

CRAVATH, SWAINE & MOORE

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REGISTRATION NO. Filed 1425

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DEC 31 1987

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REGISTRATION NO. 15439-A
WRITER'S DIRECT DIAL NUMBER

REGISTRATION NO. 15439-A
Filed 1425

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DEC 31 1987

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

No.

DEC 31 1987

Date

Fee \$ 40.00

REGISTRATION NO. 15439-B

DEC 31 1987

INTERSTATE COMMERCE COMMISSION
December 29, 1987

ICC Washington, D. C.

Grand Trunk Western Railroad Company
Lease Financing Dated as of December 1, 1987
10-1/4% Conditional Sale Indebtedness
Due January 28, 2000

Dear Ms. McGee:

Pursuant to 49 U.S.C § 11303 and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Grand Trunk Western Railroad Company, for filing and recordation counterparts of the following documents:

1. (a) Conditional Sale Agreement dated as of December 1 1987, between U S West Financial Services, Inc., as Owner, and Trinity Industries, Inc., as Builder; and
(b) Agreement and Assignment dated as of December 1, 1987, between Trinity Industries, Inc., as Builder, and Mercantile-Safe Deposit and Trust Company, as Agent.
2. (a) Lease of Railroad Equipment dated as of December 1, 1987, between Grand Trunk Western Railroad Company, as Lessee, and U S West Financial Services, Inc., as Owner; and
(b) Assignment of Lease and Agreement dated as of December 1, 1987, between U S West Financial Services,

*Counterpart -
Joseph J. Hollings*

Inc., as Owner, and Mercantile-Safe Deposit and Trust Company, as Agent.

The names and addresses of the parties to the aforementioned agreements are as follows:

1. Agent:

Mercantile-Safe Deposit and
Trust company
Two Hopkins Plaza
Baltimore, Maryland 21201

2. Owner:

U S West Financial Services, Inc.
230 Park Avenue
New York, N.Y. 10169

3. Builder-Vendor

Trinity Industries, Inc.
2525 Stemmons Freeway
Dallas, Texas 75207

4. Lessee:

Grand Trunk Western Railroad Company
1333 Brewery Park Boulevard
Detroit, Michigan 48207

Please file and record the documents referred to in this letter and index them under the names of the Agent, the Owner, the Builder-Vendor and the Lessee.

The equipment covered by the aforementioned documents is listed on Exhibit A attached hereto. The equipment bears the legend "Ownership Subject to a Security Agreement Filed with the Interstate Commerce Commission".

There is also enclosed a check for \$20 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document), and the Lease of Railroad Equipment and related Assignment of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish

to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

Laurance V. Goodrich
Laurance V. Goodrich
as Agent for
Grand Trunk Western Railroad
Company

Noreta R. McGee,
Interstate Commerce Commission,
Washington, D.C. 20423

Encls.

ANNEX B
TO
CONDITIONAL SALE AGREEMENT

Units of Railroad Equipment

| <u>Type</u> | <u>Specifi- cations</u> | <u>AAR Mechanical Designation</u> | <u>Quantity</u> | <u>Lessee's Identification Numbers (Both Inclusive)</u> | <u>Estimated Unit Base Price*</u> | <u>Estimated Total Base Price*</u> | <u>Estimated Time and Place of Delivery</u> |
|-------------------------------|-----------------------------|---|-----------------|---|---|--|--|
| bi-level fully enclosed | R-BG 1014 | FA | 145 | 88000- 88144 | \$25,000 | \$3,625,000 | Jan. '88-Feb. '88 at Builder's plant at Greenville, Pennsylvania |
| auto racks w/tie-downs | | | 145 | | | \$3,625,000 | |

* Includes freight to Lessee's lines at Lordstown, Ohio, to be prepaid by Builder.

C-39

Exhibit A

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Laurance V. Goodrich

One Chase Manhattan Plaza
New York, NY 10005

Dear Sir

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/31/87 at 11:10AM, and assigned recordation number(s).

15439 & 15439-A,B, & C

Sincerely yours,

Nesta R. McGee

Secretary

Enclosure(s)

REGISTRATION NO. ¹ 5439

DEC 31 1987 - 11 20 AM

INTERSTATE COMMERCE COMMISSION

[CS&M Ref. 6442-002]

CONDITIONAL SALE AGREEMENT

Dated as of December 1, 1987

Between

U S WEST FINANCIAL SERVICES, INC.

and

TRINITY INDUSTRIES, INC.

10-1/4% Conditional Sale Indebted-
ness Due January 28, 2000

[Covering 145 Fully Enclosed Auto Racks]

CONDITIONAL SALE AGREEMENT

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* This Table of Contents has been included for convenience only and does not form a part of this document.

CONDITIONAL SALE AGREEMENT dated as of December 1, 1987, between U S WEST FINANCIAL SERVICES, INC., a Colorado corporation (the "Owner") and TRINITY INDUSTRIES, INC., a Delaware corporation ("Vendor" or "Builder" as more particularly set forth in Article 1 hereof).

The Builder agrees to construct, sell and deliver and the Owner agrees to purchase, the railroad equipment described in Annex B hereto ("Equipment").

The Owner is entering into a Lease of Railroad Equipment with GRAND TRUNK WESTERN RAILROAD COMPANY ("Lessee") substantially in the form of Annex C hereto ("Lease").

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY ("Agent") is acting as agent for institutional investors (together with any assignees, "Investors") pursuant to a Participation Agreement dated as of the date hereof ("Participation Agreement") among the Lessee, the Agent, the Owner, Grand Trunk Corporation ("Guarantor") and the Investors.

This Agreement supersedes the Purchase Order (as defined in Section 1.3 of the Participation Agreement) insofar as the Purchase Order relates to the Equipment.

In consideration of the agreements hereinafter set forth, the parties hereto hereby agree as follows:

ARTICLE 1. ASSIGNMENT; DEFINITIONS

1.1. Contemplated Sources of Purchase Price; Assignment. The parties hereto contemplate that the Owner will furnish 20% of the Purchase Price (as defined in Section 4.1 hereof) of the Equipment and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Agent pursuant to an Agreement and Assignment dated as of the date hereof ("CSA Assignment") between the Builder and the Agent.

1.2. Lease Assignment. As security for the payment and performance of all the Owner obligations hereunder, the Owner will assign to the Agent certain of the rights and interests of the Owner in and to the Lease

pursuant to an Assignment of Lease and Agreement substantially in the form of Annex D hereto ("Lease Assignment"), and the Lessee shall acknowledge and consent thereto pursuant to a Consent and Agreement substantially in the form attached to the Lease Assignment ("Consent").

1.3. Meaning of "Vendor" and "Builder". The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 2. CONSTRUCTION AND SALE

Pursuant to this Agreement, the Builder shall construct the Equipment at its plant described in Annex B hereto (such Equipment with respect to the Builder being hereinafter sometimes called "its Equipment"), and the Builder will sell to the Owner, and the Owner will purchase from the Builder and pay for (as hereinafter provided), the Builder's Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder and the Lessee (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as then being applicable to each such unit of Equipment, and each such unit will be new railroad equipment when delivered.

ARTICLE 3. INSPECTION AND DELIVERY

3.1. Place of Delivery. The Builder will deliver the units of its Equipment to the Lessee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Lessee), freight charges and storage charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that the Builder shall not have any obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) or (d) of Section 16.1 hereof or subsequent to the occurrence of any event of default as described in Section 16.1 hereof or of any event which with or without the giving of notice or lapse of time or both would constitute such an event of default. The Builder agrees not to deliver any unit of Equipment hereunder following receipt of written notice from the Owner or the Agent of the commencement of any such proceedings or the occurrence of any such event, as aforesaid.

3.2. Force Majeure. The obligations of the Builder as to time of delivery are subject to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riots or civil commotion, sabotage, strikes, differences with workmen, accidents, fires, floods, explosions, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

3.3. Exclusion of Equipment. Notwithstanding the provisions of Section 3.2 hereof, any unit of Equipment not delivered to and accepted by the Lessee under § 2 of the Lease on or before March 31, 1988, shall be excluded from this Agreement, and the Owner shall be relieved of its obligations hereunder to purchase and pay for such Equipment. If any unit of Equipment shall be so excluded, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. In the event of any such exclusion of any unit of Equipment herefrom pursuant to the foregoing provisions or pursuant to Section 4.1 hereof, or in the event the Owner is relieved of its obligations hereunder to accept or pay for any or all units of Equipment in accordance with the terms and conditions hereof for any reason whatsoever, the Owner will transfer and assign to the

Builder all the right, title and interest of the Owner in and to the units so excluded and the Lessee will purchase such unit in accordance with the Purchase Order.

3.4. Inspection. By § 2 of the Lease and by this Section 3.4, the Owner hereby appoints the Lessee its agent to inspect and accept delivery of the Equipment. Acceptance of any unit of Equipment by the Lessee (or its employees or agents) pursuant to § 2 of the Lease shall be deemed to be acceptance of such unit hereunder by the Owner. During construction, the Equipment shall be subject to inspection and approval by employees of the Lessee, and the Builder shall grant to such inspectors reasonable access to the plant at which the units of Equipment are being constructed in accordance with the standard safety and insurance regulations of the Builder.

Until the Builder receives notice from the Agent and the Owner that the respective conditions contained in Article VII and VIII of the Participation Agreement have been met, each completed unit of Equipment shall be presented to the authorized inspector of the Lessee for inspection at the place specified for delivery of such unit, and if such unit conforms to the Specifications, requirements and standards applicable thereto, such authorized inspector shall execute and deliver to the Builder an acceptance stating that such unit has been inspected and accepted on behalf of the Lessee pursuant to the Purchase Order.

Upon receipt of such notice that the conditions contained in Article VII and VIII of the Participation Agreement have been met, the Lessee's authorized inspector shall execute and deliver to the Builder and the Owner a certificate of acceptance ("Certificate of Acceptance") stating that each unit which was previously accepted by it pursuant to the Purchase Order has been accepted on behalf of the Owner hereunder and the Lessee under § 2 of the Lease and is marked in accordance with Article 10 hereof. Thereafter prior to delivery of any additional units of Equipment each such unit of Equipment shall be presented to an authorized inspector of the Owner for inspection at the place specified for delivery of such unit, and if such unit conforms to the Specifications, requirements and standards applicable thereto, such authorized inspector shall execute and deliver to the Builder a Certificate of Acceptance stating that such unit has been inspected and accepted on behalf of the Owner hereunder and the Lessee under § 2 of the Lease and is marked in accordance with Article 10

hereof; provided, however, that the Builder shall not thereby be relieved of its warranties referred to in Articles 2 and 14 hereof by virtue of any Certificate of Acceptance. Any unit of Equipment which fails to meet the Specifications shall not be accepted hereunder unless and until reinspected and found to meet the Specifications.

3.5. Responsibilities After Delivery. Upon delivery to and acceptance of units of Equipment at the place specified for delivery, the Builder shall have no further responsibility for nor bear any risk of any damage to or the destruction or loss of any such unit except for the wilful misconduct or gross negligence of the Builder; , provided however, that the Builder shall not thereby be relieved of its warranties referred to in Articles 2 and 14 hereof.

ARTICLE 4. PURCHASE PRICE AND PAYMENT

4.1. Meaning of "Purchase Price"; Exclusion of Units. The base price or prices per unit of Equipment to be paid by the Owner are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as may be agreed to by the Builder, the Owner and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices per unit as so increased by (a) freight charges to the Lessee's designated location of delivery as shown in Annex B (which charges are to be prepaid by the Builder), (b) costs of inspection and (c) any price escalation or decrease as set forth in the invoice or invoices of the Builder (the "Invoice") delivered to the Owner and, if the Purchase Price is other than the base price or prices set forth in said Annex B, the Invoice shall be accompanied by or have endorsed thereon the agreement or approval of the Lessee. If the Purchase Price is other than the base price or prices set forth in said Annex B, the Invoice shall be accompanied by or have endorsed thereon the agreement or approval of the Lessee. If on any Closing Date (as defined in Section 4.2 hereof) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as to which the Owner, the Agent and the Lessee may have agreed prior to the delivery to the Owner of the Equipment being settled for on such Closing Date), the Builder (and any assignee of the Builder) and the Owner will enter into an agreement excluding from this Agreement such unit or units of Equipment then

proposed to be settled for and specified by the Owner and the Lessee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price to not more than said Maximum Purchase Price (or such higher amount as aforesaid) and the Owner shall have no further obligation or liability in respect of units so excluded.

4.2. Settlement and Closing Dates. The Equipment shall be settled for in such number of groups of units of Equipment delivered to and accepted by the Owner as is provided in Item 2 of Annex A hereto. The term "Closing Date" with respect to any group of units shall be such date as is specified by the Builder in accordance with Item 2 of Annex A hereto by six business days' written notice thereof with the reasonable concurrence of the Owner, the Agent and the Lessee, but in no event shall such Closing Date be later than March 31, 1988. Such notice shall specify the aggregate Purchase Price of the Equipment to be settled for and a copy thereof shall be sent by the Lessee to the Agent and the Owner. The place of each closing shall be determined by mutual agreement among the parties hereto. At least five business days prior to any Closing Date, the Builder shall present the Invoice to the Owner and the Lessee for the Equipment to be settled for. The term "business day" as used herein means any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, Denver, Colorado, Detroit, Michigan or New York, New York, are authorized or obligated to remain closed.

4.3. Indebtedness of Owner to Vendor. Subject to the terms of this Agreement, the satisfaction of the conditions set forth in the Participation Agreement and receipt by the Owner of executed counterparts of the items to be delivered to the Agent pursuant to Section 4 of the CSA Assignment, the Owner hereby acknowledges itself to be indebted to the Vendor in the amount of the aggregate Purchase Price of the Equipment to be settled for and hereby promises to pay the same in immediately available funds to the Vendor at such place as the Vendor may designate, as follows:

(a) on each Closing Date, an amount equal to 20% of the aggregate Purchase Price of the Equipment for which settlement is being made; and

(b) in 12 installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the Equipment for which settlement is being made less the

aggregate amount paid or payable with respect thereto pursuant to subsection (a) of this Section (said portion of the aggregate Purchase Price payable in installments being called "CSA Indebtedness").

4.4. CSA Indebtedness; Payment Dates; Interest.

The installments of the CSA Indebtedness shall be payable on the dates and in the amounts set forth in Schedule I hereto and interest thereon shall be payable semiannually on January 28 and July 28 in each year, commencing on July 28, 1988, and ending on January 28, 2000, as more specifically set forth in Schedule I hereto (each such date being herein called a "Payment Date"). If any Payment Date is not a business day, the payment shall be payable on the next succeeding business day.

The unpaid balance of the CSA Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at a rate of interest per annum equal to 10-1/4%. Interest on the unpaid balance of the CSA Indebtedness shall be payable in arrears to the extent accrued on July 28, 1988, and each other Payment Date. The amount of principal of the CSA Indebtedness payable on each Payment Date shall be calculated to be substantially in proportion to the amount and allocation of principal on such Payment Date set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal shall completely amortize the CSA Indebtedness at maturity. The Owner will furnish to the Vendor and the Lessee a schedule showing the amount of principal payable on each Payment Date promptly after the last Closing Date, in such number of counterparts as shall be requested by the Vendor.

4.5. Calculation of Interest. Interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months, except that interest payable on July 28, 1988, shall be calculated on an actual elapsed day, 365-day year (366 in days in 1988), basis.

4.6. Penalty Interest. The Owner will pay interest at the rate of 11-1/4% per annum, to the extent legally enforceable, ("Penalty Rate"), upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof.

4.7. Currency of Payment. All payments provided for in this Agreement shall be made by bank wire transfer of Federal funds in such coin or currency of the United States

as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 hereof, the Owner shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to the date on which it becomes due.

4.8. Liability of Owner Limited to "Income and Proceeds from Equipment". Notwithstanding any other provision of this Agreement (including but not limited to any provision of Articles 16 and 17 hereof, except as set forth in this Section 4.8), but not limiting the effect of Article 22 hereof, the liability of the Owner or any assignee of the Owner for any and all payments to be made by it under this Agreement, with the exception only of the payments to be made pursuant to Section 4.3(a) hereof, the installment of interest payable on July 28, 1988, and the proviso to Section 13.3 hereof, shall not exceed an amount equal to and shall be payable only out of the "income and proceeds from the Equipment", and such payments shall be made by the Owner only to the extent that the Owner or any assignee of the Owner shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the preceding sentence, the Owner shall have no liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Owner or any assignee of the Owner. As used herein the term "income and proceeds from the Equipment" shall mean:

(i) if one of the events of default specified in Section 16.1 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Owner or any assignee of the Owner at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in § 7 of the Lease) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 13 or any other provision of the Lease (except any Excepted Payments (as defined in the Lease Assignment)) and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition; and

(ii) at any other time only that portion of the amounts referred to in clauses (a) and (b) of

subsection (i) above as are indefeasibly received by the Owner or any assignee of the Owner and as shall equal the portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement;

it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Owner or any assignee of the Owner prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Owner or any assignee of the Owner were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Nothing contained herein limiting the liability of the Owner shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Article 16 or 17 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Owner for an amount in excess of the amounts payable by the Owner pursuant to the limitations set forth in this Section, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this Section.

ARTICLE 5. SECURITY INTEREST IN EQUIPMENT

5.1. Vendor To Retain Security Interest; Accessions Are Part of Equipment. The Vendor hereby retains a security interest in the Equipment until the Owner shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Owner and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Owner and the Lessee as provided in this Agreement and the Lease. Any and all parts installed on and additions and replacements made to any unit of Equipment (i) which are not

readily removable without causing material damage to such unit, (ii) the cost of which is included in the Purchase Price of such unit, (iii) in the course of ordinary maintenance of the units, or (iv) which are required for the operation or use of such unit in railroad interchange by the Applicable Laws (as defined in § 10.1 of the Lease) shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used herein.

5.2. Obligations upon Payment of CSA Indebtedness. Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Owner at that time, will (a) execute an instrument releasing its security interest in the Equipment and transferring such interest to the Owner or upon its order, free of all liens, security interests and other encumbrances created or retained hereby or otherwise created by the Vendor and deliver such instrument to the Owner at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Owner to the Equipment and (c) pay to the Owner any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as provided therein. The Owner hereby waives and releases any and all rights existing or that may be acquired in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instrument or instruments or to file such certificate within a reasonable time after written demand by the Owner.

ARTICLE 6. TAXES

6.1. General Tax Indemnification. Whether or not any of the transactions contemplated hereby are consummated, the Owner agrees to pay and to indemnify and hold the Vendor harmless from all Taxes (as defined in § 6 of the Lease) for

which indemnification is required under the Lease; excluding, however, (i) Taxes on or measured by net income based upon the Vendor's receipt of payments provided for herein (other than payments due the Vendor under this Article 6 except those for which the Vendor is entitled to a corresponding deduction in the calculation of its net income) and franchise and value added taxes which are in lieu of such net income taxes; and (ii) any Taxes imposed on or measured by any fees or compensation received by the Vendor; provided, however, that the Owner shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in Section 6.2 hereof.

6.2. Claims; Contests; Refunds. If claim is made against the Vendor for any Taxes indemnified against under this Article 6, the Vendor shall promptly notify the Owner. If reasonably requested by the Owner in writing, the Vendor shall, upon receipt of any indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Owner, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings or both. The Owner may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Vendor; provided that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Vendor in any such proceeding or action) without the prior written consent of the Vendor, which consent shall not be unreasonably withheld. If the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Owner in connection with any such contest or an amount representing interest thereon, the Vendor shall pay the Owner the amount of such refund or interest net of expenses; provided, however, that no event of default set forth in Section 16.1 hereof and no event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing.

6.3. Reports or Returns. In case any report or return is required to be made with respect to any obligation of the Owner under or arising out of this Article 6, the Owner shall either make such report or return in such manner as will show the interests of the Vendor in the Equipment or

shall promptly notify the Vendor of such requirement and shall make such report or return in such manner as shall be satisfactory to the Vendor. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Owner.

ARTICLE 7. MAINTENANCE AND CASUALTY OCCURRENCES

7.1. Maintenance. The Owner shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order and repair, ordinary wear and tear excepted, and eligible for railroad interchange in accordance with the Applicable Laws (as defined in § 10.1 of the Lease) and in the same condition as other similar equipment owned or leased by the Lessee.

7.2. Casualty Occurrences. In the event that any unit of Equipment shall suffer a Casualty Occurrence (as defined in § 7.1 of the Lease), the Owner shall, promptly after it shall have received notice from the Lessee or has otherwise been informed that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto by written notice. On the Casualty Payment Date (as defined in § 7.1 of the Lease), the Owner shall, subject to the limitations contained in Section 4.8 hereof, pay to the Vendor a sum equal to the Casualty Value (as defined in Section 7.3 hereof) of such unit suffering a Casualty Occurrence as of such Casualty Payment Date, together with an amount equal to accrued interest thereon (as hereinafter provided). The Owner shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of principal and interest due on such date in respect of CSA Indebtedness not being prepaid) to prepay, without penalty or premium, ratably in accordance with the unpaid balance of each installment, the CSA Indebtedness, together with all interest accrued on the portion of the CSA Indebtedness being prepaid. The Owner shall promptly cause to be furnished to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor and the Lessee may request, calculated as provided in Section 4.4 hereof.

7.3. Casualty Value. The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price

thereof referred to in Paragraph 4.3(b) hereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit). For the purpose of this paragraph each payment of the Purchase Price made pursuant to Article 4 hereof shall be deemed to be a payment with respect to each unit of Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of all the Equipment.

7.4. Obligations upon Payment of Casualty Value. Upon payment by the Owner to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Owner, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Owner, will execute and deliver to the Owner, at the expense of the Owner, an appropriate instrument confirming such passage to the Owner of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Owner may make clear upon the public records the title of the Owner to such unit.

ARTICLE 8. INSURANCE; CONDEMNATION

The Owner shall cause any insurance required by § 7.6 of the Lease to be maintained. If the Vendor shall receive any insurance proceeds or condemnation payments in respect of any unit suffering a Casualty Occurrence, the Vendor shall forthwith pay such insurance proceeds or condemnation payments to the Owner after receipt by the Vendor of the Casualty Value of such Unit, together with accrued interest thereon, unless an event of default shall have occurred and be continuing hereunder. All insurance proceeds received by the Vendor in respect of any unit of Equipment not suffering a Casualty Occurrence shall be forthwith paid to the Owner upon proof reasonably satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired, provided that an event of default shall not have occurred and be continuing.

ARTICLE 9. REPORTS AND INSPECTIONS

On or before March 31 in each year, commencing with the year 1989, the Owner shall cause to be furnished to the Vendor an accurate statement to the effect set forth in § 8 of the Lease. The Vendor shall have the right, by its agents, to inspect the Equipment and the Owner's and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 10. MARKING OF EQUIPMENT

The Owner will cause each unit of Equipment to be kept numbered and marked as provided in § 5 of the Lease. The Owner will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor which previously shall have been filed with the Vendor and filed by or on behalf of the Owner in all public offices where this Agreement shall have been filed. Except as aforesaid, the Owner will not allow the name of any person, association or corporation to be placed on any unit of Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its permitted sublessees.

ARTICLE 11. COMPLIANCE WITH LAWS

During the term of this Agreement, the Owner will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including without limitation the use, maintenance and operation of the Equipment) with all Applicable Laws (as defined in § 10 of the Lease) and in the event the Applicable Laws require any alteration, replacement or addition of or to any part on any unit of Equipment, the Owner will or will cause any lessee to conform therewith at no expense to the Vendor; provided, however, that the Owner or any lessee may, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the reasonable opinion of the Vendor, materially and adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 12. POSSESSION AND USE

12.1. Possession and Use of Equipment by Owner.

So long as an event of default shall not have occurred and be continuing under this Agreement, the Owner shall be entitled to the possession of the Equipment and the use thereof from and after delivery of the Equipment to the Owner, but only upon and subject to all the terms and conditions of this Agreement.

12.2. Lease Permitted; Lease Subordinate; No Amendment or Termination. The Owner simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights of the Vendor and shall, except as provided in §§ 4.2 and 15.2 of the Lease, be subject to the remedies of the Vendor under this Agreement. Subject to the proviso to the last sentence of Section 22.1 hereof, the Lease shall not be amended in any respect (other than with respect to Excepted Payments) or terminated (except in accordance with its terms) without the prior written consent of the Vendor prior to the payment in full of the CSA Indebtedness, together with all other sums due to the Vendor hereunder.

ARTICLE 13. PROHIBITION AGAINST LIENS

13.1. Owner To Discharge Liens. The Owner will pay or discharge any and all sums claimed by any party from, through or under the Owner or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment or any unit thereof or the Lease or the income and proceeds from the Equipment or the Lease, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, materially and adversely affect the security interest of the Vendor in or to the Equipment or the Lease, its interest in the income and proceeds from the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment or the Lease or the income and proceeds from the Equipment shall be secured by and under this Agreement.

13.2. No Breach for Certain Liens. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

13.3. Article 13 Subject to Article 22 Except in Certain Instances. The obligations of the Owner under this Article 13 are subject to the limitations contained in Article 22 hereof; provided, however, that the Owner will pay or discharge any and all taxes, claims, liens, charges or security interests claimed by any party from, through or under the Owner and its successors and assigns not arising out of the transactions contemplated hereby or in other documents mentioned herein (but including tax liens arising out of the receipt of rentals and other payments under the Lease and other proceeds from the Equipment), which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment or the Owner's interest in the Lease and the payments to be made thereunder, but the Owner shall not be required to pay or discharge any such tax, claim, lien, charge or security interest so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not in the opinion of the Vendor materially and adversely affect the security interest of the Vendor in the Equipment, the Lease, its interest in the income and proceeds from the Equipment or the Lease, or otherwise under this Agreement.

ARTICLE 14. INDEMNITIES AND WARRANTIES

14.1. Indemnification. The Owner shall pay and shall protect, indemnify and hold harmless the Vendor, the Investors and their successors, assigns, agents and servants ("Indemnified Persons"), from and against any and all Indemnified Matters (as defined in § 12 of the Lease), except that the Owner shall not be liable to the Builder in respect of any Indemnified Matter to the extent liability in respect thereof arises from an act or omission of the Builder or is covered by the Builder's warranties or patent indemnities referred to in Articles 2 and 14 hereof. The Owner shall be obligated under this Article 14, whether or not any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce

the indemnification may proceed directly against the Owner under this Article 14 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, the Owner may and, upon such Indemnified Person's request, will at the Owner's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Owner and approved by such Indemnified Person and, in the event of any failure by the Owner to do so, the Owner shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Owner is required to make any payment under this Article 14, the Owner shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Vendor and the Owner agree to give each other written notice of any claim or liability hereby indemnified against promptly upon obtaining knowledge thereof. Upon the payment in full by the Owner of any indemnity as contained in this Article 14, and provided that no event of default described in Section 16.1 hereof or other event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing, the Owner shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of such Indemnified Matter. Any payments received by such Indemnified Person from the Lessee as a result of any Indemnified Matter shall be paid over to the Owner to the extent necessary to reimburse the Owner for indemnification payments previously made by the Owner in respect of such Indemnified Matter.

14.2. Survival; No Subrogation. The indemnities contained in this Article 14 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of and shall be enforceable by any Indemnified Person. None of the indemnities in this

Article 14 shall be deemed to create any rights of subrogation in any insurer or third party against the Owner therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

14.3. Owner Not Released if Equipment Damaged or Lost. The Owner will bear the responsibility for and risk of any damage to or destruction or loss of each unit of Equipment and shall not be released from its obligations hereunder in any such event.

14.4. Warranties and Patent Indemnities. The agreement of the parties relating to the Builder's warranties of material and workmanship and to patent indemnification is set forth in Items 3 and 4 of Annex A hereto and Article 2 hereof. Such warranties and covenants of patent indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfactory discharge or termination of this Agreement in any manner whatsoever.

14.5. Warranties of the Builder. The Builder represents and warrants to the Owner that at the time of delivery and acceptance of each unit of its Equipment under this Agreement the Owner will have good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor, the Lessee and the Owner.

The Builder represents that it is not entering into this Agreement or into any other transaction contemplated by the Participation Agreement directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which it or, insofar as is known to it, any party to the Participation Agreement is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974.

The Builder hereby represents and warrants to the Owner and its successors and assigns that this Agreement has been duly authorized by the Builder and lawfully executed and delivered by it for a valid consideration and that, assuming due authorization, execution and delivery by the Owner, this Agreement is, insofar as the Builder is concerned, a legal, valid and binding instrument, enforceable against the Builder in accordance with its terms.

ARTICLE 15. ASSIGNMENTS

15.1. Assignment by Owner. The Owner will not (a) except as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement or the Lease except that all, but not less than all, of the Owner's right, title and interest in and to this Agreement and the Lease may be assigned, conveyed or transferred to (a) any bank, savings institution or trust company having a combined capital and surplus of at least \$50,000,000, (b) any corporation having a net worth of at least \$50,000,000, (c) any transferee listed in clause (a) or (b) which itself does not meet the financial test of clause (a) or (b) but which has an affiliate which does meet such financial test at the time of such transfer and which affiliate shall have executed and delivered a written guarantee pursuant to which such affiliate shall have absolutely and unconditionally guaranteed the performance of all obligations of the transferee under this Agreement, the Lease, the Lease Assignment and the Participation Agreement, or (d) any corporation owning at the time substantially all of the capital stock of the Owner or any corporation or other entity controlled thereby; provided, however, that no such transferee shall at the time of transfer have an interlocking relationship with the Lessee within the meaning of Section 10 of the Clayton Act. If the transfer occurs pursuant to clause (d) above, the Owner shall remain secondarily liable for the obligations of the transferee under this Agreement, the Lease, the Lease Assignment and the Participation Agreement, if the transferee shall not have a net worth of at least \$50,000,000 at the time of the transfer. In the event of any such assignment, conveyance or transfer the transferee shall agree to be bound by and assume all the terms of and will undertake all of the obligations of its predecessor Owner contained in this Agreement, the Lease, the Lease Assignment and the Participation Agreement in such manner as is satisfactory to the Vendor. No such assignment, conveyance or transfer shall violate any provision of law or regulation or create a relationship which would be in violation thereof. Upon any such disposition by the Owner to the transferee as above provided, such transferee shall be deemed an "Owner" for all purposes of this Agreement, the Lease, the Lease Assignment and the Participation Agreement, and shall be deemed to have made all the payments previously made by the Owner making such assignment, conveyance or transfer; and each reference herein to the Owner shall thereafter be deemed to include a reference to such transferee.

15.2. Assignment by Vendor. All or any of the rights, remedies, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Owner, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to or relieve the Builder from any of its obligations of the Builder to deliver the Equipment to the Owner in accordance herewith or to respond to its warranties and indemnities referred to in Articles 2 and 14 hereof, or obligations to the Builder contained in Articles 3, 4, 6 and 14 hereof, Annex A hereto and this Article 15 or any other obligation which, according to its terms or context, is intended to survive an assignment.

15.3. Notice of Assignment by Vendor. Upon any such assignment pursuant to Section 15.2 hereof, the assignor shall give written notice to the Owner and the Lessee, together with a copy of such assignment, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Owner of the notification of any such assignment, all payments thereafter to be made by the Owner under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct. The Owner shall have no obligation to any assignee prior to actual receipt by the Owner of written notice of any such assignment.

15.4. No Setoff Against CSA Indebtedness. The Owner recognizes that this Agreement will be assigned to the Agent as provided in the CSA Assignment. The Owner expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Agent to the entire unpaid CSA Indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever by the Owner arising out of any breach of any obligation of the Builder or any other person with respect to the Equipment or the manufacture, construction, delivery or warranty thereof or with respect to any indemnity herein contained or arising by reason of any other indebtedness or liability at any time

owing to the Owner or the Lessee by any person. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Owner against and only against the Builder.

ARTICLE 16. DEFAULTS

16.1. Events of Default; Termination of Lease; Declaration of Default; Acceleration of CSA Indebtedness.
In the event that any one or more of the following events of default shall occur and be continuing:

(a) the Owner shall fail to pay or cause to be paid in full any sum payable by the Owner pursuant to Section 4.3, Section 4.4 or Section 7.2 hereof when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 22 hereof or any other provision of this Agreement limiting the liability of the Owner) and such default shall continue for ten days after the date such payment is due and payable; or

(b) default shall be made in the observance or performance of any other of the conditions and agreements on the part of the Owner (irrespective of the provisions of Article 4 or 22 hereof or any other provision of this Agreement limiting the liability of the Owner) or the Lessee contained herein or in the Participation Agreement, the CSA Assignment, the Lease Assignment or the Consent and such default shall continue for 35 days after written notice from the Vendor to the Owner and the Lessee specifying the default and demanding that the same be remedied; or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Lease and the Consent shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or

trustees within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereafter be amended; or

(d) any other proceeding shall be commenced by or against the Owner, the Lessee or the Guarantor for any relief which includes or might result in any modification of the obligations of the Owner hereunder or under the Lease or the Lease Assignment or the Lessee under the Lease or under the Consent or the Guarantor under the Participation Agreement under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), 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 such obligations shall not have been and shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been commenced, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Owner, the Lessee or the Guarantor, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers; or

(e) any Event of Default (as defined in the Lease) shall have occurred and be continuing under the Lease unless the Owner shall have cured such Event of Default and the corresponding event of default hereunder within the later to occur of (1) the expiration of all applicable grace periods, or (2) the tenth business day following the giving of written notice to the Owner that such Event of Default has occurred and is continuing; provided, however, that if more than four Events of Default or if more than two consecutive Events of Default shall have occurred under clause (A) of § 13.1 of the Lease which corresponds to an event of default under Section 16.1(a) hereof, any such Event of Default shall be an event of default hereunder whether or not the corresponding event of default hereunder is cured;

then at any time after the occurrence, and during the continuance, of such an event of default the Vendor may, upon written notice to the Owner and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, declare (a "Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the Penalty Rate to the extent legally enforceable. In addition, if the Owner does not pay the entire unpaid CSA Indebtedness, together with the interest thereon accrued and unpaid to the date of payment within 15 days of such notice of Declaration of Default, the Vendor may, subject to the Lessee's rights of possession, use and assignment under §§ 4 and 15 of the Lease, cause the term of the Lease immediately upon such notice to terminate; provided, however, that such termination shall not be in derogation of or impair the rights of the Owner or the Agent (under the assignment thereof), as the case may be, to enforce compliance by the Lessee with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under § 13 of the Lease (subject to the Agent's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Owner or the Agent (under the assignment thereof), as the case may be, to sue for and recover damages provided for in § 13 of the Lease upon the occurrence of an Event of Default under the Lease. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Owner wherever situated, subject to the provisions of Articles 4 and 22 hereof. The Owner shall promptly notify the Vendor, the Lessee and the Guarantor of any event of which it has knowledge which constituted, constitutes, or with the giving of notice or lapse of time or both would constitute an event of default under this Agreement.

16.2. Waiver of Defaults. The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Owner and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had

been made or given. Notwithstanding the provisions of this Section, time is of the essence of this Agreement and no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. REMEDIES

17.1. Vendor May Take Possession of Equipment.

Subject to the Lessee's rights of possession, use and assignment under §§ 4 and 15 of the Lease, at any time during the continuance of a Declaration of Default and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, the Vendor may take or cause to be taken by its agent or agents immediate possession of the Equipment or one or more of the units thereof without liability to return to the Owner any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Owner, the Lessee or any other person and for such purpose may enter upon the premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Owner or the Lessee, subject to all mandatory requirements of due process of law.

17.2. Assembling of Equipment for Vendor. In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment, the Owner shall at its own expense and risk:

(a) forthwith and in the usual manner (including without limitation giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any rolling stock to which any Units are attached have been interchanged or which may have possession thereof to return such rolling stock so interchanged) place such units upon such storage tracks or other premises of the Lessee or any of its affiliates as the Vendor reasonably may designate;

(b) if the Vendor shall so request, cause the Equipment to be detached from each unit of rolling stock to which it shall then be attached;

(c) cause such units to be stored on such tracks or other premises without charge for insurance, rent or storage until all such units of Equipment have been sold, leased or otherwise disposed of by the Vendor; and

(d) cause the same to be transported to any reasonable place as directed by the Vendor.

During any storage period, the Owner will, at its own cost and expense, insure, maintain and keep each such unit in good order and repair and permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and the Owner acknowledges that upon application to any court of equity having competent jurisdiction the Vendor shall be entitled to a decree requiring specific performance hereof. The Owner hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of Equipment in any commercially reasonable manner.

17.3. Vendor May Dispose of or Retain Equipment.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as provided in Section 17.1 hereof) may, at its election, retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Owner and the Lessee by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Owner's rights in the Equipment shall thereupon terminate and all payments made by the Owner may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Owner, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the

total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid, including penalty interest, and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner; provided further that if the Owner, the Lessee or any other persons notified under the terms of this Section object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

17.4. Vendor May Sell Equipment; Owner's Right of Redemption. Subject to the Lessee's rights of possession, use and assignment under §§ 4 and 15 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Owner, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment or one or more of the units thereof free from any and all claims of the Owner, the Lessee or any other party claiming from, through or under the Owner or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Owner should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for and otherwise arranging for the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner. The proceeds of such sale or other disposition, less the reasonable attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

17.5. Sale of Equipment by Vendor. Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Owner or the Lessee may bid for and become the purchaser of the Equipment or any unit thereof so offered for sale. The Owner and the Lessee shall be given written notice of such sale not less than 10 days prior thereto, by telegram or registered mail addressed as provided in Article 21 hereof. In addition, if such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee and the Owner to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Owner or the Lessee (except to the extent of surplus money received as provided in Section 17.7 hereof) and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

17.6. Effect of Remedies and Powers and Exercise Thereof. Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity not inconsistent herewith, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Owner shall not otherwise alter or affect the Vendor's rights or the Owner's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter

or affect the Owner's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

17.7. Deficiency or Surplus. If there shall remain any amount due to the Vendor under the provisions of this Agreement after applying all sums of money realized by the Vendor under the remedies herein provided, the Owner shall, subject to the limitations of Section 4.8 hereof and of Article 22 hereof, pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Penalty Rate and, if the Owner shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Owner. If there shall remain a surplus in the possession of the Vendor after applying as aforesaid all sums realized by the Vendor, such surplus shall be paid forthwith to the Owner.

17.8. Expenses. Subject to the limitations of Section 4.8 and Article 22 hereof, the Owner will pay all reasonable fees, costs and expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

17.9. Remedies Subject to Mandatory Legal Requirements. The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. APPLICABLE STATE LAWS

18.1. Conflict with State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall be ineffective as to such jurisdiction without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Owner to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

18.2. Waiver of Notices. Except as otherwise provided in this Agreement, the Owner, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, including notice of intention to take possession of or to sell or lease the Equipment or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights and any and all rights of redemption.

ARTICLE 19. FILING

The Owner will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. The Owner will further cause all necessary filings and recordings, and, when required, refilings and rerecordings of this Agreement, and any assignments hereof, and the Lease Assignment and any amendments or supplements hereto or thereto and/or appropriate financing statements or continuation statements to be made, and from time to time when required refiled and rerecorded, in accordance with the applicable provisions of the Uniform Commercial Code as in effect in the State of Colorado (and, if the Owner changes its chief place of business to a different state, in any such other state) and in any other State of the United States of America or the District of Columbia where filing is reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its security interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement. The Owner will from time to time perform any other act and will execute, acknowledge, deliver and file any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Owner will promptly furnish to the Vendor certificates or other evidence of such filing satisfactory to the Vendor.

ARTICLE 20. HEADINGS; MODIFICATION OF AGREEMENT

All article and section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Except for the Participation Agreement and the Exhibits thereto, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Builder, the Vendor and the Owner with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Owner. Any reference herein to this Agreement or any other agreement shall mean such agreement and all amendments and supplements hereto or thereto then in effect.

ARTICLE 21. NOTICES

Any notice required or permitted hereunder shall be deemed to have been received by the addressee on the date of actual receipt (if such date is a business day, otherwise on the next business day), if transmitted by mail, telex, telecopy or similar transmission, or by hand, addressed as follows:

(a) to the Builder, attention of the Treasurer, at its address set forth in Item 1 of Annex A hereto;

(b) to the Owner, at its address set forth in Article XIII of the Participation Agreement;

(c) to the Lessee, at 1333 Brewery Park Blvd., Detroit, MI 48207, Attention of Treasurer, with a copy to the Guarantor at its address set forth in Article XIII of the Participation Agreement;

(d) to the Agent, at Two Hopkins Plaza, Baltimore, MD 21201, Attention of Corporate Trust Department;

(e) to any assignee of the Vendor or of the Owner, at such address as may have been furnished in writing to the Owner, or the Vendor, as the case may be, by such assignee;

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. SATISFACTION OF UNDERTAKINGS

The obligations of the Owner under Sections 7.1, 7.2, 17.2, 17.7 and 17.8 and under Articles 6, 8, 9, 10, 11, 13 (except as set forth in Section 13.3 thereof), 14 and 19 hereof and any and all such obligations at any time arising thereunder shall be deemed satisfied in full in all respects by the Lessee's execution and delivery of the Lease. The Owner shall not have any responsibility to the Agent, the Vendor or any other party or person for the Lessee's failure to perform such obligations; but if the same shall not be performed by Lessee as provided in the Lease, they shall constitute the basis for an event of default hereunder pursuant to Article 16.1(a) or (b) hereof, as the case may be. No waiver or amendment of the Lessee's undertakings under the Lease (other than with respect to Excepted Payments) shall be effective unless joined in by the Vendor; provided, however, that the Vendor shall consent to any agreement in writing between the Lessee and the Owner increasing the rentals or casualty values payable pursuant to § 3 or § 7 of the Lease, such consent to be given by the Vendor within 30 days of delivery of a copy of such agreement to the Vendor.

ARTICLE 23. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303, such additional rights, if any, arising out of the filing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof may be filed or in which any unit of Equipment shall be located and such rights, if any, arising out of the marking of Equipment.

ARTICLE 24. EXECUTION

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an

original and all of which together shall constitute a single instrument. Although for convenience this Agreement is dated as of the date first above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

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

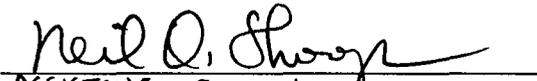
TRINITY INDUSTRIES, INC.

by


Vice President

[Corporate Seal]

Attest:


ASSISTANT Secretary

U S WEST FINANCIAL SERVICES,
INC.,

by

Vice President

[Corporate Seal]

Attest:

Secretary

original and all of which together shall constitute a single instrument. Although for convenience this Agreement is dated as of the date first above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

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

TRINITY INDUSTRIES, INC.

by

Vice President

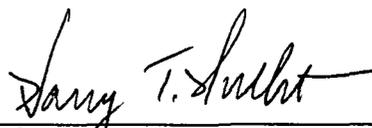
[Corporate Seal]

Attest:

Secretary

U S WEST FINANCIAL SERVICES,
INC.,

by



Vice President

[Corporate Seal]

Attest:



Secretary

STATE OF TEXAS,)
) ss.:
COUNTY OF DALLAS,)

On this _____ day of December, 1987, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is _____ of TRINITY INDUSTRIES, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires _____

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this 29th day of December, 1987, before me personally appeared Harry T. Nullet to me personally known, who, being by me duly sworn, says that he is Vice President of U S WEST FINANCIAL SERVICES, INC., that one of the seals affixed to the foregoing instrument is the 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.

Angela J. Albanese
Notary Public

[Notarial Seal]

My Commission expires _____

ANGELA J. ALBANESE
Notary Public, State of New York
No. 4798548
Qualified in Rockland County
Certificate Filed in New York County
Commission Expires Sept. 30, 1988

SCHEDULE I
 ALLOCATION SCHEDULE OF EACH
 \$1,000,000 of 10-1/4% CSA INDEBTEDNESS

| <u>Payment Date</u> | <u>Debt Service</u> | <u>Interest Payment</u> | <u>Principal Payment</u> | <u>Ending Principal</u> |
|---------------------|---------------------|-------------------------|--------------------------|-------------------------|
| 7/28/88 | * | * | \$.00 | \$1,000,000.00 |
| 1/28/89 | \$51,250.00 | \$51,250.00 | .00 | 1,000,000.00 |
| 7/28/89 | 61,743.65 | 51,250.00 | 10,493.65 | 989,506.35 |
| 1/28/90 | 101,578.32 | 50,712.20 | 50,866.12 | 938,640.23 |
| 7/28/90 | 48,105.31 | 48,105.31 | .00 | 938,640.23 |
| 1/28/91 | 48,105.31 | 48,105.31 | .00 | 938,640.23 |
| 7/28/91 | 101,578.32 | 48,105.31 | 53,473.01 | 885,167.22 |
| 1/28/92 | 45,364.82 | 45,364.82 | .00 | 885,167.22 |
| 7/28/92 | 104,318.81 | 45,364.82 | 58,953.99 | 826,213.23 |
| 1/28/93 | 42,343.43 | 42,343.43 | .00 | 826,213.23 |
| 7/28/93 | 107,340.20 | 42,343.43 | 64,996.77 | 761,216.46 |
| 1/28/94 | 149,683.63 | 39,012.34 | 110,671.29 | 650,545.17 |
| 7/28/94 | 33,340.44 | 33,340.44 | .00 | 650,545.17 |
| 1/28/95 | 149,606.22 | 33,340.44 | 116,265.78 | 534,279.39 |
| 7/28/95 | 27,381.82 | 27,381.82 | .00 | 534,279.39 |
| 1/28/96 | 120,638.22 | 27,381.82 | 93,256.40 | 441,022.99 |
| 7/28/96 | 22,602.43 | 22,602.43 | .00 | 441,022.99 |
| 1/28/97 | 113,014.09 | 22,602.43 | 90,411.66 | 350,611.33 |
| 7/28/97 | 17,968.83 | 17,968.83 | .00 | 350,611.33 |
| 1/28/98 | 164,977.83 | 17,968.83 | 147,009.00 | 203,602.33 |
| 7/28/98 | 10,434.62 | 10,434.62 | .00 | 203,602.33 |
| 1/28/99 | 172,512.04 | 10,434.62 | 162,077.42 | 41,524.91 |
| 7/28/99 | 2,128.15 | 2,128.15 | .00 | 41,524.91 |
| 1/28/00 | 43,653.06 | 2,128.15 | 41,524.91 | .00 |
| | \$1,739,669.55 | \$739,669.55 | \$1,000,000.00 | |

* Interest only shall be payable to the extent accrued on 7/28/88.

ANNEX A
TO
CONDITIONAL SALE AGREEMENT

Information Relating to Building of Equipment

- Item 1: Trinity Industries, Inc., 2525 Stemmons Freeway, Dallas, Texas 75207, Attention of Treasurer.
- Item 2: The Equipment shall be settled for in not more than two Groups of units, each Group consists of units delivered to and accepted by the Owner during such period as the parties hereto shall agree.
- Item 3: The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule A is attached (the "CSA") and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Lessee and not manufactured by the Builder) and workmanship under normal use and service, the Builder's obligation under this Item 3 being limited to making good at its factory any part or parts of any unit of the Equipment which shall, within one year after the delivery of such unit to the Lessee be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective. THE FOREGOING WARRANTY OF THE BUILDER IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER, EXCEPT FOR ITS OBLIGATIONS UNDER ARTICLES 2, 3, 4 and 14 OF THE CSA, AND THE BUILDER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF ITS EQUIPMENT, EXCEPT AS AFORESAID.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, THE BUILDER SHALL NOT BE RESPONSIBLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (AS SUCH

TERMS ARE DEFINED BY THE UNIFORM COMMERCIAL CODE) OR ANY OTHER FURTHER LOSS BY REASON OF ANY DEFECT OR BREACH.

The Builder agrees that the Owner or the Lessee as well as the Builder may to the extent permitted by law take and prosecute claims against vendors of specialties purchased by the Builder for incorporation in the Equipment and not warranted hereunder for the breach of any warranty by the vendors with respect to such specialties. The Builder and the Owner and the Lessee, as a condition of its being a third party beneficiary hereof, each agrees to notify the others prior to asserting any claim against any such vendors of specialties. If the Builder determines that it has no interest in any such claim asserted by the Owner, the Builder agrees to assign to the Owner, solely for the purpose of making and prosecuting any such claim, all of the rights which the Builder has against such vendor for the breach of warranty or other representation respecting the Equipment.

The Builder further agrees that neither the inspection as provided in Article 3 of this Agreement, nor any examination or acceptance of any units of the Equipment as provided in said Article 3, shall be deemed a waiver or modification by either the Owner or the Lessee of any of their rights under this Item 3.

It is further understood and agreed that the word "design(s)" as used herein and in Item 4 hereof and the word "specialties" as used herein shall be deemed to include articles, materials, systems, formulae and processes.

- Item 4: Except in case of designs, processes or combinations specified by the Lessee and not developed or purported to be developed by the Builder, and articles and materials specified by the Lessee and not manufactured by the Builder, the Builder agrees to indemnify, protect and hold harmless the Lessee, the Agent and the Owner, from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and reasonable attorney's fees, in any manner imposed upon or accruing against the Lessee, the

Agent or the Owner because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, process, combination, article or material infringing or claimed to infringe on any patent or other right. The Lessee will give to the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim, provided, however, that in case the Equipment, or any unit thereof, is in a suit held to constitute infringement, and the use of said Equipment or units is enjoined, Builder shall, at its own expense, and at its option, either procure for the Lessee, Agent and the Owner the right to continue using said Equipment or units, replace same with non-infringing equipment having a comparable capability or modify same so that it become non-infringing. The Lessee, as a condition to its being a third party beneficiary hereof, likewise will indemnify, protect and hold harmless the Builder from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and reasonable attorney's fees, in any manner imposed upon or accruing against the Builder because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, process or combination specified by the Lessee and not developed or purported to be developed by such Builder, or article or material specified by the Lessee, which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Owner every claim, right and cause of action which the Builder has or hereafter shall have against the originator or seller or sellers of any design, process, combination, article or material specified by the Lessee and used by the Builder in or about the construction or operation of the Equipment, or any unit thereof, on the ground that any such design, process, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right, and the Builder further agrees to execute and deliver to the Owner all and every such further assurances as may be reasonably requested by the Owner more fully to effectuate the assignment, transfer and

delivery of every such claim, right and cause of action. The Lessee, as a condition to its being a third party beneficiary hereof, will give prompt written notice to the Builder of any claim known to the Lessee on the basis of which liability may be charged against the Builder hereunder and the Builder will give prompt written notice to the Lessee and the Owner of any claim known to the Builder, on the basis of which liability may be charged against the Lessee or the Owner hereunder.

Item 5: The Maximum Purchase Price referred to in Article 4 of this Agreement is \$3,987,500.

ANNEX B
TO
CONDITIONAL SALE AGREEMENT

Units of Railroad Equipment

| <u>Type</u> | <u>Specifi- cations</u> | <u>AAR Mechanical Designation</u> | <u>Quantity</u> | <u>Lessee's Identification Numbers (Both Inclusive)</u> | <u>Estimated Unit Base Price*</u> | <u>Estimated Total Base Price*</u> | <u>Estimated Time and Place of Delivery</u> |
|-------------------------------|-----------------------------|---|-----------------|---|---|--|--|
| bi-level fully enclosed | R-BG 1014 | FA | 145 | 88000- 88144 | \$25,000 | \$3,625,000 | Jan. '88-Feb. '88 at Builder's plant at Greenville, Pennsylvania |
| auto racks w/tie-downs | | | 145 | | | \$3,625,000 | |

* Includes freight to Lessee's lines at Lordstown, Ohio, to be prepaid by Builder.

ANNEX C
to
Conditional Sale Agreement

[CS&M Ref. 6442-002]

LEASE OF RAILROAD EQUIPMENT

Dated as of December 1, 1987

between

GRAND TRUNK WESTERN RAILROAD COMPANY

Lessee,

and

U S WEST FINANCIAL SERVICES, INC.,

Owner,

[Covering 145 Fully Enclosed Auto Racks]

The rights and interests of the Owner under this Lease are subject to a security interest in favor of Mercantile-Safe Deposit and Trust Company as agent for certain investors. The original of this Lease is held by said agent.

LEASE OF RAILROAD EQUIPMENT

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* This Table of Contents has been included for convenience only and does not form a part of this document.

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LEASE OF RAILROAD EQUIPMENT dated as of December 1, 1987, between GRAND TRUNK WESTERN RAILROAD COMPANY, a Michigan and Indiana corporation ("Lessee"), and U S WEST FINANCIAL SERVICES, INC., a Colorado corporation ("Owner").

The Owner is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with TRINITY INDUSTRIES, INC. ("Builder"), pursuant to which the Builder agreed to construct, deliver and sell to the Owner the units of railroad equipment described in Appendix A hereto ("Equipment").

The Builder is assigning certain of its interests in the CSA pursuant to an Agreement and Assignment dated as of the date hereof ("CSA Assignment") to MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as agent ("Agent") for certain institutional investors (together with their successors and assigns, "Investors") under a Participation Agreement dated as of the date hereof ("Participation Agreement") among the Lessee, the Agent, the Owner, GRAND TRUNK CORPORATION ("Guarantor") and the Investors.

The Lessee desires to lease from the Owner such units of Equipment as are delivered and accepted and settled for under the CSA ("Units") upon the terms and conditions hereinafter provided. The Owner will assign this Lease for security to the Agent pursuant to an Assignment of Lease and Agreement dated as of the date hereof ("Lease Assignment"), and the Lessee will acknowledge and consent thereto pursuant to the Consent and Agreement substantially in the form attached to the Lease Assignment ("Consent").

In consideration of the agreements hereinafter set forth, the Owner hereby leases the Units to the Lessee upon the following terms and conditions:

SECTION 1. NET LEASE

This Lease is a net lease and all rentals and other amounts hereunder shall be net to the Owner and all costs, expenses and obligations of every kind and nature relating to the Units shall be paid by the Lessee, except as otherwise provided herein. Each of the Lessee's obligations to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein

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

SECTION 2. DELIVERY AND ACCEPTANCE OF UNITS

The Owner hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA and to endorse the correctness of the Purchase Price on invoices therefor from time to time submitted by the Builder. Each delivery of a Unit to the Owner under the CSA shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States at which such Unit is so delivered to the Owner. Upon such delivery, the

Lessee will cause an employee or agent of the Lessee to inspect the same, and if such Unit is found to be in accordance with the Specifications (as defined in the CSA) and otherwise acceptable, to accept delivery of such Unit on behalf of the Owner under the CSA and on behalf of itself hereunder and execute and deliver to the Owner a certificate of acceptance ("Certificate of Acceptance") in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Owner on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee hereunder; shall be conclusively presumed as between the Owner and the Lessee to comply in all respects with the specifications, requirements and standards applicable thereto pursuant to the CSA and to be in good working order and repair without inherent vice or defect in condition, design or fitness for use and shall be subject thereafter to all the terms and conditions of this Lease; provided, however, that the Lessee agrees that no authority is hereby vested in the Lessee to take delivery of or accept for the Owner under the CSA any unit of Equipment which the Builder has agreed not to deliver under Section 3.1, 3.3 or 4.1 of the CSA and the Lessee agrees not to take delivery of or accept any such unit of Equipment for the Owner under the CSA or for itself hereunder, and that the delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to Section 3.1, 3.3 or 4.1 thereof or Section 4 of the CSA Assignment shall be ineffective to subject such unit to this Lease.

SECTION 3. RENTALS

3.1. Amount and Date of Payment. The Lessee agrees to pay to the Owner, as rental for each Unit subject to this Lease 23 consecutive payments, on January 28 and July 28 in each year, commencing on January 28, 1989, and ending on January 28, 2000. Each such payment shall be equal to the percentage of Purchase Price (as defined in Section 4.1 of the CSA) of each Unit subject to this Lease which is set forth in the table below opposite the respective payment date.

| <u>Payment Date</u> | <u>Percentage of Purchase Price</u> | | <u>Payment Date</u> | <u>Percentage of Purchase Price</u> |
|---------------------|-------------------------------------|------------|---------------------|-------------------------------------|
| 1/28/89 | 4.1 | In Arrears | 7/28/94 | 2.6672352 |
| 7/28/89 | 7.8746904 | | 1/28/95 | 11.9684975 |
| 1/28/90 | 8.1262655 | | 7/28/95 | 2.1905455 |
| 7/28/90 | 3.8484249 | | 1/28/96 | 12.4451872 |
| 1/28/91 | 3.8484249 | | 7/28/96 | 1.8081943 |
| 7/28/91 | 8.1262657 | | 1/28/97 | 12.8275385 |
| 1/28/92 | 3.6291856 | | 7/28/97 | 1.4375064 |
| 7/28/92 | 8.3455048 | | 1/28/98 | 13.1982264 |
| 1/28/93 | 3.3874742 | | 7/28/98 | 0.8347696 |
| 7/28/93 | 8.5872162 | | 1/28/99 | 13.8009632 |
| 1/28/94 | 11.9746906 | In Advance | 7/28/99 | 0.1702521 |
| | | | 1/28/00 | 14.4654801 |

If and to the extent that the Agent shall not, pursuant to the first paragraph of Section 9.2 of the Participation Agreement, receive the funds due thereunder on July 28, 1988, the Lessee agrees to pay to the Lessor as additional rental for each Unit subject to this Lease, on July 28, 1988, an amount equal to the amount payable by the Vendee pursuant to the first paragraph of said Section 9.2, the Lessee agrees to pay the same; and the Lessee shall be entitled to an offset against subsequent rental payments due hereunder during the original term and any extended term of this Lease (to the extent such payments are not required to discharge the principal and interest on the CSA Indebtedness) of an amount equal to any amounts so paid by the Lessee plus interest thereon from the date of payment by the Lessee to the date of offset at the rate of 11.25% per annum.

The foregoing rental payments have been calculated on the assumptions that:

(a) The aggregate Purchase Price of all Units will be \$3,625,000 and 49.655% of such Purchase Price will relate to Units which are accepted hereunder by the Lessee on or prior to December 31, 1987; and the remaining Units will be accepted during January 1988;

(b) The Closing Date will be on January 28, 1988; and

(c) Included Costs (which shall mean the aggregate of (i) all of the usual and reasonable costs, fees, expenses incurred by the Agent in connection with the preparation, execution and delivery of the Documents, including the reasonable fees and disbursements of Cravath, Swaine & Moore as special counsel for the Agent and the

Investor and of Wilmer, Cutler & Pickering and McCarthy & McCarthy in connection therewith and (ii) the reasonable fees and disbursements of Kronauer Corporation in connection with its services shall be paid when due by the Owner and shall be equal to 1% of the aggregate Purchase Price of all Units accepted hereunder by the Lessee.

If any of the foregoing assumptions proves to be incorrect, the foregoing rental payments and the related Casualty Values set forth in Appendix B hereto will be adjusted, if necessary, in order to preserve the Owner's net after-tax yield and aggregate after-tax cash flow at the same level that the Owner would have expected had there been no inaccuracies in the foregoing assumptions. Any adjustment shall be determined by the Owner, which determination shall be made in accordance with the assumptions used by the Owner in originally evaluating the transactions contemplated hereby; provided, however, at the Lessee's cost and expense, any such adjustment shall be subject to verification by an independent accounting firm, which is reasonably acceptable to the Owner and chosen by the Lessee. The Owner and the Lessee agree to execute an addendum to this Lease to reflect any such adjustment.

In addition to the foregoing rentals, the Lessee hereby agrees to pay on an after-tax basis to the Owner as rent amounts equal to the amounts required by the Owner to make the payments provided for in the next to the last sentence of Section 2.5, the last sentence of Section 9.1 and in clauses (a) and (b) of the first sentence of Section 9.2 of the Participation Agreement on the dates required for such payments and the Owner agrees to apply such rentals for such purposes.

Except for the Owner's obligation to pay interest due on the CSA Indebtedness on July 28, 1988, the rentals payable will never be less than those amounts required to enable the Owner to satisfy its obligations to pay the CSA Indebtedness and the interest thereon when due regardless of any limitation of liability set forth in the CSA.

3.2. Payment on Nonbusiness Day. If any of the rental payment dates referred to in § 3.1 is not a business day, the rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, Detroit,

Michigan, Denver, Colorado, or New York, New York, are authorized or obligated to remain closed.

3.3. Instructions To Pay Agent and Owner. Upon execution and delivery of the Lease Assignment and until the Agent shall have advised the Lessee in writing that all sums due from the Owner under the CSA have been fully satisfied and discharged, the Owner irrevocably instructs the Lessee to make all the payments, other than Excepted Payments (as defined in the Lease Assignment), provided for in this Lease by wire transfer to the Agent at Two Hopkins Plaza, Baltimore, Maryland, attention of Corporate Trust Department (or at such other address as may be furnished in writing to the Lessee by the Agent), with a notation that payment is for credit to its Corporate Trust Account No. 620081-8 with the advice that the payment is "Re: GTW 12/1/87". If the Lease Assignment is not executed and delivered, or if the Lessee shall have been advised by the Agent in writing that all sums due from the Owner under the CSA have been fully discharged and satisfied, payments thereafter due shall be made to the Owner in immediately available funds at such bank account as the Owner shall specify in writing to the Lessee in the manner provided in § 3.4 hereof.

3.4. Payment in Immediately Available Funds. The Lessee agrees to make each payment provided for herein as contemplated by § 3.1 hereof by wire transfer of immediately available Federal funds at or prior to 11:00 a.m. at the place where such payment is to be made.

SECTION 4. TERM OF LEASE

4.1. Beginning and Termination; Survival. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance thereof pursuant to § 2 hereof and, subject to the provisions of §§ 7, 13 and 16 hereof, shall terminate on July 28, 2000. The obligations of the Lessee hereunder shall survive the expiration of the term of this Lease.

4.2. Rights and Obligations of Lessee Subject to CSA. All rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights and obligations of the Vendor (as defined in the CSA) under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination) without affecting the indemnities which by the provisions of this Lease survive the termination of its term; provided;

however, that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Agent is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 15 hereof.

SECTION. 5. IDENTIFICATION MARKS

The Lessee will cause each Unit to be kept numbered with the identification number set forth in Appendix A hereto and will keep and maintain, plainly and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Owner's and the Agent's title to and property in such Unit. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on each side thereof and will replace promptly any such words which may be removed, defaced, obliterated or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Agent and the Owner and filed by the Lessee in all public offices where this Lease and the CSA shall have been filed and (ii) the Lessee shall have furnished the Agent and the Owner an opinion of counsel in form and substance satisfactory to the Agent and the Owner to the effect that such statement has been so filed, such filing will protect the Agent's and the Owner's interests in such Units and no filing with or giving of notice to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Agent and the Owner in such Units.

The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its permitted sublessees, but the Lessee will not allow the name of any other person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

SECTION 6. GENERAL TAX INDEMNIFICATION

The Lessee assumes responsibility for and agrees to pay, protect, save, keep harmless and indemnify the Owner, the Agent, the Investors and their successors and assigns ("Indemnified Persons") against all taxes, assessments, fees, withholdings and other governmental charges of any nature whatsoever, including without limitation penalties and interest (all such taxes, assessments, fees, withholdings, governmental charges, penalties and interest called "Taxes"), imposed on, incurred by or asserted against any Indemnified Person or any Unit in whole or in part on account of or with respect to this Lease or the CSA or in any way relating to or arising or alleged to arise out of this Lease, the CSA, the Participation Agreement, the Lease Assignment, the CSA Assignment or the Units or the manufacture, purchase, acceptance or rejection of the Units or any portion thereof or the ownership, delivery, nondelivery, leasing, re-leasing, subleasing, possession, use, the transfer of title, operation, maintenance, repair, condition, sale, return or other disposition of the Units or any portion thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom; provided, however, that there shall be no indemnification hereunder (i) for any Taxes imposed on or measured by any fees or compensation received by the Agent or for any Taxes payable solely as a result of any actions taken or omissions to take any actions by such Indemnified Person in breach of any covenant set forth in this Lease or in any other document contemplated by the Participation Agreement, (ii) for any Taxes (or other levies in lieu of Taxes) on, or measured by, the net income of any Indemnified Person (and any franchise taxes or value added taxes imposed in lieu of any such Taxes or other levies on or measured by the net income of such Indemnified Person) and (iii) for any penalties, fines or interest where such levy or Tax is not paid, if the Indemnified Person was aware, and the Lessee was not aware, of the Tax and its due date and the Indemnified Person failed to notify Lessee thereof in a timely manner. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify each Indemnified Person to the extent required by this § 6 within 10 days after receipt of a written request by such Indemnified Person for indemnification specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question; provided, however, that if any Taxes are being contested in accordance with the sixth paragraph of this § 6, any payment shall be made at the time therein provided.

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

In the event any returns, statements or reports with respect to Taxes are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Owner and the Agent in such Units, as shall be satisfactory to the Owner and the Agent; provided, however, that the Owner shall, with respect to any state of the United States or political subdivision thereof, file such returns, statements and reports relating to sales or use taxes and taxes, fees and charges on or measured by the Owner's gross receipts arising from the Units as the Lessee shall determine (or, in the case of any such gross receipts tax as the Owner shall advise) are required to be filed and as shall be prepared by the Lessee, and the Owner shall remit the amount thereof upon payment by the Lessee to the Owner (such payment to be made promptly upon demand by the Owner therefor) of such taxes, fees and charges except as provided above; and provided further, that the Lessee shall have no obligation to prepare or file the Owner's income tax return or the Agent's income tax return. To the extent that the Owner has information necessary to the preparation of any returns, statements and reports which the Lessee must prepare or file, it will furnish such information to the Lessee.

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

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

reasonably may require to permit its compliance with the requirements of taxing jurisdictions.

If any taxing authority shall assert liability for any Taxes or propose an increase in the liability of any Indemnified Person for any such Taxes (such assertion or proposed increase called a "Claim"), indemnification for which would be required under this § 6, the Indemnified Person will notify the Lessee in writing within five business days of having become aware of such Claim. If the Lessee delivers to such Indemnified Person written notice of its desire to contest such Claim within 30 days after receipt of notice from such Indemnified Person, such Claim will be contested in accordance with this paragraph. If reasonably requested by the Lessee in writing and upon receipt of an indemnification reasonably satisfactory to the Indemnified Person, such Indemnified Person will contest, or permit the Lessee to contest, such Claims; provided, however, that such contest shall not materially and adversely affect the right, title and interest of the Owner in the Units and the Lease; and provided, further, however, that no Event of Default hereunder shall have occurred and be continuing. Such Indemnified Person will cooperate with any reasonable request made by the Lessee or its counsel in connection therewith; provided, however, that such Indemnified Person may, after consultation with the Lessee and, after consideration of Lessee's desires as to choice of forum, in its sole discretion determine in what court or other forum such contest will be conducted and whether such contest will proceed by payment of the Taxes in contemplation of a suit for refund, and such Indemnified Person shall not be required to take any action pursuant to this paragraph unless and until the Lessee shall have agreed to indemnify such Indemnified Person in a manner reasonably satisfactory to such Indemnified Person for any liability or loss which such Indemnified Person may reasonably incur as a result of contesting the validity of any Claim and shall have agreed to pay such Indemnified Person on demand all costs and expenses which such Indemnified Person may reasonably incur in connection with contesting such Claim (including fees and disbursements of counsel). If in any such contest the decision is made to pay the Taxes and sue for a refund, the Lessee will advance to such Indemnified Person on an interest-free basis sufficient funds to pay the Taxes which are to be contested. Upon receipt by any Indemnified Person of a refund of any Taxes paid by the Lessee pursuant to this paragraph, the amount of such refund and any interest paid to such Indemnified Person with respect thereto shall be paid to the Lessee forthwith upon receipt by such

Indemnified Person; provided, however, that no Event of Default shall have occurred or be continuing hereunder.

The Lessee covenants and agrees to pay all amounts due under this § 6 free of any Taxes and to indemnify each Indemnified Person against any Taxes imposed by reason of any payment made by the Lessee so that the Indemnified Person to whom or for whose benefit the payment is made shall receive an amount which, net of any Taxes or other charges required to be paid by such Indemnified Person in respect thereof and, to the extent possible, after taking into account any deductions permitted by reason of such indemnification, shall be equal to the amount of payment otherwise required hereunder.

In the event that the Lessee becomes liable for the payment or reimbursement of any Taxes pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such Taxes are paid or reimbursed by the Lessee.

SECTION 7. PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE

7.1. Definition of Casualty Occurrence; Payments.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged from any cause whatsoever or in the reasonable opinion of the Lessee damaged to such extent that it is uneconomical to maintain such Unit in accordance with the standards required by this Lease during the term of this Lease or any renewal thereof or until such Unit is returned pursuant to § 14 or 17 hereof, or any Unit shall be taken or requisitioned by condemnation or otherwise by the United States Government or any other governmental entity (including a foreign governmental entity) for a stated period which shall exceed the then remaining term of this Lease or any renewal thereof resulting in loss of possession by the Lessee for a period of 90 consecutive days during the term of this Lease or any renewal thereof (each such occurrence being called a "Casualty Occurrence"), the Lessee shall promptly and fully notify the Owner and the Agent with respect thereto and shall deliver to the Owner, and the Agent a certificate of an authorized officer of the Lessee identifying the unit or units suffering such Casualty Occurrence and the nature thereof. On the next succeeding rental payment date (each such date called a "Casualty Payment Date"), the Lessee shall pay to the Owner an amount equal to the Casualty Value

(as defined in Section 7.4 hereof) in respect of such Unit as of such rental payment date plus any rental due in arrears on such Unit on such date. Upon the occurrence of a Casualty Occurrence in respect of any Unit, and upon the making of such payments by the Lessee, the rental for such Unit shall cease to accrue, the term of this Lease or any renewal thereof as to such Unit shall terminate and the Owner shall be entitled to recover possession of such Unit whether or not such Unit is in the possession of the Lessee; provided, however, that the Lessee shall have no liability to return a Unit which has been lost, stolen or completely destroyed if the Lessee is unable to recover such a Unit.

In addition to the occurrences constituting a Casualty Occurrence under the preceding paragraph, if any Unit shall have been taken or requisitioned by the United States Government or any other governmental entity and such taking or requisition shall not theretofore constitute a Casualty Occurrence as aforesaid, such taking or requisition shall be deemed a Casualty Occurrence if the same shall be continuing at the end of the term of this Lease or any renewal thereof, in which event the Lessee shall promptly and fully notify the Owner with respect thereto and pay the Owner at the end of the term of this Lease or any renewal thereof an amount equal to the Casualty Value as of the end of the term of this Lease or any renewal thereof. Following such payment and provided that no Event of Default shall have occurred and be continuing, the Lessee shall be entitled to receive condemnation payments in respect of such Unit up to an amount equal to such Casualty Value previously paid by the Lessee plus the Lessee's reasonable and documented costs in such proceeding and any balance of such payments shall be the property of the Owner and shall be paid to the Owner forthwith. In the event such Unit shall be returned by the governmental entity prior to the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, then the Lessee shall dispose of such Unit pursuant to § 7.3 hereof, and shall retain the proceeds of such disposition to the extent that the aggregate of the amounts so retained and the condemnation payments theretofore received by the Lessee shall equal such Casualty Value previously paid by the Lessee plus the Lessee's reasonable and documented costs in such proceeding and the balance of such proceeds shall be paid to the Owner forthwith. In the event such Unit shall be returned by the governmental entity following the time the Lessee shall have been reimbursed by such application of condemnation payments for such use in an amount equal to such Casualty Value, such Unit shall be

returned by the Lessee to the Owner in the manner provided in § 17 hereof, except for the requirements set forth in the second sentence of the second paragraph of § 17.1 hereof.

Whenever any Unit shall suffer a Casualty Occurrence after the term of this Lease or any renewal thereof and before such Unit shall have been returned in the manner provided in § 17 hereof, the Lessee shall promptly and fully notify the Owner with respect thereto and pay to the Owner (in addition to any amounts due pursuant to § 17 hereof) an amount equal to the Casualty Value as of the end of the term of this Lease or any renewal thereof. Upon the making of any such payment by the Lessee in respect of any Unit the Owner shall be entitled to recover possession of such Unit whether or not such Unit is in the possession of the Lessee; provided, however, that the Lessee shall have no liability to return a Unit which has been lost, stolen or completely destroyed if the Lessee is unable to recover such a Unit.

7.2. Requisition by United States Government. In the event of the requisition for use by the United States Government of any Unit (except where deemed a Casualty Occurrence pursuant to the penultimate paragraph of § 7.1 hereof), all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred. All payments received by the Owner or the Lessee from the United States Government for the use of such Unit during the term of this Lease shall be paid over to or retained by the Lessee, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

7.3. Lessee Agent for Disposal. The Owner hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof before and after expiration of the Lease at the best price obtainable on an "as is, where is" basis. If the Lessee has previously paid the Casualty Value to the Owner, the Lessee shall be entitled to the proceeds of such sale or condemnation to the extent they do not exceed the Casualty Value of such Unit and shall pay forthwith any excess to the Owner.

7.4. Amount of Casualty Value. The Casualty Value of each Unit as of the Casualty Payment Date on which payment is to be made as aforesaid shall be an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Appendix B hereto opposite the Casualty Payment Date next succeeding the actual date of such Casualty

Occurrence; but in no event shall such amount be less than the "Casualty Value" (as defined in Section 7.3 of the CSA) as of such Casualty Payment Date.

7.5. No Release. Except as provided in this § 7, the Lessee shall not be released from its obligations hereunder in the event of any Casualty Occurrence, and shall bear the risk of any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

7.6. Insurance To Be Maintained. The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained types and amounts of insurance in respect of the Units at the time subject hereto and the use and operation thereof, including, without limitation, property insurance and public liability insurance with such insurance companies, in such amounts and for such risks as is customary in the industry for comparable railroad companies and as are at least comparable to insurance coverage carried by the Lessee in respect of similar equipment owned or leased by it; provided, however, that, in respect of property insurance, the Lessee may self-insure any Unit to the extent that it self-insures similar equipment owned by it. The Lessee hereby assigns and transfers to the Owner and the Agent, as their interests may appear, all right, title, and interest in and to any insurance proceeds paid under any policy of insurance to the extent such proceeds relate to the Units or the use and operation thereof as aforesaid. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice of cancellation or material change in coverage to the Owner and the Agent, (ii) provide that the Owner and the Agent shall have no liability for premiums or other payments in connection with such insurance and (iii) name the Owner and the Agent as additional insureds or loss payees, as their respective interests may appear, and, in the event such policies contain breach of warranty provisions, such policies shall provide that in respect of the interests of the Owner and the Agent in such policies the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Owner and the Agent) and shall insure the Owner and the Agent regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Owner and the Agent). On or prior to the Documents Closing Date under the Participation Agreement and thereafter not less than 15 days prior to the expiration dates of the expiring policies, the

Lessee shall deliver to the Owner and the Agent evidence satisfactory to them of the insurance required to be maintained pursuant to this Section 7.6.

In the event of failure on the part of the Lessee to provide and furnish any of the aforesaid insurance, the Owner or the Agent, upon notice to the Lessee, may, but shall not be obligated to, procure such insurance and the Lessee shall, upon demand, reimburse the Owner and the Agent for all expenditures made by the Owner or the Agent for such insurance, together with interest thereon computed at the rate set forth in Section 19 in respect of overdue rentals from the date of the Agent's or the Owner's payment until reimbursed by the Lessee.

If the Owner shall receive any insurance proceeds from insurance maintained by the Lessee pursuant hereto or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Owner shall, if no Event of Default exists and no event has occurred which with the lapse of time or the giving of notice or both would be an Event of Default and subject to the Lessee having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments (up to the amount of the Casualty Value paid) to the Lessee. All insurance proceeds received by the Owner in respect of any Unit not suffering a Casualty Occurrence shall be paid, provided that no Event of Default hereunder has occurred and is continuing, to the Lessee upon proof satisfactory to the Owner and the Agent that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

SECTION 8. REPORTS

On or before March 31 in each year, commencing with the calendar year 1989, the Lessee will furnish to the Owner and the Agent an accurate statement stating (a) as at the preceding December 31 the total number, description and identification numbers of all Units then leased hereunder and covered by the CSA and of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date hereof in the case of the first such statement) or are then undergoing repairs (other than running repairs) or then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Owner or the Agent may reasonably request, (b) in the case of all Units repainted or repaired during the period covered by

such statement, that the numbers and markings required by § 5 hereof have been preserved or replaced and (c) that the Lessee is in compliance under this Lease and has performed or has caused to be performed the required maintenance of the Units and that no event has occurred which with notice or the lapse of time or both would constitute an Event of Default. The Owner and the Agent shall each have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as they may request during the continuance of this Lease.

SECTION 9. DISCLAIMER OF WARRANTIES

THE OWNER DOES NOT MAKE, HAS NOT MADE NOR SHALL BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE OWNER DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Owner and the Lessee, are to be borne by the Lessee; but the Owner 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 of and for the account of the Owner or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Owner may have against the Builder under the provisions of the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Owner may revoke the foregoing appointment provided that it shall assert and enforce such claims and rights at the Lessee's sole cost and expense. The Owner shall not have any responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units, except to the extent any of the foregoing result from any misrepresentation by the

Owner or from the gross negligence or wilful misconduct of the Owner. The Lessee acknowledges and agrees that each Unit is of a size, design, capacity and manufacture selected by the Lessee and that the Lessee is satisfied that the same is suitable for its purpose. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Owner that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Owner or the Agent based on any of the foregoing matters.

SECTION 10. LAWS AND RULES

10.1. Compliance. The Lessee agrees, for the benefit of the Owner and the Agent, to comply in all respects (including without limitation the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units by the Lessee or any sublessee (all such laws and rules to such extent called "Applicable Laws"), and in the event that the Applicable Laws require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the opinion of the Owner or the Agent, materially and adversely affect the property or rights of the Owner or the Agent under this Lease or under the CSA or create, in the reasonable opinion of the Owner or the Agent, a situation whereby the Owner or the Agent could incur criminal or other liability for which there is no indemnification hereunder.

10.2. Reports for Owner and Agent. The Lessee agrees to prepare and deliver to the Owner and the Agent within a reasonable time prior to the required date of filing (or, to the extent permissible, file on their behalf) any and all reports (other than income tax returns) to be filed by the Owner with any Federal, state or other

regulatory authority by reason of the ownership by the Owner of the Units or the leasing thereof to the Lessee.

SECTION 11. MAINTENANCE

11.1. Units in Good Operating Order. The Lessee, at its own cost and expense, will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted, and eligible for railroad interchange in accordance with the Applicable Laws, in a manner consistent with the Lessee's insurance policies and the Builder's warranties and in the same condition as other similar Equipment owned or leased by the Lessee.

11.2. Additions and Accessions. (1) In addition to any repairs, alterations, replacements or additions required to be made by the Lessee pursuant to §§ 10.1 and 11.1 hereof, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units as are readily removable without causing material damage to the Units (and do not adversely affect the value of the Units) which shall be owned by the Lessee, except to the extent such additions, modifications or improvements are made in order to comply with § 11.2(2) hereof.

(2) Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit, whether or not installed or added to such Unit in contravention of § 11.2(1) hereof, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit in railroad interchange by the Applicable Laws, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA and Permitted Liens as defined in § 15.2 hereof) shall immediately be vested in the Owner and the Agent as their respective interests may appear in the Unit. Except for additions, modifications or replacements made in order to comply with Applicable Laws, no installation, addition or modification may be made to any Unit which impairs its function or materially diminishes its commercial value.

SECTION 12. INDEMNIFICATION

12.1. Indemnification of Indemnified Persons.

The Lessee shall pay and shall protect, indemnify and hold harmless the Owner, the Investors, the Agent and their respective successors, assigns, agents and servants ("Indemnified Persons") from and against any and all causes of action, suits, penalties, claims, demands or judgments of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all documented liabilities, obligations, damages, costs, disbursements or expenses relating thereto, including without limitation, the reasonable attorneys' fees and expenses of any Indemnified Person) in any way relating to or arising or alleged to arise out of this Lease, the CSA or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return, storage or other disposition of any Unit or portion thereof; (ii) any latent and other defects whether or not discoverable by the Indemnified Person or the Lessee; (iii) any act or omission of the Lessee when acting as agent or attorney-in-fact for the Owner; (iv) any claim for patent or trademark infringement; (v) any claims based on strict liability in tort; (vi) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner arising or alleged to arise out of the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Indemnified Person, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vii) any violation or alleged violation of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (viii) any claim arising out of any of the Owner's obligations under this Lease, the CSA or the Lease Assignment or the Agent's retention of a security interest under the CSA or the Lease Assignment or the Participation Agreement (all such matters called "Indemnified Matters"); provided, however, that Indemnified Matters shall not include Taxes which are covered by Section 6 hereof and that the Lessee shall not be required to indemnify with respect to any Indemnified Matter to the extent the same arises from any misrepresentation of such Indemnified Person or from the gross negligence or wilful misconduct of such Indemnified Person. The Lessee

shall be obligated under this § 12.1, whether or not any Indemnified Person shall also be indemnified with respect to any Indemnified Matter under any other agreement by any other person, and the Indemnified Person may proceed directly against the Lessee under this § 12.1 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense defend such action, suit or proceeding, or cause the same to be defended by counsel selected by the Lessee and approved by such Indemnified Person, which approval shall not be unreasonably withheld, and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any indemnification under this § 12, the Lessee shall pay such Indemnified Person an amount which, after deduction of all Taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such Taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against and of any other such Taxes as determined in the sole discretion of the Indemnified Person, such discretion to be reasonably applied), shall be equal to the amount of such payment. The Lessee and the Owner each agrees to give the other promptly upon obtaining knowledge thereof written notice of any claim hereby indemnified against; and, in the case of each other Indemnified Person, such other Indemnified Person shall be required to give written notice to the Lessee of any claim hereby indemnified against in respect of such Indemnified Person promptly upon obtaining knowledge thereof; provided that any failure of any Indemnified Person to furnish such notice in a prompt manner shall relieve the Lessee from its obligation to indemnify pursuant to this Section 12.2 only to the extent that such delay in notification shall be reasonably demonstrated by the Lessee to have prevented the Lessee from effectively asserting a meritorious defense to the loss or liability so indemnified against. Upon the payment in full by the Lessee of any indemnities as contained in this § 12, (i) the Lessee shall receive any right of such Indemnified Person to proceed against others (except where the Lessee is also indemnifying a person against whom the Indemnified Person has rights) in respect of such Indemnified Matter and (ii) any payments received by such

Indemnified Person from any person (except the Lessee) as a result of any Indemnified Matter shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for its indemnification payments previously made. Nothing in this § 12.1 shall constitute a guarantee by the Lessee of the CSA Indebtedness (as defined in the CSA) or a guarantee of the residual value of any Unit.

12.2. Indemnification of The Builder. The Lessee further agrees to indemnify, protect and hold harmless the Builder as a third-party beneficiary hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against such Builder because of the use in or about the construction or operation of any of the Units of any article or material specified by the Lessee and not manufactured by the Builder or of any design, process or combination specified by the Lessee and not developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder hereunder.

12.3. Survival. The indemnities contained in this § 12 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of and shall be enforceable and collectible directly from the Lessee by any Indemnified Person notwithstanding the provisions of the Lease Assignment or the Consent. None of the indemnities in this § 12 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

SECTION 13. DEFAULT

13.1. Events of Default; Remedies. If, during the continuance of this Lease or any extension or renewal thereof, one or more of the following events (each such event an "Event of Default") shall occur and be continuing:

(A) default shall be made in payment of any amount of rentals (under § 3.1 hereof), Casualty Values or

option purchase prices (under § 16.2 hereof) provided for hereunder, and such default shall continue for five days;

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

(C) default shall be made in the observance or performance of any other covenant, condition or agreement on the part of the Lessee contained herein, in the Participation Agreement or the Consent (as defined in the Participation Agreement) and such default shall continue for 30 days after the written notice from the Owner or the Agent to the Lessee specifying the default and demanding that the same be remedied;

(D) any representation or warranty made by the Lessee herein, the Lessee or the Guarantor in the Participation Agreement or in any certificate or written statement furnished by the Lessee or the Guarantor to the Owner or the Agent pursuant to or in connection with any such agreement proves untrue, misleading or incorrect in any materially adverse respect as of the date of making thereof;

(E) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee or the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease, the Consent and the Indemnity Agreement, or the Guarantor under the Participation Agreement, as the case may be, shall not have been and shall not continue to be duly assumed in writing within 60 days after such petition shall have been filed, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees; or

(F) any other proceeding shall be commenced by or against the Lessee or the Guarantor for any relief

which includes or might result in any modification of the obligations of the Lessee hereunder or under the Consent, the Indemnity Agreement, or the Guarantor under the Participation Agreement, 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 such obligations), 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 such obligations shall not have been and shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been commenced, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or the Guarantor or for the property of the Lessee or the Guarantor in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers;

then, in any such case, the Owner, at its option, may:

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Owner may by its agents enter upon the premises of the Lessee or other premises, insofar as the Lessee may be lawfully authorized so to permit, where any of such Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and possess the same free from any right of the Lessee or its successors or assigns to use the Units for any purposes whatever; but the Owner shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or

which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as liquidated damages for loss of a bargain and not as a penalty whichever of the following amounts that the Owner in its sole discretion shall specify, (i) the sum, with respect to each Unit, which represents (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Owner reasonably estimates to be obtainable for each Unit during such period (such present value to be computed in each case on the basis of a 7.34% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated) or, if such Unit is sold, the net proceeds of the sale plus (y) any damages and expenses, including reasonable attorneys' fees, which the Owner shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding the date of termination over the amount the Owner reasonably estimates to be the sales value of such Unit at such time. In the event the Owner shall have sold any Unit, the Lessee shall, if the Owner shall so elect, pay to the Owner on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit as of the Casualty Payment Date on or next preceding the date of termination over the net proceeds of such sale in lieu of collecting any amounts payable by the Lessee pursuant to clause (ii) of the preceding sentence with respect to such Unit. In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Owner's remedies with respect

thereto, including all costs and expenses incurred in connection with the return or sale of any Unit.

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

Except as otherwise provided in this Lease and the CSA, the Lessee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, any other requirements with respect to the enforcement of the Owner's rights under this Lease and the CSA and any and all rights of redemption.

13.3. Failure To Exercise Rights Is Not Waiver. The failure of the Owner to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

13.4. Notice of Event of Default. The Lessee agrees to furnish prompt telephonic notice, confirmed in writing, to the Owner and the Agent within five business days of the date on which any responsible officer becomes 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, specifying such condition and the nature and status thereof. 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.

13.5. Mandatory Requirement of Law. The foregoing provisions of this Section 13 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

SECTION 14. RETURN OF UNITS UPON DEFAULT

14.1. Return of Units. If this Lease shall terminate pursuant to § 4.2 or § 13 hereof, the Lessee shall forthwith deliver possession of the Units to the Owner. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, shall meet all standards of all Applicable Laws then in effect, and shall have attached or affixed thereto any special device considered an accession thereto as provided in § 11 hereof and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 11 hereof, is owned by the Lessee or if the Lessee elects not to remove the same and the Owner consents in writing thereto, the same will remain affixed to such Unit and title thereto will immediately vest in the Owner. For the purpose of delivering possession of any Unit or Units as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any flatcars to which any Units are attached have been interchanged or which may have possession thereof to return such flatcar so interchanged) place such Units upon such storage tracks or other premises of the Lessee or any of its affiliates as the Owner reasonably may designate;

(b) if so requested by the Owner, detach each Unit from the flatcar to which it has been attached;

(c) cause such Units to be stored on such tracks or other premises at the risk of the Lessee without charge for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Owner; and

(d) cause the same to be transported to any reasonable place as directed by the Owner.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having competent jurisdiction the Owner shall be entitled to a decree against the Lessee requiring specific performance thereof. During any storage period, the Lessee will, at its own cost and expense, insure, maintain and keep the Units in good order and repair and will permit the Owner or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All net earnings earned in respect of the Units after the date of termination of this Lease shall belong to the Owner and, if received by the Lessee, shall be promptly turned over to the Owner. In the event any Unit is not assembled, delivered and stored as hereinabove provided within 30 days after such termination, the Lessee shall in addition pay to the Owner for each day thereafter an amount equal to 0.0365% of the Purchase Price of each such Unit for each such day that such Unit is not so returned. Such payment shall not offset the obligation of the Lessee to redeliver the Equipment pursuant to the first sentence of this section. For purposes of this § 14, net earnings for each Unit shall be determined by aggregating all income including rentals and mileage per diem charges which the Lessee may have received or be entitled to receive in respect of such Unit and subtracting therefrom the Lessee's reasonable expenses for operating such Unit including rent, freight, interchange, running repairs and other similar charges in respect of such Unit.

14.2. Owner Appointed Agent of Lessee. The Lessee hereby irrevocably appoints the Owner as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Owner, to demand and take possession of such Unit in the name and on behalf of the Lessee from whosoever shall be in possession of such Unit.

SECTION 15. ASSIGNMENT, POSSESSION AND USE

15.1. Assignment. This Lease shall be assignable in whole by the Owner to any successor Owner subject to the satisfaction of all the provisions of Section 15.1 of the CSA. The Lessee hereby acknowledges the assignment of this Lease pursuant to the Lease Assignment.

15.2. Lessee's Rights To Use the Units. (1) So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Agent is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the CSA, subject to the provisions of § 4.2 of this Lease. None of the Units may be used outside of the continental United States of America or Canada, except that up to 5% of the Units then subject to this Lease may at any time be used in Mexico. The Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them without the prior written consent of the Owner and the Agent, except as provided in paragraph (2) of this § 15.2; and the Lessee shall not part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units without the prior written consent of the Owner and the Agent, except as provided in said paragraph (2). The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which if unpaid might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Owner or the Agent or resulting from claims against the Owner or the Agent not related to the ownership of the Units or any encumbrance on the leasehold estate of the Lessee which is subordinate to the interests of the Owner and the Agent arising from a sublease permitted hereunder) upon or with respect to any Unit, including any accession thereto or the interest of the Owner, the Agent or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises; provided that the Lessee may contest any such lien, claim, security interest or other encumbrance if the Lessee provides indemnity which shall protect the interests of the Agent and the Owner to the reasonable satisfaction of each; and provided, further, that this covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent ("Permitted Liens").

(2) So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Agent is entitled to apply the Payments (as defined in the Lease Assignment) in accordance

with the Lease Assignment, the Lessee shall be entitled to the possession and use of the Units by it or any sublessee upon lines of any railroad or other trackage over which railroad equipment is regularly operated and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through or trilease agreements or pursuant to necessary maintenance arrangements and to sublease the Units, but only upon and subject to all the terms and conditions of this Lease and the CSA, provided, however, that no such sublease shall extend beyond the term of this Lease. The Lessee shall not assign, sublease or permit the assignment, sublease or use of any Unit predominantly outside the United States of America within the meaning of Section 48(a) of the Internal Revenue Code of 1954, as amended to the date hereof, nor shall the Lessee assign or sublease to or permit the sublease or use of the Units by any person in whose hands such Units would not qualify as "section 38 property" within the meaning of said Code or, in connection with any such assignment, sublease or use, otherwise permit the Units to be used in any manner which would cause such Units to fail to qualify as "section 38 property" as so defined, or permit any assignee, sublessee or user to use the Units such that more than 5% of the Units then subject to this Lease are used in Mexico at any one time. The Lessee may receive and retain compensation for the use of any of the Units from railroads or other entities so using such Units. Any sublease permitted by this paragraph shall be expressly subordinate to the rights and remedies of the Agent under the CSA and the Owner under this Lease in respect of the Units covered by such sublease and no such sublease shall relieve the Lessee of any of its obligations hereunder or under the Indemnity Agreement (as defined in the Participation Agreement) which, notwithstanding any such sublease, shall remain in full force and effect.

(3) So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Agent is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, the Lessee may quietly have, hold and enjoy the Units free and clear from repossession or disturbance by the Owner or its officers, agents, employees or servants or by anyone (including the Agent and the Investors) claiming by, through or under the Owner.

15.3. Merger, Acquisition or Consolidation.
Nothing in this Section 15 shall be deemed to restrict the

right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the railroad properties of the Lessee as an entirety or substantially as an entirety; provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease and, provided further, however, that Guarantor shall deliver an acknowledgment to all the other parties to the Participation Agreement that its obligations under Article XIV of the Participation Agreement shall be primary and shall remain in full force and effect as to such assignee or transferee.

SECTION 16. OPTIONS

16.1. Renewal for Successive Period. Provided that this Lease has not been earlier terminated and no Event of Default has occurred and is continuing hereunder, the Lessee may by written notice delivered to the Owner not later than 150 days prior to the expiration of the current term of this Lease elect to extend the original term or the first extended term of this Lease in respect of not less than all the Units then covered by this Lease for a renewal term commencing on the scheduled expiration of such original term or the first extended term of this Lease for one year with rentals payable in arrears semiannually on January 28 and July 28 at the Fair Market Rental.

"Fair Market Rental" 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 (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, (i) it shall be assumed that the Units are in the condition and repair in which they are required to be maintained pursuant to this Lease and that they are free and clear of all liens, claims and encumbrances, (ii) the value of the additions, modifications and improvements as to which Lessee retains title pursuant to § 8 shall not be included and (iii) costs of removal from the location of current use shall not be a deduction from such value. If, within two months following receipt of the notice required by the preceding paragraph,

the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the relevant Units, such rental shall be determined in accordance with the foregoing definition by a qualified independent Appraiser as hereinafter defined. The term "Appraiser" shall mean such independent Appraiser as Lessor may select with the approval of Lessee, or, failing such approved selection, a panel of three independent Appraisers, one of whom shall be selected by Lessor, the second by Lessee and the third designated by the first two so selected; and if no such third Appraiser is so appointed within 15 days, either party may apply to have the appointment made by the American Arbitration Association and both parties 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 Lessor and Lessee and the Lessee shall then either exercise or not exercise the option. The cost of any appraisal shall be borne as follows: (i) if the Lessee does not elect to lease, the entire cost shall be paid by the Lessee; (ii) if the Lessee elects to lease and the Lessee and the Owner did agree on a single appraiser, the cost shall be shared equally by the Lessee and the Owner; and (iii) if the Lessee elects to lease and the Lessee and the Owner failed to agree on a single appraiser, the Lessee will pay the cost of its appraiser and one-half the cost of the third appraiser and the Owner will pay all other costs.

16.2. Purchase Options. Provided this Lease has not been earlier terminated, and no Event of Default has occurred and is continuing hereunder, upon not less than 180 days notice prior to the end of the original or any renewal term of this Lease, the Lessee may give written notice to the Owner that the Lessee elects to have the Fair Market Value of all the Units under the Lease determined. If the Lessee shall give such notice, the Owner and the Lessee shall promptly cause the Fair Market Value of such Units to be determined in the manner provided in § 16.3, which determination shall be made not less than 100 days prior to the end of the current term of this Lease. After determination of the Fair Market Value, the Lessee may, not less than 90 days prior to the end of the current term of this Lease, give written notice to the Owner of its acceptance of the determination of the Fair Market Value and that the Lessee elects to purchase all Units under the Lease at the lesser of Fair Market Value or an amount equal to 30% of the Purchase Price of such Units. If the Lessee shall fail to give such notice, the Lessee shall have no further right to purchase such Units under this paragraph. If the Lessee shall give such notice, the Lessee shall purchase such Units for cash on the last business day of the term hereof at the

price so determined. The cost of any appraisal shall be borne as follows: (i) if the Lessee does not elect to purchase, the entire cost shall be paid by the Lessee; (ii) if the Lessee elects to purchase and the Lessee and the Owner did agree on a single appraiser, the cost shall be shared equally by the Lessee and the Owner; and (iii) if the Lessee elects to purchase and the Lessee and the Owner failed to agree on a single appraiser, the Lessee will pay the cost of its appraiser and one-half the cost of the third appraiser and the Owner will pay all other costs.

Upon payment for all the Units pursuant to an exercise by the Lessee of its option to purchase with respect to all the Units, and any and all sums due hereunder, or due under the Participation Agreement or the Indemnity Agreement the Owner shall execute and deliver to the Lessee, or upon request of the Lessee to the Lessee's assignee or nominee, a bill of sale (without warranties, except as hereinafter provided in this paragraph) for all the Units which will transfer title to all the Units and all claims against third parties including warranties in respect thereof to the Lessee, or to such assignee or nominee, as the case may be, free and clear of all claims, liens, security interest and other encumbrances created by or arising through the Owner, other than claims, liens, security interests and encumbrances which the Lessee is obligated to pay or discharge under or pursuant to this Lease.

16.3. Determination of Fair Market Value. (1) The Fair Market Value for each Unit shall, assuming that such Unit is in the condition required by this Lease, be equal to the value which would obtain in an arm's-length transaction between an informed and willing buyer (other than a lessee currently in possession or a used equipment dealer) and an informed and willing seller under no compulsion to sell, and costs of removal from the location of current use shall not be a deduction from such value.

(2) If, after 20 days from the giving of notice by the Lessee of the Lessee's election to have the Fair Market Value determined, the Owner and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, either party to such determination may give written notice to the other requesting determination of such Fair Market Value by an appraisal procedure. The parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 10 days after such notice is given, each party shall appoint an appraiser within 10 days after such notice is given, and the two appraisers so appointed shall within 15 days after such notice is given

appoint a third independent appraiser. If no such third appraiser is appointed within 15 days after such notice is given, either party may apply to make such appointment to the American Arbitration Association and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Value of the Units within 20 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Value of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Value. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures.

SECTION 17. RETURN OF UNITS UPON EXPIRATION OF LEASE TERM

Upon the expiration of the original or any extended term of this Lease and provided the Lessee has not elected to extend the term of this Lease or to purchase the Units as provided in Section 16 hereof, the Lessee will, at its own cost, expense and risk return the Units to the Owner in accordance with any one (and only one) of the following provisions which shall be selected by the Owner not less than 90 days prior to the actual expiration date of this Lease. The assembling, delivery, storage and transporting of the Units as hereinafter provided are of the essence of this Lease, and upon application to any court of equity having competent jurisdiction, the Owner shall be entitled to a decree against the Lessee requiring specific performance of such covenants of the Lessee. Any obligations of the Lessee to pay rental as hereinafter provided after the expiration of the lease term shall not offset the obligation of the Lessee to redeliver the Equipment pursuant to this Section 17.

SECTION 17.1 RETURN OF THE UNITS ATTACHED TO THE UNDERLYING FLATCAR

If and only to the extent that the Owner has arranged for the use of the Units by any person who is qualified to utilize the underlying flatcar (and who has made arrangements to so utilize such flatcar) then the Lessee shall deliver the Units to the Owner at any point selected by the Owner which is along the Lessee's lines or any of the Lessee's interchange points. Delivery shall take place within 30 days of the date on which this Lease terminates but if any Unit is not returned on the date this Lease terminates the Lessee shall pay rental for each Unit not so returned in an amount equal to .0365% of the Purchase Price of each such Unit for each day thereafter to the date the Unit is so returned. Until the Units have been returned to the Owner as set forth above, the Lessee shall pay all costs associated with such Units including but not limited to storage costs, if any, and costs of maintaining insurance in accordance with the standards set forth in Section 7.6 hereof.

During any storage period the Lessee will permit the Owner or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising the rights of inspection granted under this sentence. Each Unit returned to the Owner pursuant to this Section 17.1 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) meet all standards of the Applicable Laws then in effect with respect to the usage of the Units by the Lessee and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in Section 11 hereof and have removed therefrom any such device not so considered an accession; provided, however, that if the Lessee elects not to remove the same and the Owner consents in writing thereto, the same will remain affixed to such Unit and title thereto will immediately vest in the Owner.

SECTION 17.2 RETURN OF THE UNITS DETACHED FROM THE UNDERLYING FLATCAR

(a) If the Owner directs the Lessee to have the Units removed from the underlying flatcar, then the Lessee

shall within 30 days of the date on which this Lease terminates deliver the Units to any shop (or shops) chosen by the Owner which is capable of performing the work in a reasonable period of time. If any Unit is not delivered on the date this Lease terminates the Lessee shall pay rental for each such Unit that is not delivered in accordance with the provisions of § 17.1 hereof. At the time of delivery the Units shall be in the condition specified in Section 17.1 hereof. The Owner shall direct the shop to remove the Units from the underlying flatcar at the Lessee's expense. If such shop is along the Lessee's lines the cost of transporting the Unit to the shop shall be for the Lessee's account and if the shop is not along the Lessee's lines, the Lessee shall be responsible for any transportation costs on its lines and the Owner shall pay all other transportation costs. Upon removal of a Unit from the underlying flatcar the Owner shall direct the shop to redeliver the flatcar to the Lessee at such shop. From and after the expiration of this Lease until the earlier of (i) 90 days after the expiration of this Lease, or (ii) the date the Units have been removed from the underlying flatcars the Lessee shall pay all costs associated with the Units including but not limited to storage costs and the costs of maintaining insurance in accordance with the standards set forth in Section 7.6 hereof, but excluding any transportation charges which are for the account of the Owner as aforesaid.

(b) If the Owner directs the Lessee to detach the Units in a form suitable for being shipped as scrap, then the Lessee shall within 30 days of the date on which the Lease terminates, remove the Units from the underlying flatcar, cut them into pieces which can be reasonably and safely shipped in a gondola car, load all such pieces of the Units into gondola cars and deliver such gondola cars to the Owner's possession at any interchange point designated by the Owner along the Lessee's lines or at any point along such lines. If any Unit is not so returned during such 30 day period the Lessee shall pay rental for each such Unit that is not returned in accordance with the provisions of Section 17.1 hereof. From and after the expiration of this Lease and until the Units have been returned to the Owner the Lessee shall pay all costs associated with the Units, including but not limited to storage costs and the costs of maintaining insurance in accordance with the standards set forth in Section 7.6 hereof.

SECTION 18. FILING

The Lessee, at its own expense, will cause this Lease, the CSA, the CSA Assignment and the Lease Assignment to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette) pursuant to Section 86 of the Railroad Act of Canada prior to the delivery and acceptance of any Unit hereunder, and will pay for the filing required of the Owner under the CSA. The Lessee will further cause this Lease and/or appropriate financing statements or continuation statements to be filed and recorded, and, from time to time when required, refiled and rerecorded, in accordance with the applicable provisions of the Uniform Commercial Code as in effect in the State of Michigan (and, if the Lessee changes its chief place of business, in any such other state) in like manner as if the Owner's interest in this Lease represented a security interest or in any other state of the United States of America or the District of Columbia where filing is reasonably requested by the Owner or the Agent for the purpose of proper protection, to the satisfaction of counsel of the Owner and Agent, of their interests and rights under this Lease for the purpose of carrying out the intention of this Lease. The Lessee will from time to time perform any other act and will execute, acknowledge, deliver and file (and will refile whenever required) any and all further instruments required by law or reasonably requested by the Owner or the Agent for the purpose of proper protection, to their satisfaction, of their respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA, the CSA Assignment and the Lease Assignment; and the Lessee will promptly furnish to the Agent and the Owner evidence of all such filings and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Agent and the Owner.

SECTION 19. INTEREST ON OVERDUE RENTALS

The Lessee shall pay promptly, to the extent legally enforceable, an amount equal to 11-1/4% per annum of the overdue rentals and other overdue obligations hereunder which are intended to satisfy the obligations of the Owner with respect to the CSA Indebtedness for the period of time during which they are overdue, computed on the basis of a 360-day year of twelve 30-day months.

SECTION 20. OWNER'S RIGHT TO PERFORM FOR LESSEE

If the Lessee fails to perform any of its agreements contained herein, the Owner may upon notice to the Lessee perform such agreement, and the amount of the reasonable cost and expenses of the Owner incurred in connection with such performance, together with interest on such amount at the Overdue Rate shall be payable by the Lessee upon demand, except as otherwise provided in this Lease. No such performance or compliance by the Owner shall be deemed a waiver of the rights and remedies of the Owner against the Lessee hereunder, including, without limitation, the right of the Agent to terminate this Lease pursuant to Article 16 of the CSA and the Lease Assignment, and no such performance or compliance by the Owner shall be deemed to cure an Event of Default hereunder for purposes of Article 16 of the CSA except as otherwise provided in Section 16.1(e) of the CSA.

SECTION 21. NOTICES

Any notice required or permitted hereunder shall be deemed to have been received by the addressee on the date of actual receipt (if such date is a Business Day, otherwise on the next Business Day), if transmitted by mail, recognized courier service, telex, telecopy or similar transmission, or by hand, addressed as follows:

(a) if to the Lessee, at 1333 Brewery Park Boulevard, Detroit, Michigan 48207, attention of Treasurer with a copy to the Guarantor at its address set forth in Article XIII of the Participation Agreement; and

(b) if to the Owner, at 230 Park Avenue, New York, New York, 10169, attention of Vice President-Credit.

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing. Copies of each such notice shall be given to the Agent at Two Hopkins Plaza, Baltimore, MD 21201, Attention of Corporate Trust Department.

SECTION 22. SEVERABILITY

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such

jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. Any such prohibition or unenforceability shall not invalidate or render unenforceable such provision in any other jurisdiction. When a conflicting provision of any applicable law may be waived, the Lessee hereby so waives such provision to the end that this Lease may be enforced as written.

SECTION 23. EFFECT AND MODIFICATION OF LEASE

Except for the Participation Agreement, the CSA and the Indemnity Agreement, this Lease exclusively and completely states the rights of the Owner and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers for the Owner and the Lessee.

SECTION 24. EXECUTION

This Lease may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Agent pursuant to the Lease Assignment shall be deemed to be the original counterpart. Although for convenience this Lease is dated as of the date first above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

SECTION 25. FURTHER ASSURANCES.

The Lessee and the Owner hereby agree that at any time and from time to time, after the execution and delivery of this Lease, each shall execute and deliver such further documents and do such further acts and things as may be reasonably requested by the other and necessary in order to fully effect the purposes of this Lease.

SECTION 26. RIGHTS, REMEDIES AND POWERS.

Each and every right, remedy and power granted to the Owner hereunder shall not be exclusive but shall be

cumulative and in addition to any other right, remedy or power herein specifically granted or hereafter existing in equity, at law, by virtue of statute or otherwise and each may be exercised by the Owner from time to time concurrently or independently and as often and in such order as the Owner may deem expedient. Any failure or delay on the part of the Owner in exercising any such right, remedy or power, or the abandonment or the discontinuance of steps to enforce the same shall not operate as a waiver thereof or affect the Owner's right thereafter to exercise the same, and any single or partial exercise of any such right, remedy or power shall not preclude any other or further exercise thereof or the exercise of any other right, remedy or power.

SECTION 27. GOVERNING LAW

This Lease shall be governed by and construed in accordance with the laws of the State of Michigan; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303, such additional rights arising out of the filing, recording or deposit hereof, if any, and out of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed, recorded or deposited or in which any Unit shall be located, and any rights arising out of the marking of the Units.

SECTION 28. AGREEMENTS FOR BENEFIT OF OWNER'S ASSIGNS

All rights of the Owner hereunder shall inure to the benefit of the Owner and any of the Owner's assigns (including the Agent).

IN WITNESS WHEREOF, the parties hereto have caused

this instrument to be executed by duly authorized officers
as of the date first above written.

GRAND TRUNK WESTERN RAILROAD
COMPANY,

by

[Corporate Seal]

Vice President

Attest:

Secretary

U S WEST FINANCIAL
SERVICES, INC.,

by

[Corporate Seal]

Vice President

Attest:

Secretary

APPENDIX A TO LEASE
Units of Railroad Equipment

| <u>Type</u> | <u>Specifi cations</u> | <u>AAR Mechanical Designation</u> | <u>Quantity</u> | <u>Lessee's Identification Numbers (Both Inclusive)</u> | <u>Estimated Unit Base Price*</u> | <u>Estimated Total Base Price*</u> | <u>Estimated Time and Place of Delivery</u> |
|--|----------------------------|---|-----------------|---|---|--|--|
| bi-level fully enclosed auto racks w/tie downs | R-BG 1014 | FA | 145 | 88000- 88144 | \$25,000 | \$3,625,000 | Jan. 1988-Feb. 1988 at Builder's plant at Greenville Pennsylvania |
| | | | <u>145</u> | | | <u>\$3,625,000</u> | |

* Includes freight to Lessee's lines at Lordstown, Ohio, to be prepaid by Builder.

Lease of Railroad Equipment

Casualty Value Percentages Schedule

| <u>Casualty Payment Date</u> | <u>Percentage of Purchase Price</u> |
|--------------------------------------|---|
| 1/28/88 | 101.97993 |
| 7/28/88 | 107.15034 |
| 1/28/89 | 108.26600 |
| 7/28/89 | 105.45663 |
| 1/28/90 | 106.86536 |
| 7/28/90 | 107.49409 |
| 1/28/91 | 107.95695 |
| 7/28/91 | 104.01299 |
| 1/28/92 | 104.26532 |
| 7/28/92 | 99.73897 |
| 1/28/93 | 99.87618 |
| 7/28/93 | 94.75744 |
| 1/28/94 | 97.88838 |
| 7/28/94 | 88.58092 |
| 1/28/95 | 88.58092 |
| 7/28/95 | 78.82900 |
| 1/28/96 | 78.94401 |
| 7/28/96 | 68.35231 |
| 1/28/97 | 68.53007 |
| 7/28/97 | 57.21388 |
| 1/28/98 | 57.43603 |
| 7/28/98 | 45.44084 |
| 1/28/99 | 45.98072 |
| 7/28/99 | 33.06052 |
| 1/28/00 | 33.97185 |
| 7/28/00 | 20.00000 |

ANNEX D
to
Conditional Sale Agreement

[CS&M Ref. 6442-002]

ASSIGNMENT OF LEASE AND AGREEMENT

Dated as of December 1, 1987

Between

U S WEST FINANCIAL SERVICES, INC.,
as Owner,

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,
as Agent,

ASSIGNMENT OF LEASE AND AGREEMENT dated as of December 1, 1987, between U S WEST FINANCIAL SERVICES, INC., a Colorado corporation ("Owner"), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland banking corporation, as agent ("Agent") under a Participation Agreement dated as of the date hereof ("Participation Agreement").

The Owner is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with Trinity Industries, Inc. ("Builder") providing for the sale to the Owner of such units of railroad equipment ("Units") described in Annex B to the CSA as are delivered to and accepted by the Owner thereunder.

GRAND TRUNK WESTERN RAILROAD COMPANY ("Lessee") and the Owner have entered into a Lease of Railroad Equipment dated as of the date hereof ("Lease") providing for the leasing by the Owner to the Lessee of the Units.

The Owner will assign certain of its rights under the Lease to the Agent in order to secure the obligations of the Owner under the CSA and as an inducement to the Investors (as defined in the Participation Agreement) to invest in the CSA Indebtedness (as defined in Section 4.3(b) of the CSA).

In consideration of the agreements hereinafter set forth, the parties hereto hereby agree as follows:

1. The Owner hereby transfers and assigns to the Agent, as collateral security for the payment and performance of the obligations of the Owner under the CSA, all the Owner's right, title and interest, powers, privileges and other benefits under the Lease (except any amounts of indemnity payable pursuant to Sections 6 and 12 of the Lease, any proceeds of public liability insurance maintained pursuant to Section 7.6 of the Lease payable to the Owner, any amounts payable to the Owner pursuant to the second paragraph of Section 7.6 or Section 20 of the Lease and any indemnity payments made pursuant to the Indemnity Agreement dated as of the date hereof between the Lessee and the Owner, collectively, "Excepted Payments"), including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Owner from the Lessee under or pursuant to the provisions of the Lease, whether as rent, casualty

payment, indemnity, liquidated damages or otherwise (such moneys other than Excepted Payments, being called "Payments"), and the right, upon the happening of an Event of Default, to make all waivers and agreements, to give all notices, consents and releases, to take all action specified in the Lease and to do any and all other things whatsoever which the Owner is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Owner hereby irrevocably authorizes and empowers the Agent in its own name or in the name of its nominee or in the name of the Owner or as its attorney to demand, sue for, collect and receive any and all Payments to which the Owner is or may become entitled under the Lease and to enforce compliance by the Lessee with all the terms and provisions thereof, and the Agent shall have the exclusive right to control any such proceedings to enforce compliance by the Lessee with all the terms and provisions of the Lease. None of the following provisions of this Assignment shall be construed to apply to Excepted Payments.

The Agent agrees to accept any Payments made by the Lessee for the account of the Owner pursuant to the Lease. To the extent received, the Agent will apply such Payments to satisfy the obligations of the Owner under the CSA then due and payable and, so long as no event of default under the CSA or event which with notice or lapse of time or both would constitute an event of default thereunder shall have occurred and be continuing, any balance shall be paid to the Owner on the same date such Payment is applied to satisfy such obligations of the Owner by bank wire of immediately available Federal funds to the Owner on such date at such address as may be specified to the Agent in writing, and such balance shall be retained by the Owner. If the Agent shall not receive any rental payment under § 3.1 of the Lease when due, the Agent shall notify the Owner and the Lessee at their respective addresses set forth in the Lease; provided, however, that the failure of the Agent to so notify the Owner shall not affect the obligations of the Owner hereunder or under the CSA.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Agent to or transfer or in any way affect or modify the liability of the Owner under the Lease. Notwithstanding this Assignment or any subsequent assignment, all obligations of the Owner to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns against and only against persons other than the Agent.

3. The Owner will faithfully perform each and every obligation, covenant and agreement which the Lease provides is to be performed by the Owner and, without the written consent of the Agent, will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee (including without limitation the obligation to pay the rents in the manner and at the time and place specified therein), or enter into any agreement amending, modifying or terminating the Lease, all except as permitted by Section 12.2 of the CSA. Any such amendment, waiver, modification or termination of the Lease without the Agent's consent shall be void.

4. The Owner hereby constitutes the Agent the Owner's true and lawful attorney, irrevocably, with full power (in the name of the Owner or otherwise) to demand and receive all Payments due and to become due under or arising out of the Lease to which the Owner is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Agent may deem to be necessary or advisable.

5. Upon the full discharge and satisfaction of all sums due from the Owner under the CSA, this Assignment and all rights herein assigned to the Agent shall terminate, and all right, title and interest of the Agent in and to the Lease shall revert to the Owner. Promptly following such full discharge and satisfaction, the Agent will advise the Lessee in writing that all sums due from the Owner under the CSA have been fully discharged and satisfied and instruct the Lessee that no further payments under the Lease are to be made to the Agent.

6. The Owner will pay and discharge any and all claims, liens, charges or security interests described in the proviso to Section 13.3 of the CSA to the extent required by said proviso.

7. Upon the request of the Agent, the Owner will from time to time execute, acknowledge and deliver any and all further instruments required by law or requested by the Agent in order to confirm or further assure the interest of the Agent hereunder.

8. The Agent may assign all or any of the rights assigned to it hereby or arising under the Lease, including without limitation the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

9. This Assignment shall be governed by and construed in accordance with the laws of the State of Colorado; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303, such additional rights arising out of the filing, recording, or depositing hereof, if any, as shall be conferred by the laws of the several jurisdictions in which this Assignment shall be filed, recorded or deposited or in which any Unit shall be located, and any rights arising out of the marking of the Units.

10. The Owner shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or mailed to the Agent at its address set forth in the CSA or at such other address as the Agent shall designate.

11. So long as no event of default under the CSA has occurred and is continuing, the Agent will not exercise or seek to exercise any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Owner to the Agent by this Assignment, except the right to demand, sue for, collect, receive and apply the Payments as provided in Section 1 hereof, and the Owner may (if the Agent is not already doing so) exercise or seek to exercise its rights, powers, privileges and remedies arising out of § 13.1(a) of the Lease; provided, however, that the Owner shall not terminate the Lease or otherwise exercise or seek to exercise any rights, powers, privileges and remedies arising out of § 13.1(b) of the Lease without the prior written consent of the Agent.

12. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Agent shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual dates of execution

hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

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

U S WEST FINANCIAL
SERVICES, INC.,

by

Vice President

[Corporate Seal]

Attest:

Secretary

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY, as Agent,

by

Vice President

[Seal]

Attest:

Corporate Trust Officer

CONSENT AND AGREEMENT

Grand Trunk Western Railroad Company, a Michigan and Indiana corporation ("Lessee"), the lessee named in the Lease of Railroad Equipment ("Lease") referred to in the foregoing Assignment of Lease and Agreement ("Lease Assignment"), hereby acknowledges receipt of a copy of the Lease Assignment and consents to the lease assignment in accordance with the terms of the Lease Assignment and agrees that:

(1) Pursuant to § 3.3 of the Lease, it will pay all Payments (as defined in the Lease Assignment) payable under the Lease by bank wire transfer of Federal funds directly to MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as agent ("Agent"), the assignee named in the Lease Assignment, at Two Hopkins Plaza, Baltimore, Maryland 21201, attention of Corporate Trust Department (or at such other address as may be furnished in writing to the Lessee by the Agent), for credit to its Corporate Trust Department's Account No. 620081-8 with advice that the payment is "Re: GTW 12/1/87".

(2) it shall not be entitled to any abatement of rent or additional rent, reduction thereof or setoff against or recoupment of rent or additional rent, including, but not limited to, abatements, reductions, setoffs or recoupments due or alleged to be due by reason of any past, present or future claims or counterclaims of the Lessee against the Owner under the Lease or under the CSA or against the Builder (as defined in the Lease Assignment) or the Agent or otherwise (provided that the foregoing shall not be deemed a waiver by the Lessee of its rights to pursue any past, present or future claims directly against the Builder or the Lessee's right to require the Owner to perform the Owner's obligations under the Documents (as defined in the Participation Agreement dated as of the date hereof));

(3) the Agent shall be entitled to the benefits of and to receive and enforce performance of all the covenants to be performed by the Lessee under the Lease as though the Agent were named therein as the Owner to the extent provided in the Lease Assignment; and the Agent shall not by virtue of the Lease Assignment be or become subject to any liability or obligation under the Lease or otherwise; and

(4) without the prior written consent of the Agent, the Lease shall not be terminated or modified nor shall any action be taken or omitted by the Lessee which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Agent by signing the acceptance at the foot hereof, shall be deemed to be a contract for the benefit of the Agent and its successors and assigns under the laws of the State of Michigan, and for all purposes, shall be construed in accordance with the laws of said state.

GRAND TRUNK WESTERN RAILROAD
COMPANY,

by

Vice President

[Corporate Seal]

Attest:

Secretary

The foregoing Consent and Agreement is hereby accepted as of December 1, 1987.

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY, as Agent,

by

Vice President