the rate set forth in Section 22 hereof, shall be paid by Lessee to Lessor with the next periodic payment of rent.

(c) The obligations of Lessee under this Section, which accrue during the term of this Lease, shall survive the termination of this Lease.

11. TITLE. Title to the Equipment shall at all times remain in Lessor, and Lessee shall have no right, title or

interest therein except as Lessee as expressly set forth herein. The parties intend that the Equipment shall remain personal property. Lessee further agrees to maintain the Equipment free from all claims, liens and legal processes of creditors of Lessee other than (i) liens placed by Lessor or liens of persons claiming against Lessor but not Lessee, which arise out of obligations to which Lessee is not required by this Lease to pay or discharge, (ii) liens of current taxes not delinquent, (iii) inchoate materialmen's or mechanics' liens arising in the ordinary course of business and not delinquent, and (iv) any liens attaching to the leasehold interest of Lessee under this Lease by reason of any existing or future mortgage to which Lessee is a party covering substantially all of Lessee's railroad property. Lessee will defend, at its own expense, Lessor's title to the Equipment from such claims, liens or legal processes. Lessee shall also notify Lessor immediately upon receipt of notice of any lien, attachment or judicial proceeding affecting the Equipment in whole or in part.

12. INSURANCE. Lessee shall cause to be carried and maintained at all times during the term of this Lease physical damage and liability insurance covering the Equipment in the name of Lessor and Lessee in such amounts and in such form as is customarily maintained on comparable equipment by companies similarly situated. Lessee currently maintains the insurance coverage described in Exhibit C attached hereto. Such insurance policy or policies shall provide that all losses thereunder will be adjusted with Lessor and Lessee and will be payable to Lessor and Lessee as their respective interests shall appear. All said insurance shall be with companies of recognized responsibility comparable to Lessee's present insurers. Lessee shall pay the premiums therefor and deliver to Lessor the policies of insurance or duplicates thereof, or other evidence satisfactory to Lessor of such insurance coverage. Each insurer shall agree, by endorsement upon the policy or policies issued by it or by independent instrument furnished by Lessor, that it will give Lessor thirty (30) days' (if insurance industry practice so allows) prior written notice of the effective date of any material alteration or cancellation of such policy; and shall include a standard "mortgagee endorsement" in the policy. The proceeds of such insurance payable as a result of loss of or damage to the Equipment shall be applied, as required by the provisions of Section 13 hereof: (a) toward the repair of the Equipment which may be damaged; or (b) if a Total Loss (as hereinafter defined) has occurred, toward payment of the obligations of Lessee hereunder.

13. LOSS AND DAMAGE. Lessee hereby assumes and shall bear the entire risk of direct and consequential loss and damage to the Equipment from any and every cause whatsoever.

Except as provided in this Section for discharge upon payment of Stipulated Loss Value, no loss or damage to the Equipment or any part thereof shall release or impair any obligations of Lessee under this Lease, which shall continue in full force and effect and shall be absolute during the term hereof. Lessee agrees that Lessor shall not incur any liability to Lessee for any loss of business, loss of profits, expenses, or any other damages resulting to Lessee by reason of any delay in delivery or any delay caused by any non-performance, defective performance, or breakdown of the Equipment, nor shall Lessor at any time be responsible for personal injury or the loss or destruction of any other property resulting from the Equipment. In the event of loss or damage of any kind whatever to any item of the Equipment, Lessee shall, at Lessee's expense (reduced by the application of any insurance proceeds), place the same in good repair, condition and working order.

The foregoing notwithstanding, upon the happening of any loss, theft, destruction, damage, condemnation, requisition, taking by eminent domain or other interruption or termination of use of any item of Equipment regardless of the cause thereof, or if any item of Equipment is otherwise rendered economically unserviceable for use (as established to the reasonable satisfaction of Lessee; any such occurrence being herein referred to as a "Total Loss") during the term of this Lease, Lessee shall give prompt notice thereof to Lessor. Thereafter, on the next date for the payment of rent, Lessee shall pay to Lessor the rent due on that date plus (subject to application of any insurance proceeds) the Stipulated Loss Value of the item or items of the Equipment with respect to which the Total Loss has occurred and any other sums due hereunder with respect to that Equipment.

Upon making such payment in respect of any item of the Equipment, this Lease shall terminate with respect to the Equipment or items thereof so paid for and Lessee thereupon shall become entitled thereto as is where is without warranty, express or implied, with respect to any matter whatsoever. In furtherance thereof, Lessor shall deliver to Lessee a bill of sale transferring and assigning to Lessee without recourse or warranty, except in respect of Lessor's acts, all of Lessor's right, title and interest in and to the Equipment. Lessor shall not be required to make and may specifically disclaim any representation or warranty as to the condition of the Equipment or any other matters.

As used in this Lease, "Stipulated Loss Value" shall mean the product of the Total Invoice Cost of the item or items of Equipment and the applicable percentage factor set forth on the Schedule of Stipulated Loss Values attached hereto as Exhibit D, as hereinafter provided:

(a) Stipulated Loss Value shall be determined as of the next date on which a payment of rent is or would be due after a Total Loss or other termination of this Lease, after payment of any rent due on such date, and the applicable percentage factor shall be that which is set forth with respect to the most recent rent payment actually paid.

(b) After payment of the final payment of rent due under the original term of this Lease and during any renewal term hereof, Stipulated Loss Value shall be determined as of the date of termination of this Lease (absent any renewal thereof) or, if during a renewal term, on the next date on which a payment of rent is or would be due after a Total Loss or other termination of such renewal term, after payment of any rent due on such date, and the applicable percentage factor shall be the last percentage factor set forth on the Schedule of Stipulated Loss Values.

When Lessee has fulfilled the requirements of this Section regarding a Total Loss, Lessor shall (if no Default [as hereinafter defined] or event which, with the passage of time or the giving of notice, or both, shall become a Default, has then occurred and is continuing) reimburse Lessee for its costs thus incurred to the extent of any proceeds received by Lessor because of such Total Loss either under any policies of insurance provided for in Section 12 or as satisfaction of any claim (other than one to which an insurer is or may be subrogated) by Lessor against any person or persons liable in respect of such Total Loss, after subtracting in each instance all costs and expenses, including (without limitation) reasonable legal fees and expenses, incurred by Lessor and not otherwise reimbursed by Lessee in respect thereto.

14. REDELIVERY. Upon the expiration or earlier termination of this Lease (or of any renewal hereof, if applicable), Lessee shall (unless Lessee has paid the Stipulated Loss Value with respect thereto pursuant to Section 13 hereof), at its own expense, cost and risk, return the Equipment to Lessor in the same condition as when delivered to Lessee hereunder, ordinary wear and tear resulting from proper use thereof alone excepted, and free and clear of all liens, encumbrances or rights of others whatsoever except liens or encumbrances resulting from claims against Lessor not relating to the ownership of such Equipment or otherwise permitted by Section 11 hereof, by whichever of the following means Lessor may specify:

(a) forthwith placing such items of Equipment upon such storage tracks of Lessee as Lessor reasonably may designate;

(b) permitting Lessor to store such items of Equipment on such tracks at the risk of Lessee until such items

of Equipment have been sold, leased or otherwise disposed of by Lessor, provided that, except in the case of a termination due to a default under Section 19 hereof, Lessor agrees to pay Lessee's reasonable storage charges for any storage after one hundred eighty (180) days; and

(c) transporting the same to any place on the lines of railroad operated by it or any of its affiliates or to any connecting carrier for shipment, all as directed by Lessor; and

the removal, assembling, delivery, storage (except as above provided) and transporting of the items of Equipment as hereinabove provided shall be at the expense and risk of Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to remove, assemble, deliver, store and transport the items of Equipment. During any storage period, Lessee shall maintain insurance on the Equipment in accordance with Section 12 hereof and shall upon notice permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such items of Equipment to inspect the same; provided, however, that Lessee shall not be liable, except in the case of negligence of Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of Lessor or any prospective purchaser, the rights of inspection granted under this sentence. In the event that repairs are made necessary, in the reasonable opinion of Lessor (supported by the written opinion of an independent qualified engineer), to place the Equipment in the condition required in this Section, Lessee agrees to pay the reasonable cost of such repairs and further agrees to pay Lessor reasonable rent for the period of time reasonably necessary to accomplish such repairs.

15. OPTION TO RENEW. Provided that Lessee is not then in default, Lessee shall have the option to renew this Lease, at the expiration of the term of this Lease, with respect to all but not less than all of the Equipment, on the terms and conditions of this Lease, for two (2) consecutive additional renewal terms of one (1) year each at a negotiated monthly rent based on the Fair Market Rental Value of such Equipment determined at the time of renewal.

If the parties are unable to agree on the Fair Market Rental Value of the Equipment, then Lessor and Lessee shall at Lessee's expense obtain appraisal values from three independent appraisers (one to be selected by Lessor, one by Lessee, and the other by the two selected by Lessor and Lessee) and the average Fair Market Value as determined by such appraisers shall be binding on the parties hereto.

If Lessee desires to exercise this option it shall, at least one hundred eighty (180) days before expiration of the term of this Lease, give Lessor written notice of its election to renew; and shall engage in negotiations with Lessor to determine the monthly rent to be paid during the renewal term.

16. OPTION TO PURCHASE. Provided that Lessee is not then in Default, Lessee shall have the option to purchase, upon the expiration of the term of this Lease, or of any subsequent renewal term, if applicable, all but not less than all of the Equipment subject to this Lease upon the following terms and conditions:

If Lessee desires to exercise this option it shall, at least one hundred eighty (180) days before expiration of the term of this Lease, give Lessor written notice of its election to purchase and shall, upon the expiration of the term of this Lease, pay to Lessor in cash the Purchase Price for the Equipment so purchased, determined as hereinafter provided.

The Purchase Price of the Equipment shall be an amount equal to its then Fair Market Value, together with all taxes and charges upon sale. If the parties are unable to agree on the Fair Market Value of the Equipment, then the procedure set forth in Section 15 hereof shall be followed.

Notwithstanding any election of Lessee to purchase, the provisions of this Lease shall continue in full force and effect until the passage of ownership of the Equipment upon the date of purchase. On the date of purchase, Lessor shall deliver to Lessee a bill of sale transferring and assigning to Lessee without recourse or warranty, except in respect of Lessor's acts, all of Lessor's right, title and interest in and to the Equipment. Lessor shall not be required to make and may specifically disclaim any representation or warranty as to the condition of the Equipment or any other matters.

17. INTENT. It is the express intent of the parties that this agreement constitute a lease and in no event shall this agreement be construed as a sale of the Equipment. Lessee acknowledges that the Equipment leased hereunder shall not have been used or placed into operation by Lessee for its intended purpose prior to the execution and delivery of the Certificates of Acceptance pertaining thereto, and, further, that by virtue of this Lease, Lessee shall acquire no ownership, title, property, right, or interest in the Equipment other than its leasehold interest solely as Lessee subject to all the terms and conditions hereof.

## 18. INDEMNITY.

(a) General. Lessee hereby assumes and agrees to indemnify, protect, save and keep harmless Lessor and any assignee of Lessor, its agents and employees, from and against any and all losses, damages, injuries, claims, demands and expenses, including legal expenses, of whatsoever kind and nature, arising on account of the Rehabilitation Agreement, the Bills of Sale, or this Lease, or the ordering, acquisition, delivery, installation or rejection of the Equipment, the possession, maintenance, use, condition (including without limitation, latent and other defects and whether or not discoverable by Lessor or Lessee, and any claim in tort for strict liability) or operation of any item of the Equipment, and by whomsoever used or operated, during the term of this Lease with respect to that item of the Equipment, the loss, damage, destruction, removal, return, surrender, sale or other disposition of the Equipment, or any item thereof. It is understood and agreed, however, that Lessor shall give Lessee prompt notice of any claim or liability hereby indemnified against and that Lessee shall be entitled to control the defense thereof.

(b) Tax. (1) If Lessor in computing its taxable income, shall either lose, or shall not have, or shall lose the right to claim, or there shall be disallowed or recaptured (hereinafter referred to as a "Loss"), for Federal and/or State income tax purposes, in whole or in part, the benefit of deductions for depreciation with respect to any item of the Equipment in accordance with an accelerated method with respect to new equipment set forth in Section 167 of the Internal Revenue Code of 1954, as amended (the "Code"), including use of the Asset Depreciation Range for Asset Guideline Class 40.1 provided in Rev. Proc. 77-10, C.B. 1977-1, 548; or any or all of the investment tax credit provided for in Sections 38 and 46 through 50 of the Code with respect to 73.8% of the Total Invoice Cost of the Equipment; then Lessee shall pay Lessor as additional rent such amount as, after deduction of all taxes required to be paid by Lessor in respect of the receipt thereof under the laws of any governmental or taxing authority in the United States, shall be required to cause Lessor's net return to be equal to, but no greater than, the net return that would have been available to Lessor if it had been entitled to the utilization of the tax benefits set forth in this sub-part (b)(1). Lessee represents and warrants that for purposes of this subsection, each item of the Equipment will constitute "new Section 38 property" within the meaning of Section 48(b) of the Internal Revenue Code of 1954, as amended (the "Code"), to the extent of the Rehabilitation Cost therefor.

(2) Lessee shall be responsible for the payment required by paragraph (b) of this Section only in the event

that any of the representations of Lessee made in paragraphs (k), (l) or (m) of Section 5 hereof shall prove to have been false or inaccurate in any material respect, or such Loss arises as the result of: (i) any action or failure to act on the part of Lessee; or (ii) the occurrence of a Total Loss as to any or all of the Equipment and the Stipulated Loss Value with respect thereto is not thereafter actually paid in full by Lessee to Lessor; or (iii) the occurrence of a Default (as hereinafter defined) and subsequent disposition by Lessor of any or all of the Equipment or its interest in and to this Lease, and Lessor does not recover from Lessee the aggregate amount provided for in clause (h) of Section 19 hereof.

(3) For purposes of this Section, a Loss shall occur upon the earliest of (i) the happening of any event (such as disposition or change in use of any item of the Equipment) which may cause such Loss; (ii) the payment by Lessor (or the consolidated Federal tax payer group of which Lessor is a part) to the Internal Revenue Service or State taxing authority of the tax increase resulting from such Loss; or (iii) the adjustment of the tax return of Lessor (or the consolidated Federal tax payer group of which Lessor is a part) to reflect such Loss. The parties acknowledge that the benefit of this Section 18 runs to the Trustors specified pursuant to that certain Equipment Trust Agreement dated as of the date hereof between Edward A. Dahlka, Jr. and Larry D. Unger, as trustees, and the Trustor(s) named pursuant thereto. Accordingly, for purposes of this Section 18, the term "Lessor" shall include the Lessor designated herein and the Trustors.

(4) Lessor shall promptly notify Lessee in writing of such Loss and Lessee shall, within thirty (30) days of such notice, advise Lessor: (x) of Lessee's determination to pay the required amount in one installment within such thirty (30) day period, or to adjust the periodic rental payments then remaining to be paid under this Lease in order to satisfy its payment obligations under paragraph (b) of this Section; or (y) that Lessee wishes to contest the claim giving rise to the Loss.

(5) Any request by Lessee to contest the claim giving rise to the Loss shall be accompanied by an opinion of independent tax counsel satisfactory to Lessor to the effect that a meritorious defense exists to such claim. Upon receipt of such request and opinion, Lessor shall cooperate fully with Lessee in contesting such claim, provided that adequate indemnification is provided to Lessor (in its sole discretion) against any costs or expenses which reasonably may be anticipated to be incurred by Lessor in the course of such contest.

(c) The obligations of Lessee under this Section, which accrue during the term of this Lease, shall survive the termination of this Lease.

19. DEFAULT: REMEDIES. Lessee shall be deemed to be in default hereunder ("Default") if (a) Lessee refuses, without justification, to accept delivery of the Equipment; or (b) Lessee shall fail to make any payment of rent or any other payment hereunder within ten (10) days after the same shall have become due; or (c) Lessee shall fail to provide the insurance coverage required by the provisions of Section 12 hereof and such failure shall continue unremedied for a period of ten (10) days; or (d) Lessee shall fail to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder and such failure shall continue unremedied for a period of thirty (30) days after written notice thereof to Lessee by Lessor; or (e) any proceedings or cases shall be commenced by or against Lessee for any relief which includes, or might result in, any modification of the obligations of Lessee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for Lessee or for the property of Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within thirty (30) days after such appointment, if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier; or (f) any certificate, statement, representation, warranty or audit contained herein or heretofore or hereafter furnished with respect hereto by or on behalf of Lessee proving to have been false in any material respect at the time as of which the facts therein set forth were stated or certified, or having omitted any substantial contingent or unliquidated liability or claim against Lessee.

In the event of Default on the part of Lessee hereunder, Lessor may, at its option, without notice of its election and without demand, declare this Lease to be in default, and at any time thereafter, may do any one or more of the following, all of which are hereby authorized by the Lessee:

(h) declare the then Stipulated Loss Value of the Equipment (determined as of the next date on which a payment is or would have been due after the declaration of a Default), together with all other sums then due hereunder with respect to such Equipment, immediately due and payable with respect to any or all of the Equipment; (i) sue for and recover all rent and other payments hereunder, then accrued or thereafter accruing, with respect to any or all of the Equipment; (j) take possession of any or all of the Equipment, wherever it may be located, without any court order or other process of law and without liability for any damages occasioned by such taking of possession (any such taking of possession shall not constitute a termination of this Lease as to such Equipment unless Lessor expressly so notifies Lessee in writing); (k) require Lessee to return promptly, at Lessee's expense, any or all of the Equipment to Lessor at the location, in the condition and otherwise in accordance with all of the terms of Section 14 hereof; (l) sell or otherwise dispose of any or all of the Equipment, whether or not in Lessor's possession, in a commercially reasonable manner at public or private sale and with or without notice to Lessee, and apply the net proceeds of such sale, after deducting all costs of such sale (including, but not limited to, costs of transportation, possession, storage, refurbishing, advertising and brokers fees), to the obligations of Lessee hereunder with Lessee remaining liable for any deficiency and with any excess being retained by Lessor; (m) retain any repossessed Equipment and credit the Fair Market Value thereof to the obligations of Lessee hereunder with Lessee remaining liable for any deficiency and with Lessor having no obligation to reimburse Lessee on account of any excess of such reasonable value over such obligations; (n) terminate this Lease as to any or all of the Equipment; or (o) exercise any other right or remedy available to Lessor at law or in equity.

A termination hereunder shall occur only upon written notice by Lessor to Lessee and only with respect to such items of the Equipment as Lessor specifically elects to terminate in such notice. Except as to such items of the Equipment with respect to which there is a termination, this Lease shall remain in full force and effect and Lessee shall be and remain liable for the full performance of all its obligations hereunder.

In addition, Lessee shall be liable for any and all legal fees and other costs and expenses incurred by reason of any Default or the exercise of Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Equipment in accordance with the terms of Section 14 hereof or in placing such Equipment in the condition required by said Section. No right or remedy referred to in this Section is intended to be exclusive, but

each shall be cumulative, and shall be in addition to any other remedy referred to above or otherwise available at law or in equity and may be exercised concurrently or separately from time to time.

The failure of Lessor to exercise the rights granted hereunder upon any Default by Lessee shall not constitute a waiver of any such right upon the continuation or recurrence of any such Default.

20. ASSIGNMENT BY LESSOR AND LESSEE. Without the prior written consent of Lessor, which shall not be unreasonably withheld, Lessee will not assign any of its rights hereunder, sublet the Equipment or otherwise permit the Equipment to be operated or used by, or to come into or remain in the possession of, anyone but Lessee. Lessee's interest herein shall not be assigned or transferred by operation of law. Notwithstanding the foregoing, so long as Lessee shall not be in Default hereunder, Lessee shall be entitled to the possession of the Equipment and to the use thereof upon the lines of railroad or upon the lines of any affiliate or upon lines of railroad over which Lessee has trackage or other operating rights or over which railroad equipment of Lessee is regularly operated pursuant to contract, and also to permit the use of the Equipment upon other railroads in the usual interchange of traffic, if customary at the time, but only upon and subject to all the terms and conditions of this Lease. Lessee may receive and retain compensation for such use from other railroads to using any of the Equipment. Lessee agrees that during the term of this Lease Lessee will use its best efforts to prevent the use of any item of the Equipment outside the United States of America. No assignment, interchange or sublease, whether authorized in this Section or in violation of the terms hereof, shall relieve Lessee of its obligations hereunder and Lessee shall remain primarily liable hereunder.

Lessor may at any time assign all of its right, title and interest hereunder, or any part thereof, to any other person 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 pursuant to Section 23 hereof 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 assignee. Without limiting the foregoing, 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, and (ii) said assignee shall, if a Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such a Default, shall have occurred and be continuing, have the prior 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 10, 12 [with respect to public liability insurance], 18 and 22 hereof which shall remain enforceable by the Lessor), but if no Default or event which with the lapse of time or giving of notice, or both, would constitute a 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.

In the event Lessor assigns this Lease or the rent due or to become due hereunder or any other interest herein, whether as security for any of its indebtedness or otherwise, no breach or default by Lessor hereunder or pursuant to any other agreement between Lessor and Lessee, should there be one, shall excuse performance by Lessee of any provision hereof, it being understood that in the event of such default or breach by Lessor that Lessee shall pursue any rights on account thereof against, and only against, Lessor. Subject only to the duty to honor Lessee's right of quiet enjoyment (as defined in Section 21 hereof), no such assignee of Lessor shall be obligated to perform any duty, covenant or condition required to be performed by Lessor under the terms of this Lease, and Lessor shall remain obligated for such performance hereunder.

Subject always to the foregoing, this Lease inures to the benefit of, and is binding upon, the successors and assigns of the parties hereto.

21. QUIET POSSESSION. Lessor hereby represents and warrants to Lessee that Lessor has the full right and authority to enter into this Lease on the terms herein stated, and that, conditioned upon Lessee performing all of the covenants and conditions hereof, Lessee shall peaceably and quietly hold,

possess and use the Equipment during the term of this Lease subject to the terms and provisions hereof.

22. LESSOR'S RIGHT TO PERFORM FOR LESSEE. If Lessee fails to perform or comply with any of its agreements contained herein, Lessor shall have the right, but shall not be obligated, to effect such performance or compliance, and the amount of any out of pocket expenses and other reasonable expenses of Lessor incurred in connection with the performance of or compliance with such agreement, together with interest thereon at the rate of one hundred twenty (120) percent of the prime rate at Maryland National Bank, Baltimore, Maryland, on the date of payment by Lessor, shall be payable by Lessee upon demand.

23. NOTICE. All notices (excluding billings and communications in the ordinary course of business) hereunder shall be in writing, sent by certified mail, return receipt requested, addressed to the other party at its respective address stated below the signature of such party or at such other address as such party shall from time to time designate in writing to the other party; and shall be effective from the date of mailing.

24. RECORDING; FURTHER ASSURANCES. Lessee will, at its expense, prior to the delivery and acceptance hereunder of any item of Equipment (i) execute and file such Uniform Commercial Code financing statements as Lessor may reasonably request from time to time, (ii) cause this Lease and any assignment hereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 11303 of the Revised Interstate Commerce Act, and (iii) cause this Lease and any assignment hereof to be filed and recorded with the Registrar General of Canada, with notice of deposit having been published in the Canada Gazette, in accordance with Section 86 of the Railway Act of Canada. Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by Lessor for the purpose of proper protection, to Lessor's satisfaction, of Lessor's interest in the Equipment, or for the purpose of carrying out the intention of this Lease or the assignment thereof by Lessor; and Lessee will promptly furnish to Lessor evidences of all such filing, registering, recording or depositing, and an opinion or opinions of counsel for Lessee with respect thereto satisfactory to Lessor.

25. MISCELLANEOUS. This Lease and all Certificates of Acceptance executed pursuant hereto, and any final commitment letter executed by the parties, constitute the entire agreement between the parties with respect to the subject matter hereof

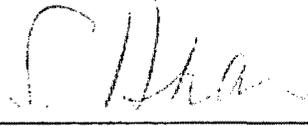
and shall not be amended or altered in any manner except by a document in writing executed by both parties.

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect. The captions in this Lease are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

26. MARYLAND LAW GOVERNS. This Lease shall not be effective unless and until accepted by execution by an officer of Lessor at the address, in the State of Maryland, as set forth below the signature of Lessor. This Lease and the rights and obligations of the parties hereunder shall be in all respects governed by, and construed in accordance with, the laws of the State of Maryland, including all matters of construction, validity and performance, regardless of the location of the Equipment.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed under seal as of the day and year first above written.

WITNESS:

  
\_\_\_\_\_

MNLC TRUST NO. 79-2  
Lessor

By:  (SEAL)  
Edward A. Dahlka, Jr., as Trustee

c/o Maryland National Leasing  
Corporation  
300 East Joppa Road  
Towson, Maryland 21204

ATTEST:

ILLINOIS CENTRAL GULF RAILROAD  
COMPANY  
Lessee

*R. G. [Signature]*  
ASSISTANT SECRETARY

By: *D. E. [Signature]* (SEAL)  
SENIOR VICE PRESIDENT

233 North Michigan Avenue  
Chicago, Illinois 60601

STATE OF ILLINOIS )  
                          ) SS:  
COUNTY OF COOK   )

On this 31st day of August, 1979, before me personally appeared EDWARD A. DAHLKA, JR., to me personally known, who being by me duly sworn, says that he is one of the Trustees of MNLC TRUST NO. 79-2; that the foregoing instrument was signed and sealed on behalf of said Trust pursuant to authority; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Trust.

[SEAL]

*Carl L. Green*  
Notary Public

My Commission Expires:

*January 23*, 19*81*

STATE OF ILLINOIS )  
                          ) SS:  
COUNTY OF COOK   )

On this 31st day of August, 1979, before me personally appeared G. E. KONKER, to me personally known, who being by me duly sworn, says that he is the Vice President of ILLINOIS CENTRAL GULF RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]

Robert H. Hughes  
NOTARY PUBLIC in and for the State  
of Illinois Residing at OLYMPIA FIELDS

My Commission Expires:

Nov. 23, 1980

EXHIBIT A TO  
EQUIPMENT LEASE AGREEMENT

14 70-ton & 100-ton 60-foot boxcars

ICG 620132	ICG 670124
620135	670134
660056	670137
660078	670139
670102	670143
670106	670144
670116	670172

23 100-ton covered hoppers

ICG 728016	ICG 765602
728030	777806
728080	777811
745255	777817
745344	777824
745351	777827
745387	777846
755045	777847
755090	782576
755111	782587
755140	782602
764655	

30 50-ton 50-foot boxcars

ICG 564237	ICG 565082
564273	565094
564274	565174
564285	565232
564292	565240
565021	565248
565026	565273
565035	565277
565042	565281
565057	565285
565058	565292
565059	565293
565071	565294
565074	565298
565076	565460

EXHIBIT A TO  
EQUIPMENT LEASE AGREEMENT

167 70-ton 50-foot boxcars

ICG 511324	ICG 567755	ICG 591448
511334	567762	591485
511363	567784	591492
511369	567797	591517
511372	567802	591522
511487	567823	591534
511498	567887	591560
511501	567915	591572
513861	590002	591573
513888	590011	591605
513890	590054	591607
514051	590151	591631
514077	590204	591658
561162	590244	591714
561232	590245	591719
561253	590268	591777
561613	590516	591812
561669	590518	591829
561684	590531	591878
562341	590608	591898
562395	590666	591950
562439	590672	591973
562465	590677	592246
562539	591053	592252
562562	591082	592318
562626	591115	592358
562718	591123	592447
562837	591137	592496
562879	591175	592506
562899	591195	592507
562916	591213	592509
565520	591216	592518
565521	591222	592527
565522	591225	592537
567325	591268	592545
567345	591270	592575
567357	591310	592576
567401	591320	592582
567470	591322	592585
567495	591331	592610
567567	591346	592618
567572	591360	592621
567625	591367	592622
567651	591405	592625
567698	591410	592633

EXHIBIT A TO  
EQUIPMENT LEASE AGREEMENT

167 70-ton 50-foot boxcars (continued)

ICG 592635	ICG 592685	ICG 595055
592636	592686	595066
592639	592768	595104
592647	592804	595158
592651	592816	595173
592659	592827	595226
592662	592869	595237
592673	592898	595265
592674	592935	595269
592680	592965	595274
592682		595304

34 70-ton insulated boxcars (RBL)

ICG 150153	ICG 150675
150162	150677
150164	150683
150560	150685
150562	150689
150565	150698
150569	150716
150588	150722
150598	150731
150620	150733
150628	150736
150635	150742
150639	150743
150642	150747
150649	150865
150661	150954
150662	150958

23 70-ton pulpwood cars

ICG 820069	ICG 821390
820171	821404
820312	821412
820334	821415
820522	821427
820524	821435
820609	821707
820680	821754
820700	821821
820719	821868
820787	821869
820851	

EXHIBIT A TO  
EQUIPMENT LEASE AGREEMENT

14 70-ton woodchip cars

ICG 866063  
866098  
866103  
866116  
866149  
866206  
866214

ICG 866232  
866240  
866245  
866255  
866256  
866278  
866299

EXHIBIT B

CERTIFICATE OF ACCEPTANCE

MNLC TRUST NO. 79-2  
c/o Maryland National  
Leasing Corporation  
300 East Joppa Road  
Towson, Maryland 21204

Gentlemen:

1. The undersigned officer of Illinois Central Gulf Railroad Company is your authorized representative designated under the Rehabilitation Agreement dated as of August 31, 1979 (the "Rehabilitation Agreement") between you and Illinois Central Gulf Railroad Company (the "Railroad Company"). As such authorized representative, the undersigned hereby represents and certifies to you as follows:

(a) That the cars described below have been duly delivered in good order by the Railroad Company under the Rehabilitation Agreement, have been duly inspected and accepted on the respective dates there shown by the undersigned as your authorized representative and conform in all respects to the requirements and specifications of the Rehabilitation Agreement; and

(b) That each such car was at its delivery properly marked on each side thereof with the legend provided in Section 7 of the Lease between you and the Railroad Company hereinafter referred to.

2. The undersigned, Illinois Central Gulf Railroad Company ("Lessee"), is the Lessee under the Equipment Lease Agreement dated as of August 31, 1979 (the "Lease") between you and the Lessee. As such Lessee, we hereby request you to pay the attached invoices for the rehabilitation and delivery of the cars described below. We hereby represent and certify to you as follows:

(a) That all of our representations and warranties set forth in Section 5 of the Lease are true and correct as of the date hereof as though made on this date;

(b) That the cars described below have been delivered to us, as Lessee under the Lease, on the dates indicated and have been duly inspected and are hereby accepted by us for lease under the Lease; and

(c) That no event of default, or event which might mature into an event of default, has occurred and is continuing under the Lease.

3. This Certificate of Acceptance shall be and become a part of the Lease, and the cars described below are hereby declared to be leased by us thereunder. The Lease was filed and recorded with the Interstate Commerce Commission on \_\_\_\_\_, 1979 at \_\_\_\_\_ .m. with Recordation No. \_\_\_\_\_. The Lease was filed and recorded with the Registrar General of Canada on \_\_\_\_\_, 1979 at \_\_\_\_\_ .m. with notice of deposit having been published in the Canada Gazette on \_\_\_\_\_, 1979.

\_\_\_\_\_  
Officer and authorized representa-  
tive, as aforesaid, and signing as  
to the matters in Paragraph 1 above

Dated \_\_\_\_\_, 1979

ILLINOIS CENTRAL GULF RAILROAD  
COMPANY, Lessee, and signing as  
to the matters in Paragraphs 2  
and 3 above

By \_\_\_\_\_  
Its \_\_\_\_\_

Dated \_\_\_\_\_, 1979

DESCRIPTION OF CARS

Total No.  
of Items

Car Type

Lessee's Identifying  
Nos.

Invoice  
Amount

EXHIBIT C

LESSEE'S INSURANCE COVERAGE

Liability Coverage provides bodily injury, property damage, Federal Employers Liability Act, including care, custody and control and including contractual liability.

Blanket Fire Coverage provides coverage for fire, lightning and extended coverage including collision and overturn and derailment of diesels.

**Illinois Central Gulf  
Exhibit D  
Schedule of Stipulated Loss Values**

<u>No.</u>	<u>Percentage Loss Values</u>
1	103.816442
2	104.564797
3	104.830968
4	104.751570
5	104.520057
6	104.231277
7	103.981634
8	103.748856
9	103.434032
10	103.070099
11	102.643476
12	102.163571
13	98.119675
14	96.180079
15	95.514758
16	94.795180
17	94.005477
18	93.168017
19	92.275643
20	91.333476
21	86.836107
22	84.444499
23	83.340730
24	82.190372
25	80.978852
26	79.721082
27	78.419976
28	77.077106
29	72.198072
30	69.435777
31	67.973453
32	66.473199
33	64.934033
34	63.354945
35	61.734899
36	60.072834
37	58.367659
38	56.618255
39	54.889168
40	53.238020
41	51.573959
42	49.890427
43	48.220207
44	46.548978
45	44.869934
46	43.182190
47	41.551423
48	39.952050
49	38.363558
50	36.774584
51	35.238565
52	33.733076
53	32.249205
54	30.729165
55	29.197190
56	27.624958
57	26.099639
58	24.698217
59	23.279334
60	20.000000
Thereafter	20.000000