

\$10  
New Number

LAW OFFICES

ALVORD AND ALVORD

200 WORLD CENTER BUILDING

918 SIXTEENTH STREET, N.W.

WASHINGTON, D.C.

20008-2973

OF COUNSEL  
JESS LARSON  
JOHN L. INGOLDSBY  
URBAN A. LESTER

CABLE ADDRESS  
"ALVORD"

TELEPHONE  
AREA CODE 202  
393-2266

TELEX  
440367 A AND A

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

ROBERT W. ALVORD\*  
CARL C. DAVIS\*  
CHARLES T. KAPPLER  
JOHN H. DOYLE\*  
GEORGE JOHN KETO\*  
MILTON C. GRACE\*  
JAMES C. MARTIN, JR.\*

\*NOT A MEMBER OF D.C. BAR  
\*ALSO ADMITTED IN NEW YORK  
\*ALSO ADMITTED IN OHIO  
\*ALSO ADMITTED IN MARYLAND

RECORDATION NO. 1 5110 Filed & Recorded

DEC 3 1986 11-30 AM

INTERSTATE COMMERCE COMMISSION

December 2, 1986

6 337A060

No.

Date .DEC. 3. 1986.....

Fee \$ 10.00.....

ICC Washington, D. C.

TOO CHEAP TO  
THE SERVICE  
DEC 3 11 22 AM '86  
MOTOR OPERATING UNIT

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, D.C.

Dear Ms. McGee:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are the original and five copies of a Railroad Equipment Lease dated November 19, 1986, a primary document as defined in the Commission's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed document are:

Lessor: Gunderson Leasing, Inc.  
4350 Northwest Front Avenue  
Portland, Oregon 97210

Lessee: The Chesapeake and Ohio Railway Company  
c/o CSX, Transportation  
100 North Charles Street  
Baltimore, Maryland 21201

A description of the railroad equipment covered by the enclosed document is set forth in Exhibit A attached hereto and made a part hereof.

Also enclosed is a check in the amount of \$10 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

*CT. Kappler*  
*Quen...*

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
December 2, 1986  
Page Two

Kindly return stamped copies of the enclosed document to Charles T. Kappler, Esq., Alvord and Alvord, 918 Sixteenth Street, N.W., Washington, D.C. 20006.

A brief summary of the enclosed primary document to appear in the Commission's Index is:

Railroad Equipment Lease dated November 19, 1986 between Gunderson Leasing, Inc., Lessor, and The Chesapeake and Ohio Railway Company, Lessee covering bulkhead intermodal railroad cars bearing NYSW 6836 - NYSW 6860.

Very truly yours,

  
Charles T. Kappler

Enclosures

EXHIBIT A

DESCRIPTION OF EQUIPMENT

The Cars subject to this Lease are identified by the following numbers which are stenciled on such Cars, and the Lessor's Cost for each Car shall be as indicated below:

<u>Car Numbers</u>	<u>Lessor's Cost</u>
NYSW6836 through NYSW6840, inclusive	\$169,750 each
NYSW6841 through NYSW6860, inclusive	\$165,897 each

Interstate Commerce Commission  
Washington, D.C. 20423

12/ 3/86

OFFICE OF THE SECRETARY

Charles T. Kappler  
Alvord & Alvord  
918 16th St. N.W.  
Washington, D.C. 20006

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/3/86 at 11:30am , and assigned re-  
recording number(s). 15110

Sincerely yours,

*Noreta R. McGee*  
Secretary

Enclosure(s)

SE-30  
(7/79)

RAILROAD EQUIPMENT LEASE

DEC 3 1986 11-30 AM.

INTERSTATE COMMERCE COMMISSION

THIS RAILROAD EQUIPMENT LEASE dated November 19, 1986 (the "Lease"), by and between GUNDERSON LEASING, INC., an Oregon corporation, as lessor ("Lessor"), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation, as lessee ("Lessee").

## W I T N E S S E T H:

WHEREAS, Lessor desires to lease the bulkhead intermodal railroad cars listed on Exhibit A hereto (the "Cars") to Lessee, and Lessee desires to lease the Cars from Lessor, upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the covenants set forth herein and other good and valuable consideration, the receipt of which is hereby acknowledged, Lessor and Lessee agree as follows:

SECTION 1. LEASE OF CARS.

Lessor hereby agrees to lease the Cars to Lessee, and Lessee hereby agrees to lease the Cars from Lessor, upon all the terms and conditions set forth herein. Lessee shall inspect each Car upon delivery and the execution by Lessee of a Certificate of Acceptance with respect to the Cars in the form of Exhibit B hereto shall, without further act, for all purposes of this Lease be deemed to be conclusive evidence that the Cars are in good order, condition and repair, have been delivered to and accepted by Lessee and are in the possession of Lessee under and subject to all the terms of this Lease.

**SECTION 2. TERM OF LEASE.**

The original lease term for each Car shall be ten years beginning on November 19, 1986 (the "Term").

**SECTION 3. BASIC RENT, PAYMENT DATES AND PLACE OF PAYMENT.**

Lessee agrees to pay as monthly rent for each Car for and during the Term an amount equal to .95887% of the Lessor's Cost of such Car ("Basic Rent"). Lessor's Cost for each Car shall be as indicated on Exhibit A hereto.

The Basic Rent shall be payable in arrears on the 19th day of each calendar month ("Rent Payment Date") and shall be for the period beginning with the 20th day of the previous calendar month and ending on the 19th day of the current calendar month.

All payments of Basic Rent remaining due and unpaid after the due date thereof shall bear interest from the due date thereof at a rate per annum equal to the current prime interest rate plus 1% (computed on the basis of a 365-day year of actual days elapsed) or the maximum rate permitted by applicable law, whichever is less (the "Late Payment Rate").

If a Rent Payment Date shall not be a business day, the payment otherwise due thereon shall be due and payable on the next succeeding business day.

**SECTION 4. ADDITIONAL RENT PAYABLE BY LESSEE.**

In addition to the Basic Rent payable by Lessee under Section 3, Lessee agrees to pay, as additional rent, sums sufficient to pay and discharge all amounts required to be paid by Lessee in order to comply fully with all other provisions of this Lease ("Additional Rent").

Additional Rent will be due and payable by Lessee at the time specified in the relevant provisions hereof. The Section under which Additional Rent is payable shall be stated in an invoice from Lessor, and the supporting detail or documentation required by such Section shall be included.

**SECTION 5. PURCHASE OPTION.**

Lessee shall have the option to purchase all, but not less than all, the Cars then subject to this Lease at the end of the Term. The purchase price for all Cars shall be equal to their fair market value as of the end of the Term, subject to a maximum price equal to 35% of the Lessor's Cost for such Cars. If Lessee desires to exercise its option pursuant to this Section, it shall notify Lessor in writing 6 months prior to the end of the Term. If the parties cannot agree on the fair market value of the Cars, the fair market value shall be the weighted average of the determinations of three appraisers, one appraiser to be appointed by each of the parties and the third appraiser to be appointed by the two appraisers thus selected.

**SECTION 6. LESSEE'S REPRESENTATIONS AND WARRANTIES.**

Lessee represents and warrants that:

(a) Due Organization. Lessee is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia, is duly licensed and qualified as a foreign corporation in good standing in each jurisdiction in which such licensing or qualification is necessary to carry out the terms of this Lease and has the corporate power and authority to carry on its business

as presently conducted, to take and hold property under lease, and to enter into and perform its obligations under this Lease.

(b) Due Authorization. The execution, delivery and performance by Lessee of this Lease have been duly authorized by all necessary corporate action on the part of Lessee.

(c) Due Execution. This Lease has been duly executed and delivered by Lessee and constitutes the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms except as such enforcement may be qualified by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by applicable principles affecting the availability of specific performance and other special or equitable remedies.

(d) No Violation. Neither the execution and delivery of this Lease by Lessee, nor the consummation by Lessee of the transactions contemplated hereby, nor the performance by Lessee of its obligations hereunder, conflicts or will conflict with, or results or will result in a breach of any of the provisions of, the Certificate of Incorporation or By-Laws of Lessee, or a violation of any law, judgment, order, decree, rule or regulation presently in effect of any court, administrative agency or other governmental authority or a breach or default under any other agreement or instrument to which Lessee is a

party or to which Lessee, any of its property or the Cars are subject, or by which Lessee, any of its property or the Cars are bound or results or will result in the imposition of any liens or encumbrances on any of its property.

(e) Governmental Approvals. No approval, consent or withholding of objection on the part of, or filing (except the filing required by Section 21), registration or qualification with, any governmental body, federal, state or local, is necessary in connection with the execution or delivery by Lessee of this Lease or compliance by Lessee with any of the provisions hereof.

(f) Litigation. There are no proceedings pending or, to the knowledge of Lessee, threatened against or affecting Lessee in any court or before any regulatory commission, board or other governmental administrative agency or authority which, if adversely determined, would have a material adverse effect on its ability to fulfill its obligations under this Lease.

(g) Financial Statements. The financial statements of Lessee heretofore furnished to Lessor are in accordance with the books and records of Lessee and, except as noted therein, were prepared in conformity with generally accepted accounting principles consistently applied and fairly present the financial position of Lessee on and as of the date thereof and the results of its operations for the periods covered thereby. Since the date of such

financial statements, there has been no material adverse change in the financial condition of Lessee.

**SECTION 7. LESSOR'S REPRESENTATIONS AND WARRANTIES.**

Lessor represents and warrants that:

(a) Due Organization. Lessor is a corporation duly organized and validly existing in good standing under the laws of the State of Oregon and has the corporate power and authority to carry on its business as presently conducted and to enter into and perform the acts and obligations of Lessor under this Lease.

(b) Due Authorization. The execution, delivery and performance by Lessor of this Lease have been duly authorized by all necessary corporate action on the part of Lessor.

(c) Due Execution. This Lease has been duly executed and delivered by Lessor and constitutes the legal, valid and binding obligation of Lessor, enforceable against Lessor in accordance with its terms except as such enforcement may be qualified by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by applicable principles affecting the availability of specific performance and other special or equitable remedies.

(d) No Violation. Neither the execution and delivery of this Lease by Lessor, nor its consummation of the transactions contemplated hereby, nor the performance by Lessor of its obligations hereunder, conflicts or will

conflict with, or results or will result in a breach of any of the provisions of, the Articles of Incorporation or By-Laws of Lessor, or any law, judgment, order, decree, rule or regulation of any court, administrative agency or other governmental authority or any other agreement or instrument to which Lessor is subject or is a party or by which it is bound, or constitutes or will constitute a default under any provision thereof.

**SECTION 8. GENERAL INDEMNITY.**

(a) Indemnity. Lessee agrees to assume liability for, and does hereby indemnify and agree to indemnify, protect, save and hold harmless Lessor on an after-tax basis (i.e., after payment of all federal, state and local taxes payable by Lessor with respect to payments pursuant to this indemnity) from and against, any and all liabilities, obligations, losses, damages, penalties, claims (including, without limitation, claims involving negligence or omissions, or strict or absolute liability in tort), actions, suits, judgments, costs, expenses and disbursements (including, without limitation, the fees and expenses of lawyers, accountants and other experts) of any kind and nature whatsoever without any limitations as to amounts ("Claims") which may be imposed on, incurred by or asserted against Lessor in any way relating to or arising out of this Lease or any amendment, modification, supplement, waiver or consent thereunder, or the performance or enforcement of any of the terms hereof, or

the breach by Lessee of any of the terms of this Lease (or any representation made in writing to Lessor by Lessee in connection with this Lease), or in any way relating to or arising out of the ownership of the Cars or the design, manufacture, acquisition, erection, reconditioning, modification, ownership, delivery, lease, possession, use, operation, maintenance, condition, registration, control, financing, insuring, sale, storage or disposition of the Cars or any casualty, injury or loss in connection therewith (including, without limitation, latent and other defects, whether or not discoverable and any Claim for patent, trademark or copyright infringement and expenses of Lessor incurred in the administration of this Lease and reasonable fees and disbursements of outside counsel and other experts incurred in connection therewith). To the extent that Lessor in fact receives indemnification payments from Lessee under this Section, Lessee shall be subrogated, to the extent of the indemnity paid, to Lessor's rights with respect to the transaction or event requiring or giving rise to such indemnity. The indemnities and assumptions of liability of Lessee hereunder are not intended as, and do not constitute, a guarantee of the residual value of any Car.

LESSEE AGREES THAT LESSOR SHALL HAVE NO LIABILITY DIRECTLY OR INDIRECTLY TO LESSEE, TO ANY PERSON CLAIMING BY, THROUGH OR UNDER LESSEE OR TO ANY OTHER PERSON FOR ANY CLAIM ARISING DIRECTLY OR INDIRECTLY FROM ANY CAR, OR FROM

ANY INADEQUACY THEREOF FOR ANY PURPOSE, OR FROM ANY DEFICIENCY OR DEFECT THEREIN WITH RESPECT THERETO OR FROM ANY DELAY IN PROVIDING OR FAILURE TO PROVIDE ANY THEREOF OR FROM ANY INTERRUPTION OR LOSS OF SERVICE OR USE THEREOF OR FROM ANY LOSS OF BUSINESS, ALL OF WHICH SHALL BE THE RISK AND RESPONSIBILITY OF LESSEE.

(b) Exceptions. Lessee shall not be required to indemnify any person pursuant to paragraph (a) of this Section for any Claim resulting from the willful misconduct or criminal act of such person.

(c) Notice of Claim. If any indemnitee has actual knowledge of any pending or threatened proceeding asserting any Claim that would be indemnified against under paragraph (a) of this Section, such indemnitee shall give prompt notice thereof to Lessee. Upon receipt of such notice, Lessee shall, at its own expense, assume full responsibility for the defense against or settlement of any such Claim (the indemnitee being entitled to participate in such defense by its own counsel and at its own expense) and such indemnitee shall cooperate with Lessee by providing, at the expense of Lessee, such assistance as Lessee may reasonably request, provided that each indemnitee shall have the right, at its expense, to control the defense against or settlement of such Claim if such indemnitee shall release Lessee from any obligation to indemnify such indemnitee (or any other indemnitee) for such claim.

(d) Payment. So long as Lessee is complying with its obligations under paragraph (c) of this Section, Lessee shall not be required to make any payment pursuant to this Section of any Claim until the indemnitee shall have been lawfully required to make a payment in respect of the Claim indemnified against hereunder. After payment by Lessee in full of all amounts due from Lessee to an indemnitee pursuant to this Section in respect of a Claim, the indemnitee shall promptly assign to Lessee all its right, title and interest to any claims relating to such Claim, provided that such assignment shall be made without representation, warranty or recourse, and that no breach or default under this Lease on the part of Lessee shall exist. Nothing in this Section shall relieve Lessee of its obligation to make payment under this Section (whether or not it shall contest the Claim) if such failure to pay or such contest will result in a lien on the Cars, any criminal or other civil liability on the part of Lessor or any other obligation of Lessor for which no effective indemnification is provided hereunder.

SECTION 9. GENERAL TAX INDEMNITY.

(a) Indemnity. Lessee agrees to pay, and hereby indemnifies Lessor and agrees to indemnify and hold harmless Lessor, from and against, any and all governmental or quasi-governmental, income, franchise, sales, use, personal property, ad valorem, value added, leasing, leasing use, excise, gross receipts, stamp or

other tax, levy, impost, duty, charge, assessment, fee or withholding of any nature, together with any penalty, fine, addition to tax or interest on any of the foregoing (individually, a "Tax" and collectively, "Taxes") imposed against Lessor or the Cars by any federal, state or local government or taxing authority in the United States or by any foreign government or taxing authority upon or with respect to the Cars, or upon or with respect to the purchase, acquisition, reconditioning, modification, condition, ownership, registration, delivery, leasing, possession, use, operation, control, financing, insuring, maintenance, storage, sale or other disposition thereof, or upon or with respect to the rentals, receipts or earnings arising therefrom, or upon or with respect to this Lease, or any indebtedness created or repaid or deemed to be or have been created or repaid hereunder, unless, and only to the extent that, any such Tax which is not imposed by way of withholding is being contested by Lessee in good faith by appropriate proceedings diligently conducted, if such proceedings shall stay the collection thereof from or against Lessor, Lessee and the Cars and shall not adversely affect the title, property, security interest or other rights of Lessor in the Cars or this Lease. Lessee further agrees that, with respect to any payment or indemnity under this Lease, such payment or indemnity shall include any amount necessary to hold Lessor harmless, on an after-tax basis, from all Taxes

required to be paid by Lessor with respect to such payment or indemnity.

(b) Limitation on Indemnity. Notwithstanding the provisions of paragraph (a) of this Section (except the last sentence thereof), Lessee shall have no obligation hereunder as to any Taxes which are based on, or measured by, the net income of any indemnitee imposed or levied as a consequence of the receipt of payments provided in this Lease by (i) the United States Government or (ii) all other jurisdictions up to the amount of any such Taxes which would be payable to the state and city in which such indemnitee has its principal place of business without apportionment to any other state, except any such Tax which is in substitution for or relieves Lessee from the payment of Taxes which it would otherwise be obligated to pay or reimburse as herein provided.

(c) Contest. If any proceeding (including the written claim or written threat of such proceeding) is commenced against Lessor for any Tax to which the indemnity provided in paragraph (a) of this Section applies, Lessor shall notify Lessee within 30 days. If reasonably requested by Lessee in writing, Lessor shall, at the expense of Lessee and upon receipt of indemnification reasonably satisfactory to Lessor with respect to all costs of contesting the validity, applicability or amount of such Tax (including, without limitation, all costs, expenses, losses, fees and

required to be paid by Lessor with respect to such payment or indemnity.

(b) Limitation on Indemnity. Notwithstanding the provisions of paragraph (a) of this Section (except the last sentence thereof), Lessee shall have no obligation hereunder as to any Taxes which are based on, or measured by, the net income of any indemnitee imposed or levied as a consequence of the receipt of payments provided in this Lease by (i) the United States Government or (ii) all <sup>state and local</sup> other jurisdictions up to the amount of any such Taxes which would be payable to the state and city in which such indemnitee has its principal place of business without apportionment to any other state, except any such Tax which is in substitution for or relieves Lessee from the payment of Taxes which it would otherwise be obligated to pay or reimburse as herein provided.

CON  
AGA

(c) Contest. If any proceeding (including the written claim or written threat of such proceeding) is commenced against Lessor for any Tax to which the indemnity provided in paragraph (a) of this Section applies. Lessor shall notify Lessee within 30 days. If ~~reasonably requested by Lessee in writing, Lessor shall,~~ at the expense of Lessee and upon receipt of indemnification reasonably satisfactory to Lessor with respect to all costs of contesting the validity, applicability or amount of such Tax (including, without limitation, all costs, expenses, losses, fees and

disbursements of lawyers, accountants and other experts, penalties and interest), in good faith contest (after consultation with Lessee) in the name of Lessee or Lessor, as the case may be, the validity, applicability or amount of such Tax by (i) resisting payment thereof if Lessor in its sole discretion shall determine such course of action to be appropriate, (ii) not paying the same except under protest, if protest is necessary and proper, or (iii) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings. Lessee, through its counsel, shall have the right to participate in any proceeding related to such contest, provided that the control of such proceeding shall be exercised by counsel designated by Lessor. If Lessor shall obtain a refund of all or any part of such Tax paid by Lessee, Lessor shall pay Lessee the amount of such refund. If in addition to such refund Lessor shall receive an amount representing interest on the amount of such refund, Lessor shall pay Lessee that proportion of such interest which is fairly attributable to Taxes paid by Lessee prior to the receipt of such refund.

(d) Reports. In case any report or return is required to be made with respect to any obligation of Lessee under this Section or arising out of this Section, Lessee will either make such report or return in such manner as will show the ownership of the Cars in Lessor, and send a copy of such report or return to Lessor, or

disbursements of lawyers, accountants and other experts, penalties and interest), in good faith contest (after consultation with Lessee) in the name of Lessee or Lessor, as the case may be, the validity, applicability or amount of such Tax by (i) resisting payment thereof if Lessor in its sole discretion shall determine such course of action to be appropriate, (ii) not paying the same except under protest, if protest is necessary and proper, or (iii) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings. Lessee, through its counsel, shall have the right to participate in any proceeding related to such contest, provided that the control of such proceeding shall be exercised by counsel designated by Lessor. If Lessor shall obtain a refund of all or any part of such Tax paid by Lessee, Lessor shall pay Lessee the amount of such refund. If in addition to such refund Lessor shall receive an amount representing interest on the amount of such refund, Lessor shall pay Lessee that proportion of such interest which is fairly attributable to Taxes paid by Lessee prior to the receipt of such refund.

(d) Reports. In case any report or return is required to be made with respect to any obligation of Lessee under this Section or arising out of this Section, Lessee will either make such report or return in such manner as will show the ownership of the Cars in Lessor, and send a copy of such report or return to Lessor, or

*W*  
other than property  
taxes or ad val  
tax  
ret

will notify Lessor of such requirement within a reasonable time before the required filing date and (unless such report or return cannot properly be made except by Lessor) make or cause to be made such report or return in such manner as shall be satisfactory to Lessor.

**SECTION 10. LIMITED SPECIAL INCOME TAX INDEMNITY.**

Lessor expects to claim an investment tax credit with respect to the Cars pursuant to a special transition rule in the Tax Reform Act of 1986. Lessee represents, warrants and covenants that it will not use the Cars in any manner which would cause the Cars not to constitute "Section 38 property" within the meaning of Section 48(a) of the Internal Revenue Code. If Lessor shall lose the right to claim the investment tax credit as a direct result of the manner in which Lessee has used the Cars, then Lessee shall pay to Lessor an amount which, in the reasonable opinion of Lessor, will cause Lessor to realize, on an after-tax basis, the value to it of the investment tax credit so lost, plus an amount equal to all interest, penalties or additions to tax payable by Lessor as a result of such loss.

**SECTION 11. RISK OF LOSS.**

During the term of this Lease with respect to any Car, and for so long thereafter as such Car remains in the possession of Lessee, Lessee shall bear the risk of and all responsibility for loss, theft, destruction, damage, seizure, taking or requisition, by whatever cause, human or natural, within or beyond the control of Lessee, partial or complete, of or to such Car. Lessee agrees that no occurrence specified in the preceding sentence shall

will notify Lessor of such requirement within a reasonable time before the required filing date and (unless such report or return cannot properly be made except by Lessor) make or cause to be made such report or return in such manner as shall be satisfactory to Lessor.

**SECTION 10. LIMITED SPECIAL INCOME TAX INDEMNITY.**

Lessor expects to claim an investment tax credit with respect to the Cars pursuant to a special transition rule in the Tax Reform Act of 1986. Lessee represents, warrants and covenants that it will not use the Cars in any manner which would cause the Cars not to constitute "Section 38 property" within the meaning of Section 48(a) of the Internal Revenue Code. If Lessor shall lose the right to claim the investment tax credit as a direct result of the manner in which Lessee ~~has used~~<sup>uses</sup> the Cars, then Lessee shall pay to Lessor an amount which, in the reasonable opinion of Lessor, will cause Lessor to realize, on an after-tax basis, the value to it of the investment tax credit so lost, plus an amount equal to all interest, penalties or additions to tax payable by Lessor as a result of such loss.

*Wm  
1/2/87*

**SECTION 11. RISK OF LOSS.**

During the term of this Lease with respect to any Car, and for so long thereafter as such Car remains in the possession of Lessee, Lessee shall bear the risk of and all responsibility for loss, theft, destruction, damage, seizure, taking or requisition, by whatever cause, human or natural, within or beyond the control of Lessee, partial or complete, of or to such Car. Lessee agrees that no occurrence specified in the preceding sentence shall

relieve or impair, in whole or in part, any obligation of Lessee to Lessor under this Lease, including, without limitation, the obligation to pay Basic Rent and Additional Rent.

**SECTION 12. REPAIR AND MAINTENANCE.**

During the term of this Lease, Lessee shall at its sole expense maintain and keep all of the Cars subject to this Lease in good order, condition and repair, qualified for use in interchange in accordance with the rules of the Association of American Railroads and shall use the Cars only in the manner for which they were designed and intended and so as to subject them only to ordinary wear and tear. Any parts installed or replacements made by Lessee upon any Car shall be considered accessions to such Car and title thereto shall be immediately vested in Lessor without cost or expense to Lessor. Lessee shall make no additions or improvements to any Car without the prior written consent of Lessor unless the same are readily removable without causing material damage to such Car. Title to any such readily removable additions or improvements shall remain with Lessee.

**SECTION 13. OPERATING RULES AND REGULATIONS.**

Lessee agrees to comply with all governmental laws, regulations and requirements, including the Interchange Rules and all other rules of the Association of American Railroads (or any successor thereto) and the Interstate Commerce Commission. In case any equipment or appliance on any Car shall be required to be changed or replaced, or any additional or other equipment or appliance is required to be installed on such Car in order to

comply with such laws, regulations, requirements and rules, Lessee agrees to make such changes, additions and replacements at its own expense and title thereto shall be immediately vested in Lessor.

SECTION 14. ASSIGNMENTS.

(a) By Lessor. It is understood and agreed that all rents and other sums due or to become due or at any time owing or payable by Lessee hereunder may be assigned by Lessor, and that the Cars leased hereunder may be mortgaged by Lessor under a chattel mortgage. In any such event, the right, title and interest of the mortgagee under any such chattel mortgage shall by express terms of such chattel mortgage be subject to the leasehold interest of Lessee in and to the Cars hereunder. In the event an assignment of such rents and other sums is made as collateral security for an obligation of Lessor, then the right, title and interest of such assignee in and to such rents and other sums and to receive and collect the same shall not be subject to any abatement, defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of Lessor hereunder or by reason of any other indebtedness or liability at any time owing by Lessor to Lessee or from any defects in the Cars. Any such assignee shall be entitled to all the privileges, powers and immunities of Lessor and may, but shall not be obligated to, perform any duty, covenant or condition required to be performed by Lessor under the terms of this

Lease, providing that nothing herein contained shall release Lessor of its obligations to Lessee hereunder and Lessee shall look solely to Lessor for the performance thereof.

(b) By Lessee. So long as no Event of Default exists hereunder, Lessee shall be entitled to sublease one or more of the Cars to Intermodal Systems, Inc., a Delaware corporation, or, upon the prior written permission of Lessor, to any other person.

SECTION 15. EVENTS OF DEFAULT.

(a) Events of Default. Each of the following events shall constitute an "Event of Default" hereunder (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body);

(i) Default by Lessee in making any payment of Basic Rent or Additional Rent due hereunder, as and when the same shall become due and payable, and such default shall continue unremedied for ten days; or

(ii) Default by Lessee in the observance or performance of any covenant, condition or agreement to be performed or observed by Lessee under this Lease or any other document or certificate furnished to Lessor in connection herewith or pursuant hereto,

and such default shall continue for 30 days after written notice thereof from Lessor to Lessee; or

(iii) Any representation or warranty made by Lessee in this Lease or in any other document or certificate furnished by Lessee to Lessor in connection herewith shall prove to be untrue or incorrect in any material respect as of the date of issuance or making thereof; or

(iv) Lessee is generally not paying its debts as such debts become due or becomes insolvent or bankrupt or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee or receiver for any of its properties or assets; or

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

in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed; or

(vi) Any proceedings shall be commenced by or against Lessee for any relief which includes, or might result in, any modification of the obligations of Lessee under this Lease, or any other document or instrument furnished to Lessor in connection herewith under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of Lessee hereunder, or under any such other document or instrument), and, are consented to or are not dismissed within 60 days after such proceedings shall have been commenced; or

(b) Remedies. Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing and shall not have been remedied, Lessor may, at its option declare this Lease to be in default and, at any time thereafter, may exercise one or more of the following remedies, as Lessor in its sole discretion shall elect:

(i) Lessor may proceed by appropriate court action, either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof.

(ii) Lessor may by notice in writing, terminate this Lease as to any or all Cars, whereupon all rights of Lessee to the use of such Cars shall absolutely cease and terminate but Lessee shall remain liable as herein provided; and thereupon Lessee, if so requested by Lessor, shall at the expense of Lessee promptly return such Cars to the possession of Lessor as provided in Section 16.

(iii) Lessor may enter upon the premises where any Car is located and take immediate possession of and remove such Car, all without liability on the part of Lessor for or by reason of such entry or taking possession, whether for the restoration of damage to property caused by such taking or otherwise, and without such action constituting a termination of this Lease as to such Car unless Lessor expressly notifies Lessee in writing to that effect.

(iv) Lessor may sell any or all Cars at public or private sale, with notice to Lessee but with or without advertisement, in such manner as Lessor may determine, or otherwise dispose of, hold, use,

operate, lease to others or keep idle any or all thereof, as Lessor in its sole discretion may determine and all free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or inaction or for any proceeds with respect thereto.

(v) Lessor may avail itself of any other remedy provided by any statute or otherwise available at law, in equity or in bankruptcy.

**SECTION 16. SURRENDER OF THE CARS.**

(a) Expiration. Unless Lessee shall have exercised its option to purchase the Cars pursuant to Section 5 hereof, upon expiration of the Term of this Lease with respect to any Car, Lessee, at its own expense and risk, will at the request of Lessor, deliver possession of such Car to Lessor at any reasonable place on the lines of any railroad operated by it or any of its affiliates or to any connecting carrier for shipment, all as directed by Lessor, upon not less than 30 days' written notice to Lessee. If Lessee cannot deliver possession of any Car to Lessor because such Car has been lost, stolen, destroyed or irreparably damaged, Lessee shall pay to Lessor an amount equal to the fair market value of a similar car, to be determined in the same manner as determined under Section 5.

(b) Default. If this Lease shall terminate in respect of any of the Cars pursuant to Section 15 hereof,

Lessee shall forthwith deliver possession of such Cars to Lessor and shall give prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any Car so to return such Cars. For the purpose of delivering possession of any Car or Cars to Lessor as above required, Lessee will, at its own expense and risk: (i) forthwith and in the usual manner cause such Cars to be transported to the storage tracks of any railroad within the United States, as shall be designated by Lessor or in the absence of such designation, as Lessee may select, and there assembled; (ii) furnish or arrange for Lessor to store such Cars on any lines of a railroad or premises approved by Lessor until such Cars have been sold, leased or otherwise disposed of by Lessor; and (iii) cause such Cars to be transported to such interchange point or points as shall be designated by Lessor upon any sale, lease or other disposition of all or any of such Cars. All movement and storage of each Car is to be at the risk and expense of Lessee.

SECTION 17. INSURANCE.

The Lessee will, at all times prior to the return of the Cars to the Lessor, at its own expense, cause to be carried and maintained insurance, in respect of the Cars at the time subject hereto, in such amounts and against such risks as is consistent with prudent industry practice for Class I railroads but, in any event, at least in such amounts and against such risks

customarily insured against by the Lessee in respect of similar equipment owned by it. The Lessee shall give the Lessor at least 30 days' prior written notice of any material change in coverage or cancellation of insurance; provided, however, that if it is not practicable for the Lessee to have knowledge of a material change in coverage at least 30 days prior to the occurrence thereof, the Lessee shall give the Lessor written notice as soon as the Lessee learns of such change.

SECTION 18. NET LEASE.

This Lease is a net lease and Lessee acknowledges and agrees that Lessee's obligation to pay all rent payable hereunder, and the rights of Lessor in and to such rent, shall be absolute and unconditional and shall not be subject to any abatement, reduction, setoff, defense, counterclaim or recoupment whatsoever, including without limitation, abatements, reductions, setoffs, defenses, counterclaims or recoupments due or alleged to be due to, or by any reason of, any past, present or future claims which Lessee may have against Lessor, the manufacturer, any lenders or against any person for any reason whatsoever; 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 the Cars, the condition, design, operation or fitness for use thereof, or any damage to, or any loss or destruction of, or any liens, encumbrances, security interests or rights of others with respect to the Cars, any prohibition or interruption of or other restriction against Lessee's use, operation or possession of the



**SECTION 20. FURTHER ASSURANCES.**

Lessee understands that Lessor may finance or refinance the purchase of the Cars with a third party lender, and may pledge as collateral for such borrowing the Cars and the Lease. Lessee agrees that it will do such further acts and provide Lessor with such further documents, agreements, or amendments as may be necessary to make the Lease acceptable collateral for the contemplated borrowings, provided that Lessee shall not be required to provide any document pursuant to this Section which would increase its obligations under the Lease.

**SECTION 21. RECORDING.**

Lessee, at its own expense, will cause this Lease to be filed in accordance with 49 U.S.C. §11303(a).

**SECTION 22. BINDING EFFECT.**

This Lease shall be binding upon and shall inure to the benefit of Lessor and Lessee and their respective successors and assigns.

**SECTION 23. GOVERNING LAW.**

This Lease shall be construed in accordance with and shall be governed by the laws of the Commonwealth of Virginia.

**SECTION 24. EXECUTION IN COUNTERPARTS.**

This Lease may be executed in any number of counterparts, each counterpart constituting an original but all together one and the same instrument and contract.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed in their respective names as of the date first above written.

GUNDERSON LEASING, INC.

By: L. Bruce Ward  
Title: PRESIDENT

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF Virginia )  
City of Richmond ) SS:  
COUNTY OF Richmond )

On this 19<sup>th</sup> day of November, 1986, before me personally appeared L. Bruce Ward, to me personally known, who being by me duly sworn, says that he is President of GUNDERSON LEASING, INC., that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Barbara M. Surles  
Notary Public

[NOTARIAL SEAL]

My commission expires: Sept. 5, 1987



STATE OF Maryland )  
COUNTY OF Baltimore ) SS:

On this 19th day of November, 1986, before me personally appeared A. B. Afrosia, to me personally known, who being by me duly sworn, says that he is Treasurer of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Jane Ann Dolan  
Notary Public

[NOTARIAL SEAL]

EXHIBIT A

DESCRIPTION OF EQUIPMENT

The Cars subject to this Lease are identified by the following numbers which are stenciled on such Cars, and the Lessor's Cost for each Car shall be as indicated below:

<u>Car Numbers</u>	<u>Lessor's Cost</u>
NYSW6836 through NYSW6840, inclusive	\$169,750 each
NYSW6841 through NYSW6860, inclusive	\$165,897 each

EXHIBIT B

Certificate of Acceptance

The Chesapeake and Ohio Railway Company as Lessee under a Railroad Equipment Lease dated November 19, 1986, with Gunderson Leasing, Inc. (the "Lease"), hereby certifies that it has received and inspected the following bulkhead intermodal railroad cars: NYSW6836 through NYSW6860, inclusive, on the date written below, and such cars are in good order, condition and repair, are ready for service, and are accepted on such date for all purposes of, and subject to, the Lease.

THE CHESAPEAKE AND OHIO  
RAILWAY COMPANY

By \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_