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DIRECT DIAL NUMBER
457-1634

February 13, 1981

12928
RECORDATION NO. ..... Filed 1425

FEB 12 1981 -2 00 PM

INTERSTATE COMMERCE COMMISSION

No. 1-044A145
Date FEB 13 1981
Fee $ 50.00
ICC Washington, D.C.

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FEE OPERATION BR.

Mrs. Agatha L. Mergenovich
Office of the Secretary
Recordation Office
Interstate Commerce Commission
12th Street and Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Crocker Investor Lease Corporation, Funding Systems Railcars, Inc., and FSC Corporation: Four Hundred (400) 100-ton gondola cars.

Dear Ms. Mergenovich:

In accordance with the provisions of Section 11303 of the Revised Interstate Commerce Act, 49 U.S.C. § 11303, and Part 1116 of Title 49 of the Code of Federal Regulations, I request, as special counsel for Funding Systems Railcars, Inc., that the enclosed document be be recorded and filed by the Interstate Commerce Commission.

You will find enclosed herewith an original and two certified copies of the following document:

> "Lease of Railroad Equipment," dated as of January 1, 1981, among Crocker Investor Lease Corporation, as Lessor, Funding Systems Railcars, Inc., as Lessee, and FSC Corporation, as Guarantor.

This Lease in intended to effectuate the lease by Funding Systems Railcars, Inc., of Four Hundred (400) 100-ton gondola cars from Crocker Investor Lease Corporation. One Hundred (100) of the gondola cars have been marked and bear the following road

Counterpart — Joan G. McDonough

numbers and markings: WSOR 5630-5729, inclusive. The remaining gondola cars will be marked and assigned appropriate road numbers. This information will be supplied by an amendment to this Lease. Each of the Four Hundred (400) gondola cars is a 100-ton vehicle, 52 feet, 6 inches in length and is being constructed by Evans Transportation Company and/or Evans Railroad Car Leasing Company.

The parties to this Lease of Railroad Equipment are:

Crocker Investor Lease Corporation
595 Market Street
San Francisco, California 94105
Attention: Leveraged Leasing Group

Funding Systems Railcars, Inc.
2215 Sanders Road
Suite 370
Northbrook, Illinois 60062
Attention: President

and

FSC Corporation
One Thousand RIDC Plaza
Pittsburgh, Pennslvania 15238
Attention: Treasurer

Would you please stamp, as filed, and return the enclosed copies to my office at your earliest convenience? If you have any questions in this regard, please do not hesitate to contact me.

Sincerely yours,

JACKSON, CAMPBELL & PARKINSON, P.C.

By: David H. Cox
David H. Cox

DHC/lg

Enclosures As Stated.

cc: Richard M. Contino, Esquire

Interstate Commerce Commission
Washington, D.C. 20423

2/13/81

OFFICE OF THE SECRETARY

David H. Cox
Jackson, Campbell & Parkinson, PC.
One Lafayette Centre
Suite 300 South
1120 20th Street, N.W.
Washington, D.C. 20036

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 2/13/81 at 2:00pm, and assigned re-recordation number(s). 12928

Sincerely yours,

Agatha L. Mergenovich

Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

12928
RECORDATION NO. ..... Filed 1425

FEB 12 1981 -2 00 PM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of January 1, 1981

among

CROCKER INVESTOR LEASE CORPORATION,

as Lessor

FUNDING SYSTEMS RAILCARS, INC.,

as Lessee

and

FSC CORPORATION,

as Guarantor

---

400 ONE HUNDRED-TON

GONDOLA CARS

LEASE OF RAILROAD EQUIPMENT

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LEASE OF RAILROAD EQUIPMENT dated as of January 1, 1981 among CROCKER INVESTOR LEASE CORPORATION (hereinafter, together with its successors and assigns, called "Lessor"), FUNDING SYSTEMS RAILCARS, INC. (hereinafter called "Lessee") and FSC CORPORATION (hereinafter called "Guarantor").

WHEREAS, Crocker National Bank, the owner of all of the outstanding capital stock of Lessor, has entered into an Agreement of Settlement and Release (hereinafter called the "Settlement Agreement") with Evans Transportation Company (hereinafter, together with its permitted assigns under the Settlement Agreement, called "Builder") covering the sale and delivery by Builder to Lessor, on the terms and conditions therein set forth, of the railroad equipment described in Annex A hereto (hereinafter called the "Equipment");

WHEREAS, Lessee desires to lease all the units of the Equipment, or such lesser number as are delivered, accepted and settled for under the Settlement Agreement, at the rentals, for the term and upon the conditions hereinafter stated (such number of units as are delivered, accepted and settled for under the Settlement Agreement being hereinafter called the "Units");

WHEREAS, as an inducement to Lessor to purchase the Units and lease the same hereunder, Lessee, Guarantor and Lessor, concurrently with the execution and delivery of this Lease, are entering into a Tax Indemnification Agreement dated as of the date hereof (hereinafter called the "Tax Indemnification Agreement") with respect to certain income tax consequences of the transactions contemplated by this Lease; and

WHEREAS, as a further inducement to Lessor to lease the same hereunder, Guarantor, by its execution and delivery of this Lease, is unconditionally guaranteeing performance of all Lessee's obligations under this Lease and the Tax Indemnification Agreement.

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by Lessee and Guarantor, Lessor hereby leases the Units to Lessee upon the following terms and conditions:

SECTION 1. Net Lease. This Lease is a net lease and Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or set-offs due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor under this Lease or against Lessor under the Settlement Agreement, including Lessee's rights by subrogation thereunder against Builder, or other-

wise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of Lessor or 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 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 the bankruptcy, reorganization or similar proceeding against Lessee or Lessor, 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 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; provided, however, that so long as Lessor shall not have made an assignment permitted by Section 12, other than an assignment to any corporaton which is a member of the same "affiliated group" (as defined in Section 1504 of the Internal Revenue Code of 1954, as amended) as Lessor (or the corporation which holds all the voting securities of Lessor), Lessee shall be entitled to contest any rental payment due hereunder, but only to the extent that there shall then exist a material breach of Lessor's representation in Section 19(h) or Lessor's covenant in the penultimate sentence of Section 20. To the extent permitted by applicable law, 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 Lessee hereunder shall be final, and Lessee shall not seek to recover all or any part of such payment from Lessor, including any assignee of Lessor permitted by Section 12, for any reason whatsoever.

SECTION 2. Delivery and Acceptance of Units. Lessor hereby appoints Lessee as its agent for the inspection and acceptance of the units of the Equipment tendered by Builder pursuant to the Settlement Agreement, and Lessee accepts such appointment. Lessor will cause each such unit to be tendered to Lessee at the place at which such unit is tendered to Lessor under the Settlement Agreement; and Lessor will use its best efforts to cause Builder to tender units of the Equipment in such lots as Lessee may reasonably request. Within 10 days after receipt by Lessee of written notice from Builder of tender of units of the Equipment, plus such further period as Lessee is delayed from entering upon the premises where such units are then located

or stored (and Lessee shall diligently pursue permission for such entry), Lessee, on its own behalf under this Lease and as agent of Lessor under the Settlement Agreement, will cause an employee of Lessee or an authorized representative of Lessee to inspect the same. Lessee shall execute and deliver a certificate of acceptance (hereinafter called a "Certificate of Acceptance"), conforming with Exhibit B of the Settlement Agreement and stating that the units therein described have been inspected and accepted on behalf of Lessor and Lessee on the date of such Certificate of Acceptance, with respect to all such units which constitute Conforming Cars (as hereinafter defined), whereupon such unit shall be deemed to have been accepted by Lessee hereunder, shall (without limiting Section 9) as between Lessor and Lessee be conclusively presumed to comply with the specifications, requirements and standards applicable thereto pursuant to the Settlement Agreement and to be in good working order and repair without inherent vice or defect in title, condition, design, operation or fitness for use, except that such presumption shall not limit Lessor's representation in Section 19(h), and shall thereafter be subject to all the terms and conditions of this Lease. Pursuant to the Settlement Agreement, upon such acceptance by Lessee Builder shall consign the accepted Units to a common carrier for transportation to a destination designated by Lessee for use by Lessee in interstate commerce, it being understood that Lessor's exclusive remedy for Lessee's breach of this sentence is the increase in Lessor's Cost provided for in the last sentence of the first paragraph of Section 3.

Lessee, on behalf of Lessor and Lessee, may reject units of the Equipment that do not constitute Conforming Cars by notifying Builder (in Georgia) and Lessor in writing within 10 days after receipt by Lessee from Builder of notice of tender of such units, plus such further period as Lessee is delayed from entering upon the premises where such units are then located or stored (and Lessee shall diligently pursue permission for such entry), such rejection notice to identify the unit or units rejected and the particular reasons for its or their rejection. If Lessee fails to give Builder written notice of rejection within such 10-day period (plus such further period, if any) with respect to any units so tendered, such units shall conclusively be deemed Conforming Cars and accepted hereunder, and Lessee shall execute and deliver to Builder and Lessor an appropriately dated Certificate of Acceptance with respect to such units with the same effect as provided in the preceding paragraph of this Section 2. Lessee acknowledges that Builder has undertaken in the Settlement Agreement, within a reasonable time after receiving notice of rejection, but in no event later than May 29, 1981 (plus such further period, if any), to cure any tender of non-Conforming Cars by tendering Conforming Cars subject to a reasonable opportunity to

inspect. Lessee agrees to make such inspection on behalf of Lessor and Lessee, to accept or reject the unit or units tendered and to execute and deliver a Certificate of Acceptance, all as above provided with respect to units originally tendered.

If Builder disputes any rejection of units of the Equipment as non-Conforming Cars, Lessee, on behalf of Lessor and Lessee, and Builder shall submit their dispute to arbitration. The arbitration shall be governed by any applicable rules or standards of the American Association of Railroads, and shall take place in Atlanta, Georgia, or such other place as Lessee and Builder may agree. The arbitrator shall be selected by agreement of Lessee and Builder or, if they fail to agree, each shall select an arbitrator, who will in turn select by agreement an arbitrator to decide the principal dispute. The arbitrator shall decide if the units under challenge are Conforming Cars within the meaning of this Lease. The arbitrator's decision shall be immediately effective and binding upon Lessee, Builder and Lessor. If Lessee shall not prevail in such arbitration, Lessee shall pay the cost thereof and shall execute and deliver to Builder and Lessor a Certificate of Acceptance with respect to the challenged units with the same effect as provided in the first paragraph of this Section 2.

For the purposes of this Lease, "Conforming Cars" shall mean railroad cars conforming as to materials and workmanship to Builder's Specification No. 78-119 (Lot 1715) dated January 5, 1981 (a copy of which is attached to the Settlement Agreement) and marked as provided in Section 5 of this Lease.

Any unit of the Equipment not delivered, accepted and settled for by Lessor under the Settlement Agreement shall not be subject to this Lease.

Notwithstanding anything herein to the contrary, Lessee shall indemnify and hold Lessor harmless from any liability, loss, cost or expense, including reasonable attorneys' fees, suffered or incurred by Lessor as a result of (a) Lessee's failure to reject in a timely manner or improperly rejecting any railroad car tendered under the Settlement Agreement and, in furtherance thereof, Lessee agrees to submit to the jurisdiction of any court in the continental United States of America in which Lessor may be sued by Builder by reason of such failure to reject or improper rejection or (b) Lessee's failure to consummate the transactions herein contemplated.

In the event Builder shall fail to tender Conforming Cars in violation of its obligations under the Settlement Agreement and Lessee suffers monetary damages as a result

therof, Lessor hereby irrevocably appoints and constitutes Lessee as its agent and attorney-in-fact to assert and enforce from time to time, in the name and for the account of Lessor and/or Lessee, as their interests may appear, at Lessee's sole cost and expense, whatever claims and rights Lessor may have against Builder in respect of such violation.

SECTION 3. Rentals. Lessee agrees to pay to Lessor, as rental for each Unit subject to this Lease, 64 consecutive payments in arrears on March 1, June 1, September 1 and December 1 in each year, commencing September 1, 1981 and terminating June 1, 1997. On September 1, 1981, Lessee shall pay to Lessor an amount equal to the sum of .0316727% of Lessor's Cost per day for each Unit then subject to this Lease for each day elapsed from and including the date of acceptance of such Unit as specified in Section 2 through September 1, 1981. In addition, there shall be 63 quarterly rental payments, commencing December 1, 1981, each in an amount equal to 2.85056% of Lessor's Cost for each Unit then subject to this Lease. Prior to August 31, 1981, Lessee, Guarantor and Lessor shall execute a supplement hereto establishing Lessor's Cost of each Unit (which shall be equal to Builder's total invoice price plus freight charges (not included in such invoice price) from the place where Builder tendered each Unit to the destination designated by Lessee to Builder as provided in the last sentence of the first paragraph of Section 2 plus any sales or use tax imposed by the State of Georgia or any political subdivision thereof excluded from item (iv) or item (v) in the first paragraph of Section 6 which is properly includable in the basis of such Unit for federal income tax purposes).

If any of the quarterly rental payment dates referred to above is not a Business Day, the quarterly rental payment otherwise payable on such date shall be payable on the next succeeding Business Day. The term "Business Day" as used herein means calendar days, excluding Saturdays, Sundays and all days on which banking institutions in San Francisco, California or Chicago, Illinois are authorized or obligated to remain closed.

Lessor hereby instructs Lessee to make all the payments provided for in this Lease directly to Lessor at Lessor's principal office in San Francisco, California.

All payments provided for in this Lease shall be made in immediately available funds in such coin or currency of the United States of America as at the time shall be legal tender for the payment of public and private debts.

The rentals provided for in the first paragraph of this Section 3 are subject to adjustment as provided in Section 12 of the Tax Indemnification Agreement.

SECTION 4. Termination of Lease. Subject to the provisions of Sections 7, 10 and 13, this Lease shall terminate on June 1, 1997.

SECTION 5. Identification Marks. Lessee will cause each Unit to be kept numbered with an identifying number as set forth in Annex A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Owned By and Leased From a Bank or Trust Company and May Be Subject to a Security Agreement Filed with the Interstate Commerce Commission," or other appropriate words designated by Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect Lessor's title to, and any security interest of any assignee of Lessor permitted by Section 12 in, such Units and the rights of Lessor under this Lease. Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or cause to be replaced promptly any such markings which may be removed, defaced or destroyed. Lessee will not change the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with Lessor and filed, recorded, registered and deposited by Lessee in all public offices where this Lease shall have been filed, recorded, registered and deposited and (ii) Lessee shall have furnished Lessor an opinion of counsel for Lessee with respect thereto reasonably satisfactory to Lessor.

Except as provided in the immediately preceding paragraph, Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Units may be lettered with the names or initials or other insignia customarily used by Lessee or any sublessee permitted by Section 12.

Section 6. General Tax Indemnification. All payments to be made by Lessee under this Lease to Lessor will be free of expense to Lessor with respect to collection charges and any Impositions as hereinafter defined. Lessee agrees to pay, on demand, any and all Impositions and shall save harmless and indemnify Lessor from and against all such Impositions. As used in this Section 6, "Impositions" shall mean the amount of any local, state, federal or foreign taxes of any nature whatsoever (including any value added tax), assessments, license fees, governmental charges, duties, fines, interest or penalties hereafter levied or imposed upon or in connection with or measured by any Unit

or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, sale, return or other disposition thereof; the rentals, receipts or earnings arising therefrom or value added thereto; this Lease or any payment made pursuant hereto; or the property, the income or other proceeds received with respect to the Units. Anything to the contrary notwithstanding, the term "Impositions" shall not include: (i) United States federal tax and state tax on net income; (ii) any tax imposed by Section 531 or 541 of the Internal Revenue Code of 1954, as amended; (iii) the aggregate of all franchise taxes measured by net income based on such receipts, or franchise taxes measured by capital stock, paid-in capital, retained earnings, net assets or net worth, up to the amount in the aggregate of any such franchise taxes which would be payable to the states and cities in which Lessor had previously maintained places of business, except any such tax which is in substitution for or relieves Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided; (iv) any tax imposed on the purchase of the Units from Builder (other than by reason of Lessee's having used or arranged for the use of any Unit in an intrastate shipment in the State of Georgia); and (v) any sales or use taxes imposed upon the voluntary transfer or disposition by Lessor of all or any of the Units (other than a claim that this Lease constitutes such a transfer or disposition by reason of Lessee's having used or arranged for the use of any Unit in an intrastate shipment in the State of Georgia), it being understood that any transfer or disposition which occurs after a Default (as defined in the penultimate paragraph of Section 10) or an Event of Default has occurred and while the same is continuing, or after a Casualty Occurrence, shall not be deemed to be a voluntary transfer or disposition.

In the event any reports or returns with respect to Impositions are required to be made on the basis of individual Units, Lessee will either prepare and file such reports or returns in such manner as to show as required the interest of Lessor in such Units or, if Lessee shall not be permitted to file the same, Lessee will promptly notify Lessor of such requirement, prepare such reports or returns in such manner as shall be satisfactory to Lessor and deliver the same to Lessor within a reasonable period prior to the date the same is to be filed. All costs and expenses (including legal and accountants' fees) of preparing such reports and returns shall be borne by Lessee.

Lessee shall furnish promptly upon request such information and data as is normally available to Lessee and which Lessor reasonably may require to permit compliance with the requirement of any taxing authority.

All amounts payable by Lessee pursuant to this Section 6 shall be payable, to the extent not theretofore paid, on written demand by Lessor; and all the indemnities contained in this Section 6 shall continue, but only as to periods included in the term of this Lease and the period of assembly, delivery, storage and transporting provided for in Sections 11 and 14, in full force and effect notwithstanding the expiration or other termination of this Lease.

SECTION 7. Payment for Casualty Occurrences; Insurance. In the event that any Unit shall become worn out, lost, stolen, destroyed or irreparably damaged, or taken or requisitioned by condemnation or otherwise in such manner as to result in the loss of possession (excluding any sublease permitted by Section 12) by Lessee for 90 consecutive days, except any requisition for use by the United States Government (hereinafter called the "Government") for a stated period not in excess of the then remaining term of this Lease (such occurrences being hereinafter called "Casualty Occurrences"), during the term of this Lease, Lessee shall promptly and fully notify Lessor with respect thereto. On the rental payment date next succeeding such notice ("Loss Payment Date"), Lessee shall pay to Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on the Loss Payment Date, plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the rental payment date which is the same as or next occurs after the date of such Casualty Occurrence ("Casualty Payment Date"); provided, however, that if the Loss Payment Date shall occur after the Casualty Payment Date, each quarterly rental payment in respect of such Unit for the period occurring after the Casualty Payment Date shall be in an amount equal to interest on the Casualty Value of such Unit for such period at the rate specified in Section 17. Upon (but not prior to) the making of such payment by Lessee in respect of any Unit, the rental for such Unit shall thereafter cease, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) Lessor shall be entitled to recover possession of such Unit. Lessor hereby appoints Lessee as its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof at the best price obtainable, as determined by Lessee, on an "as is, where is" basis. If Lessee shall have previously paid the Casualty Value to Lessor, unless a Default or an Event of Default shall have occurred and be continuing, Lessee shall be entitled to the proceeds of such sale to the extent that such proceeds do not exceed the Casualty Value of such Unit, and Lessor shall be entitled to any excess.

The Casualty Value of each Unit as of its Casualty Payment Date shall be that percentage of Lessor's Cost (as set forth in Annex A hereto or as supplemented in accordance with Section 3) of such Unit as is set forth in Annex B hereto opposite such date.

In the event of the requisition for use by the Government of any Unit during the term of this Lease, unless such requisition shall constitute a Casualty Occurrence, all Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government to Lessee at any time after the end of the term of this Lease, Lessee shall be obligated to return such Unit to Lessor pursuant to Section 11 or 14, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease, but Lessee shall in all other respects comply with the provisions of Section 11 or 14, as the case may be, with respect to such Unit. All payments received by Lessor or Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to or retained by Lessee provided no Default or Event of Default shall have occurred and be continuing; and, except as provided in the last sentence of the first paragraph of this Section 7, all payments received by Lessor or Lessee from the Government for the use of such Unit after the term of this Lease shall be paid over to or retained by Lessor.

Except as hereinabove in this Section 7 provided, Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after acceptance thereof by Lessee hereunder until such Unit shall have been returned to Lessor in accordance with Section 11 or 14.

Lessee will, at all times prior to the return of the Units to Lessor in accordance with the terms of this Lease (including any storage period provided for in Sections 11 and 14), at its own expense, cause to be carried and maintained with insurers of recognized responsibility (a) property and casualty insurance in respect of the Units at the time subject hereto and (b) public liability insurance against claims for personal injury, death or property damage resulting from the ownership, possession, maintenance, use or operation of the Units at the time subject hereto, in both cases in at least such amounts and against such risks as are customarily insured against by companies of recognized standing engaged in a business similar to Lessee in respect to similar equipment; provided, however, that in no event shall (i) the amount of such property and casualty insurance be less than the aggregate Casualty Value of the Units at the time subject hereto, except that Lessee may self-insure in an amount equal to 1% of its net worth, and (ii) the amount of such public liability insurance be less than $20,000,000 in respect of any one occurrence; and the benefits thereof shall be payable to Lessor and Lessee, as their respective interests may appear. Any policy of insurance carried in accordance with this paragraph shall (i) require

30 days' prior written notice to Lessor of a material change or of cancellation or non-renewal, (ii) name Lessor as an additional named insured or loss payee, as its interest may appear, and provide that all provisions of such policy, except the limits of liability, will operate in the same manner as if there were a separate policy governing such additional insured, (iii) include a waiver by the insurer of all claims for premiums against Lessor, (iv) provide that, in respect of the interests of Lessor, such insurance will not be invalidated by reason of any breach of representation or violation of warranty by Lessee to the insurer in connection with obtaining such policy of insurance or maintaining the same in full force and effect and (v) be primary without rights of contribution from any other insurance which Lessor or Lessee may have. Lessee shall deliver to Lessor a copy of each such policy (or a certificate of insurance relating thereto) on or before the date of payment (as specified in Paragraph 5.1 of the Settlement Agreement) with respect to the Units then being settled for.

Any insurance proceeds (net of all costs and expenses of collection, including attorneys' fees) resulting from insurance carried by Lessee or condemnation payments received by Lessor in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by Lessee to Lessor in respect of Casualty Occurrences pursuant to this Section 7. If Lessor shall receive any such net insurance proceeds or condemnation payments after Lessee shall have made payment pursuant to this Section 7 without deduction for such net insurance proceeds or such condemnation payments, Lessor shall pay such net insurance proceeds or condemnation payments to Lessee, within 10 days after receipt, up to an amount equal to the Casualty Value with respect to a Unit paid by Lessee unless a Default or an Event of Default shall have occurred and be continuing, in which case the amount otherwise payable to Lessee may be retained by Lessor and applied to discharge the liabilities of Lessee under Section 10. The balance of such net insurance proceeds or condemnation payments shall remain the property of Lessor. All net insurance proceeds received by Lessor or Lessee with respect to a Unit not suffering a Casualty Occurrence shall be applied in payment (when due) of the cost of repairing the damage to such Unit. Any condemnation payments received during the term of this Lease with respect to a Unit not suffering a Casualty Occurrence shall be the property of Lessee unless a Default or an Event of Default shall have occurred and be continuing, in which case the amount otherwise payable to Lessee may be retained by Lessor and applied to discharge the liabilities of Lessee under Section 10.

SECTION 8. Reports. On or before March 31 in each year, commencing with the year 1982, Lessee will fur-

nish to Lessor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the calendar year then ended (specifying the date of each Casualty Occurrence) or, to Lessee's knowledge, are then undergoing repairs (other than running repairs) or are 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 Lessor may reasonably request and (b) stating that, in the case of all Units repaired or repainted during the period covered by such statement, the numbers and markings required by Section 5 have been preserved or replaced. Lessor shall have the right, by its agents, to inspect the Units and Lessee's records with respect thereto at such reasonable times as Lessor may request during the term of this Lease, which inspection shall not materially and unreasonably interfere with Lessee's normal business operations.

SECTION 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO LESSEE HEREUNDER, AND LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR, EXCEPT AS SET FORTH IN SECTION 19(h), AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, it being agreed that all such risks, as between Lessor and Lessee, are to be borne by Lessee; but Lessor hereby irrevocably appoints and constitutes Lessee as 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 Lessor and/or Lessee, as their interests may appear, at Lessee's sole cost and expense, whatever claims and rights Lessor may have as owner of the Units against Builder (or any subcontractor or supplier) under the provisions of the Settlement Agreement. Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between Lessee and Lessor that the Units described therein are in all of the foregoing respects satisfactory to Lessee, and Lessee will not assert any claim of any nature whatsoever against Lessor based on any of the foregoing matters; provided, however, that Lessor shall be liable for a material breach of its representation in Section 19(h).

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

dictions in which operations involving the Units may extend, with the interchange rules of the Association of American Railroads, 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 and with all provisions of the insurance policies carried by Lessee pursuant to Section 7; and in the event that such laws, rules or provisions require any alteration, replacement, addition or modification of or to any part of any Unit, Lessee will conform therewith at its own expense; provided, however, that Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of Lessor, adversely affect the property or rights of Lessor under this Lease or create any danger that Lessor or its agents or servants will incur criminal or other liability for which no indemnification is provided hereunder.

Lessee shall pay all costs, expenses, fees and charges (other than any thereof included in Lessor's Cost as provided in Section 3) incurred in connection with the use and operation of the Units. Lessee, at its own cost and expense, shall maintain, repair and service, or cause to be maintained, repaired and serviced, each of the Units so as to keep it in the same operating condition, order, repair and appearance as it was when it first became subject to this Lease, ordinary wear and tear excepted; and at all times, such Unit shall be suitable for use in interchange. Lessee, at its own cost and expense and within a reasonable period of time, shall also replace all parts of any Unit that may have become worn out, lost, stolen, confiscated, destroyed or otherwise rendered permanently unfit for use with appropriate replacement parts, which shall be free and clear from any mortgage, lien, charge, security interest or encumbrance except for those created by Lessor in accordance with this Lease.

Lessee, at its own cost and expense, may at its option furnish additions, modifications and improvements to the Units during the term of this Lease if the same are readily removable without causing material damage to the Units. All such additions, modifications and improvements shall remain the property of Lessee, but shall be subject to any lien which may be created by Lessor pursuant to Section 12; provided, however, that upon the occurrence of an Event of Default all such additions, modifications and improvements shall constitute accessions to the Units and ownership thereof shall immediately vest in Lessor. Lessee shall not, however, without the prior written consent of Lessor, alter any Unit, or affix or install any accessories or devices on

any Unit, if the same shall impair the originally intended function or use of such Unit or shall diminish its commercial value. Except as provided in the first sentence of this paragraph, any and all additions to and improvements of any Unit, and any and all parts installed on and additions and replacements made to any Unit, shall constitute accessions to such Unit and ownership thereof, free from any mortgage, lien, charge, security interest or encumbrance (except for those created by Lessor in accordance with this Lease), shall immediately be vested in Lessor.

Lessee agrees to indemnify, protect and hold harmless Lessor (including its agents and servants) from and against all losses, damages, injuries, liabilities, claims (including claims for negligence or strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, penalties and interest, arising out of or as a result of (or alleged to arise out of or as a result of) (i) the entering into or the performance of this Lease, or any amendment, consent, waiver or modification hereof, the ownership or possession of any Unit, the use, operation, condition (whether defects are latent or discoverable by Lessor or Lessee), maintenance, repair, improvement, purchase, delivery, rejection, lease, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage, sale or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in Section 14, (ii) any loss or damage to the Units, ordinary wear and tear excepted, (iii) any act or omission of Lessee when acting as agent or attorney-in-fact for Lessor hereunder or (iv) any failure of Lessee to comply with the terms of this Lease or the Tax Indemnification Agreement; provided however, that Lessor shall not be indemnified, protected or held harmless for a material breach of its representation in Section 19(h). Lessee shall pay all of its own costs and expenses, including fees and disbursements of its counsel, incurred in connection with the preparation, execution and delivery of this Lease and the Tax Indemnification Agreement.

Lessee agrees to prepare, deliver to Lessor for execution within a reasonable time prior to the required date of filing and file (or, to the extent permissible, to prepare for and file on behalf of Lessor directly) any and all reports (other than income tax returns) required to be filed by Lessor with any federal, state or other regulatory authority by reason of the ownership by Lessor of the Units, any security interest therein of any assignee of Lessor permitted by Section 12 and of which Lessor has advised Lessee in writing or the leasing thereof to Lessee.

SECTION 10. Default. If during the continuance of this Lease one or more of the following events (herein called "Events of Default") shall occur and be continuing:

(A) default shall be made in the payment of any part of the rent provided for in Section 3, and such default shall continue for 10 days after such payment shall become due; or default shall be made in the payment of a Casualty Payment provided for in Section 7 or in the payment of any amount due under Section 6 or the Tax Indemnification Agreement, and such default shall continue for five Business Days after such payment shall become due;

(B) Lessee shall make, permit or suffer any unauthorized assignment or transfer of this Lease or any interest herein or any unauthorized transfer of the right to possession of the Units, or any thereof or shall fail to maintain insurance in accordance with Section 7;

(C) Lessee shall, for more than 30 days after Lessor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Lease or the Tax Indemnification Agreement on the part of Lessee to be kept or performed or to make provision reasonably satisfactory to Lessor for such compliance;

(D) any proceedings shall be commenced by or against Lessee or Guarantor for any relief under any bankruptcy or insolvency law, or any law relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangement, composition or extension, 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 of the obligations of Lessee or Guarantor, as the case may be, hereunder and under the Tax Indemnification Agreement 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 or receiver or receivers appointed (whether or not subject to ratification) for Lessee or Guarantor, as the case may be, or its respective property in connection with any such proceedings in such manner that such obligations shall have the same

status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 30 days after such proceedings shall have been commenced, whichever is earlier, or Lessee or Guarantor shall make a general assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due;

(E) any representation or warranty made by Lessee or Guarantor in this Lease or the Tax Indemnification Agreement, or any certificate or other document delivered by Lessee or Guarantor pursuant thereto, shall be false or misleading in any material respect as of the date made;

(F) final judgment for the payment of money in excess of $100,000 shall be rendered against Lessee or Guarantor and the same shall remain unsatisfied for a period of 45 days during which execution shall not be effectively stayed; or

(G) Guarantor shall fail to perform its obligations, covenants or agreements provided for in Section 21;

then, in any such case, Lessor, at its option, may:

(1) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Lessee and/or Guarantor of the applicable covenants of this Lease or to recover damages for the breach thereof, including net after-tax losses of federal and state income tax benefits to which Lessor would otherwise be entitled as a result of owning the Units and leasing the same to Lessee under this Lease; or

(2) by notice in writing to Lessee terminate this Lease with respect to any or all of the Units, whereupon all rights of Lessee to the possession and use of such Units shall absolutely cease and terminate as though this Lease had never been made, but Lessee shall remain liable as hereinafter provided; and thereupon Lessor may, by its agent or agents, enter upon the premises of Lessee or any other premises where any of such Units may be located and take possession of all or any of such Units and thenceforth hold, possess, operate, sell, lease and enjoy the same free from any right of Lessee, or its successors or assigns,

to use such Units for any purposes whatsoever and without any duty to account to Lessee for any action or inaction or for any proceeds arising therefrom, but Lessor shall, nevertheless, have a right to recover from Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by 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 Lessee and/or Guarantor (a) as damages for loss of the bargain and not as a penalty, whichever of the following sums, with respect to each such Unit, Lessor, in its sole discretion, shall specify by written notice to Lessee: (x) an amount equal to the excess, if any, of the Casualty Value for such Unit, computed as of the rental payment date immediately preceding the Event of Default specified in such notice, over the Fair Market Rental (as defined in Section 13) of such Unit for the remainder of the term of this Lease after discounting such Fair Market Rental quarter-annually to present value as of such preceding rental payment date at 2% over the prime rate of Crocker National Bank in effect on the date of such notice or (y) an amount equal to the excess, if any, of the Casualty Value for such Unit as of such preceding rental payment date over the Fair Market Value (as defined in Section 13) of such Unit as of such preceding rental payment date and (b) any damages and expenses, including costs and expenses incurred in connection with the recovery, repair, repainting, return and remarketing of any Unit or other exercise of Lessor's remedies hereunder and reasonable attorneys' fees, in addition thereto which Lessor shall have sustained by reason of the breach of any covenant, agreement, term, provision, representation or warranty of this Lease other than for the payment of rental.

The remedies in this Lease provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. Lessee 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 permitted by law. Lessee hereby waives any and all existing or future

claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by Lessee or on its behalf.

The failure of Lessor to exercise any of the rights, powers or remedies granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right, power or remedy upon the continuation or recurrence of any such contingencies or similar contingencies.

Upon any Responsible Officer of Lessee or Guarantor becoming aware of the existence of any event or condition which constitutes a Default or an Event of Default, Lessee or Guarantor, as the case may be, shall give immediate telephonic notice (confirmed in writing within three days thereafter) to Lessor specifying the nature and period of existence thereof and what action Lessee and/or Guarantor is taking or proposes to take with respect thereto. For the purposes of this paragraph, "Responsible Officer" shall mean, with respect to the subject matter of any particular covenant, agreement, term or provision of this Lease, any corporate officer of Lessee or Guarantor who in the normal course of his duties would have knowledge of such subject matter and the requirements of this Lease with respect thereto. For the purposes of this Lease, "Default" shall mean any event which, with notice, the lapse of time or both, would constitute an Event of Default.

The foregoing provisions of this Section 10 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

SECTION 11. Return of Units upon Default. If this Lease shall terminate pursuant to Section 10 with respect to all or any of the Units, Lessee shall forthwith deliver possession of such Units to Lessor and shall:

(a) forthwith and in the usual manner (including giving prompt telegraphic and written notice to the Association of American Railroads and all railroads which may have possession of any Unit or Units to return such Unit or Units) cause such Units to be placed upon such storage tracks as Lessor reasonably may designate, including those of Lessee or any affiliate of Lessee; provided such designation shall not materially and unreasonably interfere with Lessee's normal business operations;

(b) permit Lessor to store such Units on such tracks at the risk of Lessee for a period not exceeding one year; and

(c) transport such Units to any place on the lines of railroad operated by Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by Lessor.

The Units shall be returned in the condition in which they are required to be maintained by Lessee under Section 9, shall be maintained, or caused to be maintained, by Lessee, at its own cost and expense, in such condition during the period of storage provided for in this Section 11 and shall be insured by Lessee, at its own cost and expense, during such period of storage in accordance with Section 7; and at the time of such return and during such period of storage shall be kept free and clear of all liens, charges, security interests and encumbrances in accordance with Section 12. The assembling, delivery, storage and transporting of the Units as in this Section 11 provided shall be at the expense and risk of Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee requiring specific performance of the same. During any storage period, Lessee will permit Lessor 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 amounts earned in respect of the Units after the date of termination of this Lease shall belong to Lessor and, if received by Lessee, shall be promptly turned over to Lessor. In the event that any Unit is not assembled, delivered and stored as hereinabove provided within 30 days after such termination, Lessee shall, in addition, pay to Lessor for each day after such termination an amount equal to the amount, if any, by which the per diem interchange for such Unit for each such day exceeds the actual earnings received by Lessor on such Unit for each such day.

Without in any way limiting the obligations of Lessee under the foregoing provisions of this Section 11, Lessee hereby irrevocably appoints Lessor as the agent and attorney of Lessee, with full power and authority, at any time after termination of this Lease with respect to all or any of the Units while Lessee is obligated to deliver possession of any Unit to Lessor, to demand and take possession of such Unit in the name and on behalf of Lessee from whomsoever shall be in possession of such Unit at the time and to notify the American Association of Railroads or any other appropriate person or governmental authority of a change in the road numbers of the Units.

SECTION 12. Assignment; Possession and Use; Liens. Lessor agrees that it will not assign any of its rights under this Lease without the prior written consent of Lessee unless such assignment constitutes a security agreement securing any borrowing by Lessor for the purpose of financing or refinancing all or any portion of Lessor's Cost of the Units or is to (i) a bank, trust company or insurance company which is organized and doing business in the United States of America and has a combined capital and surplus of at least $50,000,000; (ii) a financial corporation which is organized and doing business in the United States of America and has a combined capital and surplus of at least $50,000,000; or (iii) any corporation which is a member of the same "affiliated group" (as defined in Section 1504 of the Internal Revenue Code of 1954, as amended) as Lessor (or the corporation which holds all the voting securities of Lessor) or as any bank, trust company, insurance company or other financial corporation covered by clause (i) or (ii) above. Lessee shall be under no obligation to any assignee of Lessor except upon receipt of written notice of such assignment from Lessor. All the rights of Lessor hereunder (including, but not limited to, the rights under Sections 6, 7 and 10 and the right to receive the rentals payable under this Lease) shall inure to the benefit of Lessor's permitted assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively), to the extent of such assignment. Whenever the term "Lessor" is used in this Lease, it shall apply and refer to Lessor and each such assignee of Lessor.

So long as no Event of Default under this Lease shall have occurred and be continuing, Lessee shall be entitled to the possession and use of the Units in accordance with and subject to all the terms and conditions of this Lease, but, without the prior written consent of Lessor (except as otherwise expressly permitted herein), Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by or liabilities in favor of any person which, if unpaid, might diminish the amount of rents due and payable under Section 3 or might become a mortgage, lien, charge, security interest or other encumbrance (other than an encumbrance by, through or under Lessor (which shall include any claim or encumbrance constituting a material breach of Lessor's representation in Section 19(h)) or resulting from claims against Lessor not related to the ownership or leasing of the Units) on or with respect to any Unit, including any accession thereto, or the interest of Lessor or Lessee therein, and will promptly discharge any such mortgage, lien, charge, security interest or other encumbrance which

arises; provided, however, that Lessee 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 Lessor, adversely affect the title of Lessor to, or the security interest of any assignee of Lessor permitted by this Section 12 in, the Units or otherwise adversely affect the rights of Lessor under this Lease; and provided further that this covenant will not be breached by reason of the existence of liens for taxes, assessments or governmental charges or levies, in each case so long as 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. Lessee shall not, without the prior written consent of Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as no Event of Default under this Lease shall have occurred and be continuing, Lessee shall be entitled to the possession and use of the Units, or without Lessor's consent to sublease the Units to, or to permit their use by, a user incorporated in the United States of America (or any state thereof or the District of Columbia), upon lines of railroad owned or operated by Lessee or such user or by a railroad company or companies incorporated in the United States of America (or any state thereof or the District of Columbia), or over which Lessee, such user or such railroad company or companies have trackage rights or rights for operation of their trains, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but in all cases only upon and subject to all the terms and conditions of this Lease; provided, however, that Lessee shall not sublease or otherwise permit the use of any Unit outside the United States of America, except occasional use in Canada or Mexico as long as such Canadian or Mexican use does not involve regular operation and maintenance outside the United States of America; and provided further that any such sublease or use shall be consistent with the provisions of the Tax Indemnification Agreement. No such sublease or other assignment of use by Lessee shall relieve Lessee or Guarantor of its obligations hereunder or under the Tax Indemnification Agreement. Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession and use of the Units included in such sublease; provided, however, that every such sublease shall expressly provide that it is

subject to the rights and remedies of Lessor under this Lease.

Nothing in this Section 12 shall be deemed to restrict the right of Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any solvent corporation incorporated under the laws of any state of the United States of America or the District of Columbia and having a combined capital and surplus at least equal to that of Lessee and Guarantor, taken as a whole, at the time of such assignment or transfer (which corporation shall have specifically assumed the obligations of Lessee hereunder and under the Tax Indemnification Agreement pursuant to appropriate instruments satisfactory in form and substance to Lessor and its counsel) into or with which Lessee shall have merged or consolidated or which shall have acquired the property of 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 or the Tax Indemnification Agreement, and Lessee's obligations hereunder to Lessor shall continue as those of a principal and not of a surety. Guarantor's obligations hereunder to Lessor shall continue in full force and effect.

SECTION 13. Renewal Option. Provided this Lease has not been earlier terminated and there exists no Default or Event of Default hereunder, Lessee may by written notice delivered to Lessor not less than 180 days prior to the end of the original term or an extended term of this Lease elect to extend the term of this Lease in respect of all, but not less than all, Units then covered by this Lease for an additional two-year period commencing on the scheduled expiration of the original term or extended term, as the case may be; provided, however, that this Lease may not be extended beyond June 1, 2001. In the event that the term of this Lease is extended pursuant to the preceding sentence, Lessee shall pay rentals in arrears at the "Fair Market Rental" (as hereinafter defined) of such Units in quarterly payments on March 1, June 1, September 1 and December 1 in each year of such extended term; and all of the other terms of this Lease shall be applicable during any extended term, except that the Casualty Values of the Units shall be as calculated by Lessor, taking into consideration the Fair Market Value of the Units.

Fair Market Value 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 buyer (other than a lessee currently in posses-

sion or a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. 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 or a used equipment dealer) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value and there shall be excluded any rental value attributable to improvements or additions which Lessee is permitted to remove pursuant to Section 9. If on or before 120 days prior to the expiration of the original term of this Lease, Lessor and Lessee are unable to agree upon a determination of the Fair Market Value and/or the Fair Market Rental, as the case may be, of the relevant Units, such value or rental shall be determined in accordance with the foregoing definitions by a qualified independent Appraiser. 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. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to Lessor and Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fees of the Appraiser shall be paid equally by Lessee and Lessor unless this Lease shall have been terminated pursuant to Section 10, in which case Lessee shall pay all such expenses and fees.

SECTION 14. Return of Units upon Expiration of Term. As soon as practicable on or after the expiration of the original or any extended term of this Lease, Lessee will, at the request of Lessor, deliver the Units to Lessor upon such storage tracks of Lessee or of any affiliate of Lessee as Lessor may reasonably designate, and permit Lessor to store such Units on such tracks for a period not exceeding 90 days and transport the same at any time within such 90-day period to any reasonable place on the lines of railroad operated by Lessee or any affiliate of Lessee or to any connecting carrier for shipment, all as directed by Lessor upon not less than 30 days' written notice to Lessee. The Units shall be returned in the condition in which they are required to be maintained by Lessee under Section 9, shall be maintained by Lessee, at its own cost and expense, in such condition during the period of storage provided for in

this Section 14 and shall be insured by Lessee, at its own cost and expense, during such period of storage in accordance with Section 7. The assembling, delivery, storage and transporting of the Units as in this Section 14 provided shall be at the expense and risk of Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee requiring specific performance of the same. During any storage period, Lessee will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of such Units, to inspect the same; provided, however, that Lessee shall not be liable, except in the case of negligence of Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of Lessor or any prospective purchaser or lessee, the right of inspection granted under this sentence. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to Lessor and, if received by Lessee, shall be promptly turned over to Lessor. In the event that any Unit is not assembled, delivered and stored as hereinabove provided within 60 days after such termination, Lessee shall, in addition, pay to Lessor for each day thereafter an amount equal to the amount, if any, by which the per diem interchange for such Unit for each such day exceeds the actual earnings received by Lessor on such Unit for each such day.

SECTION 15. Recording. Lessee, at its own expense, will cause this Lease, and any amendments or supplements hereto and any assignments hereof, to be filed and recorded in accordance with 49 United States Code §11303(a); and Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record (and will refile, re-register, redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by Lessor for the purpose of proper protection, to its satisfaction, of Lessor's interests in the Units, or for the purpose of carrying out the intention of and its rights under this Lease; and Lessee will promptly furnish to Lessor certificates or other evidence of all such filing, registering, depositing and recording, and an opinion or opinions of counsel for Lessee with respect thereto satisfactory to Lessor. This Lease shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit. Lessee shall not have any duty to effect any filing, registering, depositing or recording with respect to any assignee of Lessor until Lessee shall have received written notice of such assignment.

SECTION 16. Removal of Certain Additions, Modifications or Improvements. If title to any additions, modifications or improvements to any Unit or Units shall remain in Lessee at the date of termination of this Lease pursuant to Section 9, Lessee shall, at its cost and expense, prior to the return of such Unit or Units to Lessor hereunder remove the same without material damage to such Unit or Units.

SECTION 17. Interest on Overdue Rentals. Anything herein to the contrary notwithstanding, any nonpayment of rentals and other obligations after the due date hereunder shall result in the obligation on the part of Lessee promptly to pay, to the extent legally enforceable, interest on such rentals and obligations for the period of time during which they are overdue at 2% over the prime rate of Crocker National Bank from time to time in effect or such lesser amount as may be legally enforceable.

SECTION 18. Representations and Warranties of Lessee and Guarantor. Lessee and Guarantor, jointly and severally, represent and warrant to Lessor that:

(a) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware; each of Lessee and Guarantor has full power and authority and all necessary licenses and permits to carry on its business as presently conducted, to own or hold under lease its properties and to enter into and perform its obligations under this Lease and the Tax Indemnification Agreement; and each of Lessee and Guarantor is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which the character of its properties or the nature of its business requires such qualification.

(b) The execution, delivery and performance by Lessee and Guarantor of this Lease and the Tax Indemnification Agreement have been duly authorized by all necessary corporate action on the part of Lessee and Guarantor, do not contravene any law, governmental rule or regulation or any order, writ, injunction, decree, judgment, award, determination, direction or demand (collectively "Order") binding on Lessee or Guarantor or their respective properties or the corporate charter or By-laws of Lessee or Guarantor and do not and will not contra-

vene the provisions of, or constitute a default (either with or without notice or lapse of time) under, or result in the creation of any lien, mortgage, pledge, charge, security interest or encumbrance (collectively "Lien") upon the Equipment or any property of Lessee or Guarantor under, any indenture, mortgage, contract or other instrument to which Lessee or Guarantor is a party or by which Lessee or Guarantor is bound.

(c) No consent or approval of, giving of notice to, registration with or taking of any other action by, any state, federal or other governmental commission, agency or regulatory authority, including the Securities and Exchange Commission, the Department of Transportation, the Federal Railway Administration and the Interstate Commerce Commission, is required for the performance by Lessee or Guarantor of the transactions contemplated by this Lease or the Tax Indemnification Agreement.

(d) This Lease and the Tax Indemnification Agreement have been duly entered into and delivered by Lessee and Guarantor, and each constitutes a legal, valid and binding agreement of Lessee and Guarantor enforceable against Lessee and Guarantor in accordance with its respective terms, except as limited by (i) any bankruptcy, insolvency, reorganization or other similar laws of general application affecting the enforcement of creditors' or lessors' rights, (ii) emergency powers lawfully conferred upon any governmental agency and (iii) laws or judicial decisions limiting the right to specific performance or other equitable remedies.

(e) There are no actions, suits or proceedings pending (nor, to the knowledge of Lessee or Guarantor, are any actions, suits or proceedings threatened) against or affecting Lessee or Guarantor or any property of Lessee or Guarantor in any court or before any arbitrator of any kind or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign (collectively "Governmental Body") (except actions, suits or proceedings of the character normally incident to the kind of business conducted by Lessee and Guarantor for which sufficient accruals have been established to reflect potential liability in all such pending actions, suits

or proceedings and as to which any adverse determination in excess of such accruals would not materially adversely affect the business, assets, operations or condition, financial or otherwise, of Lessee and Guarantor, taken as a whole, or adversely affect the ability of Lessee or Guarantor to perform its obligations under this Lease or the Tax Indemnification Agreement); and neither Lessee nor Guarantor is in default with respect to any Order of any court, arbitrator or Governmental Body.

(f) The consolidated balance sheets of Guarantor as of December 31, 1979 and 1978, and the related consolidated statements of income, retained earnings and changes in financial position of Guarantor for the two years ended December 31, 1979, heretofore delivered to Lessor fairly present the consolidated financial position of Guarantor as of such dates and the consolidated results of operations and consolidated changes in financial position for the two years ended December 31, 1979, all in conformity with generally accepted accounting principles consistently applied during the periods (except as set forth in the notes thereto). Since December 31, 1979, there has not been any material adverse change in the business, assets, liabilities, results of operations or condition, financial or otherwise, of Lessee and Guarantor, taken as a whole.

(g) Neither Lessee nor Guarantor is a party to any agreement or instrument or subject to any charter or other corporate restriction which materially adversely affects or, so far as Lessee or Guarantor can now foresee, will materially adversely affect the business, operations or properties of Lessee or Guarantor or the ability of Lessee or Guarantor to perform its obligations under this Lease or the Tax Indemnification Agreement.

(h) To the best knowledge of Lessee and Guarantor, each of Lessee and Guarantor has filed all required tax returns in all jurisdictions in which such returns were required to be filed and has paid, or made provision for, all taxes shown to be due and payable on such returns and all other taxes and assessments which are payable by it, except for any taxes and assessments of which the amount, applicability or validity is currently

being contested in good faith by appropriate proceedings and which in the aggregate do not involve material amounts.

(i) Except as disclosed in a letter dated February 5, 1981, neither Lessee nor Guarantor is in default in the payment of the principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement under or subject to which any indebtedness for borrowed money has been issued; no event has occurred and is continuing under the provisions of any such instrument or agreement which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default thereunder; and neither Lessee nor Guarantor is in violation of any term of its corporate charter or By-laws or of any term of any material agreement, lease of real or personal property or other instrument.

(j) Lessee has not and will not take any action or maintain any position inconsistent with treating this Lease as a valid leasehold interest in the Equipment.

(k) Neither this Lease nor any other transaction contemplated hereby will involve any "prohibited transaction" (as defined in Section 406 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or Section 4975 of the Internal Revenue Code of 1954, as amended), which representation is made in reliance upon and subject to the accuracy of the representation of Lessor as to the source of the funds to be used in making its purchase of the Equipment. No "employee pension benefit plan" (as defined in Section 3(2) of ERISA) which is subject to Part 3 of Subtitle B of Title I of ERISA and which was established or is maintained, or to which contributions have been or are being made, by Lessee or Guarantor had an "accumulated funding deficiency" (as defined in Section 302 of ERISA) as of the last day of the most recent fiscal year of such plan ended prior to the date hereof; no "reportable event" (as defined in Section 4043(b) of ERISA) has occurred with respect to any such "employee pension benefit plan" which is subject to Title IV of ERISA; neither Lessee nor Guarantor has incurred any liability to the Pension Benefit Guaranty Corporation under Section 4062 of ERISA; and each of

Lessee and Guarantor is in compliance in all material respects with the applicable provisions of ERISA.

(l) at the time of delivery and acceptance of each unit of the Equipment under this Lease (i) such unit will not have been used by Lessee or Guarantor, or any person or entity acting with the consent or sufferance of Lessee or Guarantor, so as to preclude "the original use of such property" within the meaning of Sections 48(b) (2) and 167(c)(2) of the Internal Revenue Code of 1954, as amended, from commencing with Lessor and (ii) no depreciation or other tax benefits (other than deductions for rent payable hereunder) will have been claimed by Lessee, Guarantor or any such person or entity with respect thereto.

SECTION 19. Representations and Warranties of Lessor. Lessor represents and warrants to Lessee and Guarantor that:

(a) Lessor is a corporation duly organized, validly existing and in good standing under the laws of the State of California and has full power and authority to enter into and perform its obligations under this Lease, the Settlement Agreement and the Tax Indemnification Agreement.

(b) The execution, delivery and performance by Lessor of this Lease, the Settlement Agreement and the Tax Indemnification Agreement have been duly authorized by all necessary corporate action on the part of Lessor, do not contravene any law, governmental rule or regulation governing the banking powers of Lessor or any Order binding on Lessor or its properties or the Articles of Incorporation or By-laws of Lessor and do not and will not contravene the provisions of, or constitute a default (either with or without notice or lapse of time) under, or subject the Equipment to any Lien (other than the Lien of this Lease) under, any indenture, mortgage, contract or other instrument to which Lessor is a party or by which it is bound.

(c) The execution, delivery and performance by Lessor of this Lease, the Settlement Agreement and the Tax Indemnification Agreement do not require the consent or approval of, the giving of notice to, the registration with or the taking of

any other action in respect of, any state, federal or other governmental authority or agency by reason of any business or operations of Lessor unrelated to the transactions contemplated by this Lease.

(d) This Lease, the Settlement Agreement and the Tax Indemnification Agreement have been duly entered into and delivered by Lessor, and each constitutes a legal, valid and binding agreement of Lessor enforceable against Lessor in accordance with its terms, except as limited by (i) any bankruptcy, insolvency, reorganization or other similar laws of general application affecting the enforcement of creditors' or lessors' rights, (ii) emergency powers lawfully conferred upon any governmental agency and (iii) laws or judicial decisions limiting the right to specific performance or other equitable remedies.

(e) Lessor is purchasing the Units out of its general assets and is not entering into the transactions contemplated by this Lease directly or indirectly in connection with any arrangement in any way involving any "employee benefit plan" within the meaning of ERISA.

(f) Lessor will not transfer its interest in the Units to any "employee benefit plan" with respect to which Lessee or Guarantor is a "party in interest" or a "disqualified person".

(g) There are no actions, suits or proceedings pending or threatened before any court, administrative agency, arbitrator or Governmental Body which might, if determined adversely to Lessor, adversely affect its ability to perform its obligations under this Lease, the Settlement Agreement or the Tax Indemnification Agreement.

(h) Prior to the execution of this Lease, neither Crocker National Bank nor any corporate affiliate thereof (including Lessor) has executed any agreement (other than the Settlement Agreement) or has taken any other action which will permit any person (other than Lessee, Lessor or Builder) to successfully maintain that it has lawful title to any of the Units, any lawful lien, encumbrance or security interest therein or any lawful right to possession thereof.

SECTION 20. Conditions to Lessor's Obligation. The obligation of Lessor to lease the Units to Lessee is subject to the fulfillment of the following conditions to Lessor's satisfaction:

(a) On the date of execution of this Lease, Lessor shall have received an opinion of counsel for Lessee and Guarantor, dated such date and addressed to Lessor, to the effect set forth below:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware; each of Lessee and Guarantor has full power and authority to carry on its business as presently conducted, to own or hold under lease its properties and to enter into and perform its obligations under this Lease and the Tax Indemnification Agreement; and each of Lessee and Guarantor is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which the character of its properties or the nature of its business requires such qualification;

(ii) the execution, delivery and performance by Lessee and Guarantor of this Lease and the Tax Indemnification Agreement have been duly authorized by all necessary corporate action on the part of Lessee and Guarantor, do not contravene any law, governmental rule, regulation or Order binding on Lessee or Guarantor or their respective properties or the corporate charter or By-laws of Lessee or Guarantor and do not contravene the provisions of, or constitute a default (either with or without notice or lapse of time) under, or result in the creation of any Lien upon the Equipment or any property of Lessee or Guarantor under, any indenture, mortgage, contract or other instrument to which Lessee or Guarantor is a party or by which Lessee or Guarantor is bound;

(iii) no consent or approval of, giving of notice to, registration with or taking of any other action by, any state, federal or

other governmental commission, agency or regulatory authority, including the Securities and Exchange Commission, the Department of Transportation, the Federal Railway Administration and the Interstate Commerce Commission, is required for the performance by Lessee or Guarantor of the transactions contemplated by this Lease or the Tax Indemnification Agreement;

(iv) this Lease and the Tax Indemnification Agreement have been duly entered into and delivered by Lessee and Guarantor, and each constitutes a legal, valid and binding agreement of Lessee and Guarantor enforceable against Lessee and Guarantor in accordance with its respective terms, except as limited by (a) any bankruptcy, insolvency, reorganization or other similar laws of general application affecting the enforcement of creditors' or lessors' rights, (b) emergency powers lawfully conferred upon any governmental agency and (c) laws or judicial decisions limiting the right to specific performance or other equitable remedies; the Lease creates a valid leasehold interest in the Equipment;

(v) there are no actions, suits or proceedings pending or, so far as is known to such counsel (having made due inquiry with respect thereto), threatened before any court, administrative agency, arbitrator or Governmental Body which might, if determined adversely to Lessee or Guarantor, have a materially adverse effect on the business, assets, operations or condition, financial or otherwise, of Lessee and Guarantor, taken as a whole, or adversely affect the ability of Lessee or Guarantor to perform their obligations under this Lease or the Tax Indemnification Agreement; and so far as is known to such counsel, neither Lessee nor Guarantor is in default with respect to any Order of any court, arbitrator or Governmental Body; and

(vi) no mortgage, deed of trust or other Lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property (or interests therein) of Lessee or Guarantor now attaches

or hereafter will attach to any of the Equipment, or in any manner affects or will affect adversely Lessor's right, title and interest in the Equipment.

(b) On or prior to the first date of delivery (hereinafter called the "First Delivery Date") of any unit of the Equipment under this Lease, the following conditions shall be satisfied:

(i) No change shall have occurred after the execution and delivery of this Lease in applicable law or regulations or official interpretations thereof which would make it illegal for Lessor to perform its obligations hereunder on the First Delivery Date.

(ii) The Lease, the Settlement Agreement and the Tax Indemnification Agreement shall have been duly executed and delivered by the parties thereto, in form acceptable to Lessor, and shall be in full force and effect.

(iii) The Lease shall have been filed and recorded in accordance with 49 United States Code §11303(a).

(iv) The representations and warranties of Lessee and Guarantor contained herein and in any certificate or other document delivered pursuant hereto shall be true and correct on and as of the First Delivery Date with the same effect as though made on and as of the First Delivery Date, and at the First Delivery Date there shall be no Default or Event of Default; and appropriate certificates executed on behalf of Lessee and Guarantor, dated as of the First Delivery Date, to such effect shall have been delivered to Lessor.

(v) Lessor shall have received an opinion of counsel for Lessee and Guarantor, dated the First Delivery Date and addressed to Lessor, to the effect set forth below and as to such other matters as Lessor or its counsel may reasonably request:

(A) the Lease has been duly filed and recorded with the Interstate Commerce Commission in accordance with 49 United

States Code §11303(a), and no other recording, filing or deposit in the United States of America of any document is necessary to establish and perfect the interests of Lessor therein and in the Equipment as against Lessee, its creditors or third parties; and

(B) the opinion of such counsel delivered to Lessor on the date of execution of this Lease is in all respects confirmed as of the First Delivery Date.

(vi) Lessor shall have received an opinion of counsel for Builder, dated the First Delivery Date and addressed to Lessor, to the effect set forth below and as to such other matters as Lessor or its counsel may reasonably request:

(A) Builder is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation and has full power and authority to enter into and perform its obligations under the Settlement Agreement;

(B) the execution, delivery and performance by Builder of the Settlement Agreement have been duly authorized by all necessary corporate action on the part of Builder and do not contravene any law, governmental rule, regulation or Order binding on Builder or its properties or the corporate charter or By-laws of Builder; and

(C) the Settlement Agreement has been duly entered into and delivered by Builder, and, assuming the due authorization, execution and delivery thereof by Lessor, constitutes a legal, valid and binding agreement of Builder enforceable against Builder in accordance with its terms, except as limited by (a) any bankruptcy, insolvency, reorganization or other similar laws of general application affecting the enforcement of creditors' rights, (b) emergency powers lawfully conferred upon any governmental

agency and (c) laws or judicial decisions limiting the right to specific performance or other equitable remedies.

Lessor shall deliver to Lessee a copy of Builder's opinion.

(vii) Lessor shall have received such other evidence of fulfillment of the foregoing conditions of this subsection (a), including, without limitation, certificates of officers of Lessee and Guarantor, public officials and others, as Lessor or its counsel may reasonably require to establish to their satisfaction the fulfillment of such conditions; and all proceedings taken in connection with the transactions contemplated hereby and all documents and papers relating thereto shall be satisfactory in form and substance, as of the First Delivery Date, to Lessor and its counsel.

(c) Payment Dates. On or before each date for payment by Lessor pursuant to Paragraph 5.1 of the Settlement Agreement, the following conditions shall be satisfied:

(i) The conditions set forth in subparagraphs (a) and (b) of this Section 20 shall have been satisfied or waived;

(ii) Lessor shall have received copies of the insurance policies (or certificates of insurance) required to be maintained under Section 7 with respect to the Units then being settled for; and

(iii) Lessor shall have received all documents specified in such Paragraph 5.1 of the Settlement Agreement with respect to the Units for which payment is then being made.

Lessor shall not accept a bill of sale for any of the Units which does not substantially comply with Paragraph 5.1(a) of the Settlement Agreement and shall use its best efforts to have Evans Transportation Company guarantee each such bill of sale. Lessor shall deliver to Lessee a copy of each such bill of sale and each opinion of counsel delivered to Lessor pursuant to Paragraph 5.1(b) of the Settlement Agreement.

SECTION 21. Guaranty By Guarantor. In consideration of the execution and delivery by Lessor of this Lease and the receipt of other good and valuable consideration

from Lessee, and to induce Lessor to purchase the Units and lease the same to Lessee hereunder because Guarantor believes that its prosperity and success will be furthered by the benefits accruing to Lessee from such lease, Guarantor hereby unconditionally guarantees to Lessor the prompt performance of all Lessee's obligations under this Lease (including any extended term hereof) and the Tax Indemnification Agreement, including, without limitation, the due and punctual payment of the rent provided for in Section 3, all Casualty Payments provided for in Section 7 and all amounts due under Section 6 and the Tax Indemnification Agreement, when and as the same become due. If Lessee shall not promptly perform any of its obligations under this Lease or the Tax Indemnification Agreement, Guarantor shall promptly thereafter perform such obligations. Guarantor agrees that its obligations hereunder are unconditional, irrespective of the validity, regularity or enforceability of, or any change in or amendment to, this Lease or the Tax Indemnification Agreement, or the institution or absence of any action to enforce the same, any waiver or consent by Lessor with respect to the provisions of this Lease or the Tax Indemnification Agreement, the obtaining of any judgment against Lessee or any action to enforce the same, the inability to recover from Lessee because of any statute of limitations, laches or otherwise or any other circumstance which might otherwise constitute a legal or equitable discharge of or a defense to a guarantor. Guarantor waives diligence, protest, presentment, filing of claims with a court in the event of the bankruptcy of Lessee, any right to require a proceeding first against Lessee or that Lessee be joined in any proceeding against Guarantor, any marshalling of assets of Lessee or Guarantor providing security for the obligations of Lessee or Guarantor to Lessor or any notice of Default or Event of Default with respect to this Lease or the Tax Indemnification Agreement. Guarantor's obligations under this Section 21 shall be discharged only by complete performance of the undertakings herein and in the Tax Indemnification Agreement.

Guarantor authorizes Lessor, without notice or demand to Guarantor and without affecting its liability hereunder, from time to time (i) to renew, compromise, extend, accelerate or otherwise change the time for payment of, or otherwise change the terms of, all or any part of the obligations guaranteed hereby; (ii) to take and hold security for the payment of amounts due under this Lease or the Tax Indemnification Agreement or to exchange, enforce, waive and release any such security; (iii) to apply any such security and to direct the order or manner of sale thereof as Lessor in its discretion may determine; and (iv) to obtain additional or substitute endorsers or guarantors. Guarantor waives any right to require Lessor to proceed against any additional or substitute endorsers or guarantors or to pursue or exhaust

any security provided by Lessee, Guarantor or any other person or to pursue any other remedy available to Lessee.

Until all indebtedness and other obligations of Lessee guaranteed hereby shall be fully paid and performed, Guarantor shall not be subrogated to any right of Lessor against Lessee or any other person or any security held therefor in respect of any amount paid by Guarantor pursuant to this Section 21; and, until such time, Guarantor expressly waives any right to enforce any claim or remedy which Lessor may at any time have against Lessee or any other person and expressly waives the right to participate in, or to have any benefit of, any security held by or on behalf of Lessor.

Any indebtedness of Lessee now or hereafter owing to Guarantor is hereby subordinated to the indebtedness and other payment obligations of Lessee guaranteed hereby; and upon any Default or Event of Default under this Lease or the Tax Indemnification Agreement, such indebtedness of Lessee to Guarantor shall be collected, enforced and received by Guarantor, as trustee for Lessor, to be paid over to Lessor, without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Section 21.

No waiver or modification of this Section 21 shall be effective as against Lessor unless in a writing signed by Lessor. The guaranty provided for in this Section 21 may be assigned by Lessor in whole or in part without notice to Guarantor.

Guarantor shall pay all reasonable costs and expenses, including attorneys fees, incurred in connection with the enforcement of this Section 21 by Lessor.

SECTION 22. Financial Information. Lessee and/or Guarantor will deliver to Lessor (i) as soon as available, and in any event within 90 days after the end of each fiscal year of Lessee, a certificate signed by the President, any Vice President, the Treasurer or any Assistant Treasurer of Lessee stating that a review of the activities of Lessee during such year has been made under his supervision with a view to determining whether Lessee has kept, observed, performed and fulfilled all of its obligations under this Lease and the Tax Indemnification Agreement and that to the best of his knowledge Lessee during such year has kept, observed, performed and fulfilled each and every covenant, obligation and condition contained herein and in the Tax Indemnification Agreement or if a Default or an Event of Default hereunder or under the Tax Indemnification Agreement shall have occurred or exists at the date of such certificate specifying such Default or Event of Default and the nature and status thereof, and either (ii) as soon as available, and in any event within 45 days of the date of submission to the Securities and Exchange Commission, copies of all reports

of Lessee and Guarantor filed with the Securities and Exchange Commission, including, without limitation, any Form 10-K, 10-Q, 8-K or annual report to shareholders so filed by Lessee or Guarantor, or (iii) in the event that such reports are not filed or not filed in a timely fashion (x) as soon as available, and in any event within 45 days after the end of the first, second and third quarterly accounting periods in each fiscal year of Guarantor, copies, in comparative form with the figures for the corresponding date and period in the previous fiscal year, of the consolidated balance sheet of Guarantor and subsidiary companies (including Lessee) as of the end of such accounting period and of the related consolidated statements of income and retained income of Guarantor and subsidiary companies (including Lessee) for the portion of the fiscal year ended with the last day of such quarterly accounting period and (y) as soon as available, and in any event within 90 days after the end of each fiscal year of Guarantor, copies, in comparative form with the preceding fiscal year, of the consolidated balance sheet of Guarantor and subsidiary companies (including Lessee) as of the end of such fiscal year and of the related consolidated statements of income and retained income and changes in financial position of Guarantor and subsidiary companies (including Lessee) for such fiscal year, all in reasonable detail and certified by Guarantor's independent public accountants.

SECTION 23. Notices. Any notice hereunder to any of the persons designated below shall be deemed to have been properly served if delivered personally or if deposited with the United States Postal Service, certified mail, postage prepaid, at the following specified addresses:

(a) To Lessor, 595 Market Street, San Francisco, California, 94105, attention Leveraged Leasing Group;

(b) To Lessee, 2215 Sanders Road, Suite 370, Northbrook, Illinois, 60062, attention President; and

(c) To Guarantor, One Thousand RIDC Plaza, Pittsburgh, Pennsylvania, 15238, attention Treasurer

or to such other address as may have been furnished in writing by any of the foregoing persons to the other persons named above and shall be effective for all purposes under this Lease on the date of such delivery or deposit.

SECTION 24. Severability; Effect and Interpretation of Lease. Any provision of this Lease which is prohibited or unenforceable by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective to the

extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by Lessee to the full extent permitted by law, to the end that this Lease shall be enforced as written.

Except as provided in the Tax Indemnification Agreement and the letter dated February 6, 1981 from Crocker National Bank to Lessee and Guarantor, this Lease exclusively and completely states the rights of Lessor and Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto.

All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Lease. All references herein to Sections, paragraphs, clauses and other subdivisions refer to the designated Sections, paragraphs, clauses and other subdivisions of this Lease; and the words "herein," "hereof," "hereunder" and words of similar import refer to this Lease as a whole and not to any particular Section, paragraph, clause or other subdivision hereof.

SECTION 25. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 United States Code §11303(a) and such additional rights arising out of the filing, recording, registering or depositing, if any, of this Lease as shall be conferred by the laws of the several jurisdictions in which this Lease shall be filed, recorded, registered or deposited.

SECTION 26. Further Assurances. Lessee agrees that at any time and from time to time, after the execution and delivery of this Lease, it shall, upon request of Lessor, execute and deliver such further documents and do such further acts and things as Lessor may reasonably request in order fully to effect the purposes of this Lease and the Tax Indemnification Agreement, including, but not limited to, furnishing any and all information necessary to enable Lessor to properly complete and file any and all state (or political subdivision thereof) income tax returns in connection herewith.

SECTION 27. Modification, Waiver and Consent. Any modification or waiver of any provision of this Lease, or any consent to any departure by Lessee therefrom, shall not be effective in any event unless the same is in writing and signed by Lessee, Lessor and Guarantor, and then such modification, waiver or consent shall be effective only in

the specific instance and for the specific purpose given. Any notice to or demand on Lessee or Guarantor in any event not specifically required of Lessor hereunder shall not entitle Lessee or Guarantor to any other or further notice or demand in the same, similar or other circumstances unless specifically required hereunder.

SECTION 28. Binding Effect. This Lease shall be binding upon and shall inure to the benefit of the respective successors and assigns of Lessee, Guarantor and Lessor.

SECTION 29. Use of Units Beyond Lease Term. If Lessor permits the use of any Unit beyond the term of lease with respect thereto, the obligations of Lessee and Guarantor hereunder shall continue; provided, however, that such permissive use shall not be construed as a renewal of such term of lease nor as a waiver of any right or continuation of any obligation of Lessor hereunder, and Lessor may take possession of such Unit at any time upon demand.

SECTION 30. Indemnification Payments. Notwithstanding anything herein to the contrary, all indemnification payments required to be made pursuant to this Lease shall be made "on an after-tax basis" as defined in Section 2 of the Tax Indemnification Agreement.

SECTION 31. Rights, Remedies and Powers. Each and every right, remedy and power granted to Lessor hereunder shall not be exclusive but shall be cumulative and in addition to any other right, remedy or power herein specifically granted or now or hereafter existing in equity, at law, by virtue of statute or otherwise and may be exercised by Lessor from time to time concurrently or independently and as often and in such order as Lessor may deem expedient. Any failure or delay on the part of Lessor in exercising any such right, remedy or power, or abandonment or discontinuance of steps to enforce the same, shall not operate as a waiver thereof or affect Lessor'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. In the event Lessor shall have proceeded to enforce any such right, remedy or power and such proceeding shall have been determined adversely to Lessor, then in such event Lessee, Guarantor and Lessor shall be restored to their former positions and the rights, remedies and powers of Lessor shall continue as if no such proceeding had been taken.

SECTION 32. Execution. This Lease may be executed in any number of counterparts. Although this Lease is dated

as of January 1, 1981 for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

This Lease shall take effect only upon notification by Lessor to Lessee not later than February 11, 1981. If such notice is not given, this Lease shall be null and void.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this Lease to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

CROCKER INVESTOR LEASE CORPORATION, as Lessor

By _____
Vice President

(Corporate Seal)

Attest:

_____
ASSISTANT Secretary

FUNDING SYSTEMS RAILCARS, INC., as Lessee

By _____
President

(Corporate Seal)

Attest:

_____
Asst Secretary

FSC CORPORATION, as Guarantor

By _____
Vice President

(Corporate Seal)

Attest:

_____
Asst Secretary

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 9TH day of February, 1981, before me personally appeared Edmund P. Wysocki, to me personally known, who, being by me duly sworn, said that he is a Vice President of CROCKER INVESTOR LEASE CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said association and 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 association.

Antoinette Vlasak
Notary Public

(Notarial Seal)

My commission expires

8/26/83

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 9th day of February, 1981, before me personally appeared James B. Shein, to me personally known, who, being by me duly sworn, said that he is the President of FUNDING SYSTEMS RAILCARS, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and 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.

Antoinette Vlasak
Notary Public

(Notarial Seal)

My commission expires

8/26/83

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 9th day of February, 1981, before me personally appeared James B. Shein, to me personally known, who, being by me duly sworn, said that he is a Vice President of FSC CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and 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.

Antoinette Vlosak
Notary Public

(Notarial Seal)

My commission expires

8/26/83

DESCRIPTION OF UNITS

Type	Quantity	Lessee's Road Numbers (Both Inclusive)*	Estimated Lessor's Cost Per Unit**	Builder
100-ton gondola cars (52' 6" in length)	400	WSOR 5630 through 5729, inclusive	$41,600	Evans Transportation Company and/or Evans Railcar Leasing Company

* To be completed by Supplement to his Lease.

** To be adjusted as provided in Section 3.

SCHEDULE OF CASUALTY VALUES

The Casualty Value of any Unit to be paid on any Loss Payment Date during the original term (which shall include any period when the Units are subject to Section 11, 14 or 29) of this Lease shall be an amount equal to the percentage of Lessor's Cost of such Unit set forth opposite such Casualty Payment Date in the following schedule; provided, however, that in the event Lessee makes payments pursuant to Section 2 or 3 of the Tax Indemnification Agreement to reflect a Loss of Investment Credit or a Loss of Depreciation Deduction (as such terms are defined in the Tax Indemnification Agreement) such percentage of Lessor's Cost of such Unit shall be redetermined and adjusted in a manner which, after taking into account such payments, will provide Lessor the same pre-tax yield as contemplated by this Lease, it being understood that no such redetermination and adjustment shall reduce the amount payable on any date as the Casualty Value of any Unit to an amount less than the unpaid principal amount of debt with respect to such Unit secured by any security agreement permitted by Section 12 of this Lease, together with accrued interest and premium, if any, thereon unpaid on such date. Lessor shall furnish Lessee with a writing setting forth in reasonable detail the computations and methods used in redetermining the Casualty Values. At Lessee's request and expense, Lessor will retain a firm of nationally recognized independent certified public accountants selected by Lessee (other than any firm which examines Lessee's or Guarantor's books and records) to provide Lessee with verification of Lessor's calculation of such redetermined and adjusted Casualty Values.

CASUALTY PAYMENT DATE	PERCENTAGES OF LESSOR'S COST
June 1, 1981	101.3038
September 1, 1981	104.3100
December 1, 1981	105.8660
March 1, 1982	106.8557
June 1, 1982	108.1442
September 1, 1982	109.1787
December 1, 1982	110.1171

CASUALTY PAYMENT DATE	PERCENTAGES OF LESSOR'S COST
March 1, 1983	109.0168
June 1, 1983	109.8328
September 1, 1983	110.7918
December 1, 1983	111.7768
March 1, 1984	110.2507
June 1, 1984	111.0837
September 1, 1984	104.3556
December 1, 1984	105.0857
March 1, 1985	103.3356
June 1, 1985	103.9101
September 1, 1985	104.4911
December 1, 1985	105.0712
March 1, 1986	102.7885
June 1, 1986	103.2053
September 1, 1986	96.0508
December 1, 1986	96.3452
March 1, 1987	93.9545
June 1, 1987	94.0854
September 1, 1987	94.2168
December 1, 1987	94.3383
March 1, 1988	91.5397
June 1, 1988	91.4925
September 1, 1988	83.8675
December 1, 1988	83.6822
March 1, 1989	80.9000
June 1, 1989	80.5480
September 1, 1989	80.1899
December 1, 1989	79.8125
March 1, 1990	76.7463
June 1, 1990	76.1995
September 1, 1990	75.6445
December 1, 1990	75.0668
March 1, 1991	71.7782
June 1, 1991	71.0297
September 1, 1991	70.2710
December 1, 1991	69.4861
March 1, 1992	66.0365
June 1, 1992	65.0806
September 1, 1992	64.1124
December 1, 1992	63.1147

CASUALTY PAYMENT DATE	PERCENTAGES OF LESSOR'S COST
March 1, 1993	59.5651
June 1, 1993	58.3974
September 1, 1993	57.2154
December 1, 1993	56.0005
March 1, 1994	52.4118
June 1, 1994	51.0291
September 1, 1994	49.6304
December 1, 1994	48.1953
March 1, 1995	44.6285
June 1, 1995	43.0253
September 1, 1995	41.3979
December 1, 1995	39.7281
March 1, 1996	36.2114
June 1, 1996	34.3703
September 1, 1996	32.4937
December 1, 1996	30.5660
March 1, 1997	27.1017
June 1, 1997	25.0000