

NEW NUM 13512

810

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WASHINGTON, D.C.  
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RECORDATION NO. 1 5130 December 19, 1986  
Filed & Recorded

DEC 19 1986 2-0 5 PM

INTERSTATE COMMERCE COMMISSION

6-353A021

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

Date: DEC 19 1986  
Fee \$ 10.00

ICC Washington, D. C.

Dear Ms. McGee:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) is a Railroad Equipment Lease dated as of December 15, 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: Great Western Leasing Corporation  
555 California Street  
San Francisco, California 94104

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 Exhibits A-1 and A-2 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.

*Conduct - C.T. Kappler*

DEC 19 1 55 PM '86  
MOTOR OPERATING UNIT  
100 N. CHARLES ST.  
BALTIMORE, MD.

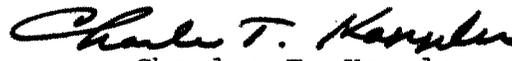
Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
December 19, 1986  
Page Two

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

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

Railroad Equipment Lease dated as of December 15, 1986 between Great Western Leasing Corporation, Lessor, and The Chesapeake and Ohio Railway Company, Lessee, covering one hundred twenty-seven (127) bulkhead intermodal railroad cars bearing marks and numbers NYSW 6813-6835, 6861-6902 and 7000-7061.

Very truly yours,

  
Charles T. Kappler

Enclosures

DESCRIPTION OF ITC CARS

<u>Number of Cars</u>	<u>Identifying Mark and Numbers</u>	<u>Lessor's Cost</u>
33	NYSW 6870 through NYSW 6902, inclusive	\$165,897
62	NYSW 7000 through NYSW 7061, inclusive	\$167,000

DESCRIPTION OF NON-ITC CARS

<u>Number of Cars</u>	<u>Identifying Mark and Numbers</u>	<u>Lessor's Cost</u>
23	NYSW 6813 through NYSW 6835, inclusive	\$169,750
9	NYSW 6861 through NYSW 6869, inclusive	\$165,897

Interstate Commerce Commission

Washington, D.C. 20423

12/19/86

OFFICE OF THE SECRETARY

Charles T. Kappler  
Alvord & Alvord  
118 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 12/19/86 at 2:05pm, and assigned re-  
recording number (s). 15131

Sincerely yours,

*Noreta R. McGee*  
Secretary

Enclosure(s)

SE-30  
(7/79)

1 5134 *lmh*  
RECORDATION NO. \_\_\_\_\_ Filed & Recorded

DEC 19 1986 2:05 PM

INTERSTATE COMMERCE COMMISSION

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RAILROAD EQUIPMENT LEASE

Dated as of December 15, 1986

Between

GREAT WESTERN LEASING CORPORATION  
("Lessor")

and

THE CHESAPEAKE AND OHIO RAILWAY COMPANY  
("Lessee")

---

relating to

127 Bulkhead Intermodal Railroad Cars

TABLE OF CONTENTS

	PAGE
Section 1. Definitions.....	1
Section 2. Lease of Cars.....	4
Section 3. Acceptance, Lease and Funding.....	4
Section 4. Term of Lease.....	6
Section 5. Basic Rent, Payment Dates and Place of Payment....	6
Section 6. Additional Rent Payable by Lessee.....	7
Section 7. Renewal Option.....	7
Section 8. Early Termination Option.....	8
Section 9. Purchase Option.....	9
Section 10. Lessee's Representations and Warranties.....	10
Section 11. Lessor's Representations and Warranties.....	11
Section 12. General Indemnity.....	12
Section 13. General Tax Indemnity.....	13
Section 14. Special Income Tax Indemnity.....	15
Section 15. Risk of Loss and Payment of Loss Value.....	17
Section 16. Repair and Maintenance.....	18
Section 17. Disclaimer of Warranties.....	18
Section 18. Operating Rules and Regulations.....	19
Section 19. Ownership; Liens; Personal Property.....	19
Section 20. Assignments.....	20
Section 21. Events of Default.....	21
Section 22. Surrender of the Cars.....	24
Section 23. Insurance.....	25
Section 24. Net Lease.....	27
Section 25. Notices.....	27

Section 26.	Annual Reports and Inspection.....	27
Section 27.	Recording.....	28
Section 28.	Lessor's Right to Perform for Lessee.....	28
Section 29.	Binding Effect.....	28
Section 30.	Severability.....	28
Section 31.	Lessee's Right to Possession and Use.....	29
Section 32.	Governing Law.....	29
Section 33.	Execution in Counterparts.....	29

ATTACHMENTS TO RAILROAD EQUIPMENT LEASE:

- Exhibit A - Description of Cars
- Exhibit B - Certificate of Acceptance
- Exhibit C - Termination Values
- Exhibit D - Description of Opinion of Counsel for Lessee
- Exhibit E - Loss Values

RAILROAD EQUIPMENT LEASE

THIS RAILROAD EQUIPMENT LEASE dated as of December 15, 1986 ("Lease"), by and between GREAT WESTERN LEASING CORPORATION, a California 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 has purchased or will purchase 127 bulkhead intermodal railroad cars pursuant to a purchase agreement dated as of December 15, 1986 (the "Purchase Agreement") (such cars, as identified on Exhibits A-1 and A-2 hereto, hereinafter called individually a "Car" and collectively the "Cars"); and

WHEREAS, Lessor desires to lease the Cars to the 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. DEFINITIONS.

The following terms shall have the following meanings for all purposes of this Lease, which meanings shall apply, unless the context otherwise requires, to both the singular and plural of such terms:

Additional Rent shall have the meaning set forth in Section 6 hereof.

Affiliate of any Person means a Person controlling, controlled by, or under common control with, such Person.

After-Tax Basis shall have the meaning set forth in Section 12 hereof.

Association of American Railroads means the trade association of railroad companies with principal offices at 1920 "L" Street, N.W., Washington, D.C. 20035.

Basic Rent shall have the meaning set forth in Section 5 hereof.

Basic Term shall have the meaning set forth in Section 4 hereof.

Benefits shall have the meaning set forth in Section 14 hereof.

Car and Cars shall have the meanings set forth in the Recitals hereto.

Certificate of Acceptance means a Certificate of Acceptance, in substantially the form attached hereto as Exhibit B.

Claims shall have the meaning set forth in Section 12 hereof.

Closing Date means each date on which Lessor shall pay the purchase price of any Car, designated by Lessee by giving at least two days' notice prior to such date (which notice may be telephonic, confirmed in writing) to Lessor, and on which Lessor will deliver such Cars to the Lessee hereunder.

Code means the Internal Revenue Code of 1986, as amended to the date of this Lease.

Commencement Date shall have the meaning set forth in Section 4 hereof.

Document Closing Date means the date on which the document closing contemplated by Section 3(b) hereof is held, as designated by Lessee by giving at least five days' notice prior to such date (which notice may be telephonic, confirmed in writing) to Lessor.

Event of Loss shall have the meaning set forth in Section 15 hereof.

Event of Default shall have the meaning set forth in Section 21 hereof.

Fair Market Value Opinion shall have the meaning set forth in Section 9 hereof.

First Rent Payment shall have the meaning set forth in Section 5 hereof.

Interest Deductions shall have the meaning set forth in Section 14 hereof.

Investment Credit shall have the meaning set forth in Section 14 hereof.

Interchange Rules means those interchange rules and procedures promulgated by the Association of American Railroads from time to time.

ITC Car shall have the meaning set forth in Section 4 hereof.

Late Payment Rate shall have the meaning set forth in Section 5 hereof.

Law means any applicable provision of any constitution, statute, rule, ordinance, regulation, executive or administrative order or other rule of law of the United States or any state or any political subdivision of the United States or any state or any department, agency, or instrumentality of any of the foregoing.

Lease means this instrument (including the attachments, exhibits and schedules attached hereto) as modified, amended and supplemented from time to time.

Lessee shall be the Person identified as the lessee in the introductory paragraph hereof.

Lessee's Appraiser shall have the meaning set forth in Sections 7 and 9 hereof.

Lessor shall be the Person identified as the lessor in the introductory paragraph hereof.

Lessor's Appraiser shall have the meaning set forth in Section 9 hereof.

Lessor's Cost means, as to each Car, the purchase price for such Car as indicated on Exhibit A-1 or Exhibit A-2 hereto.

Lessor's Liens shall have the meaning set forth in Section 19 hereof.

Lien means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind, including, without limitation, any conditional sale or other title retention agreement, any lease in the nature thereof, or the filing of or agreement to give any financing statement under the Uniform Commercial Code of any jurisdiction.

Loss shall have the meaning set forth in Section 14 hereof.

Loss Payment Date means, as to any Car suffering an Event of Loss, the Rent Payment Date or the last day of the Primary Term or Evergreen Term with respect to such Car, as the case may be, which next follows the date on which Lessee determines pursuant to Section 15 hereof that an Event of Loss with respect to such Car has occurred.

Loss Value means, as to any Car suffering an Event of Loss, an amount equal to that percentage of the Lessor's Cost of such Car set forth in Exhibit E hereto opposite the Rent Payment Date for such Car.

New Section 38 Property shall have the meaning set forth in Section 48(b) of the Code.

Non-ITC Car shall have the meaning set forth in Section 4 hereof.

Payment Date shall have the meaning set forth in Section 21 hereof.

Person means any individual, partnership, corporation, trust, unincorporated association or joint venture, a government or political subdivision or any department or agency thereof, or any other entity.

Primary Term shall have the meaning set forth in Section 4 hereof.

Purchase Agreement shall have the meaning set forth in the Recitals hereto.

Qualifications shall have the meaning set forth in Sections 7 and 9 hereof.

Reappraisal Opinion shall have the meaning set forth in Section 7 hereof.

Recovery Deductions shall have the meaning set forth in Section 14 hereof.

Renewal Factors shall have the meaning set forth in Section 7 hereof.

Renewal Rent shall have the meaning set forth in Section 7 hereof.

Renewal Term shall have the meaning set forth in Section 7 hereof.

Rent means all payments due from Lessee to Lessor pursuant to this Lease, including Basic Rent, Interim Rent, Renewal Rent and Additional Rent.

Rent Payment Date shall have the meaning set forth in Section 5 hereof.

Tax and Taxes shall have the meanings set forth in Section 13 hereof.

Termination Date shall have the meaning set forth in Section 8 hereof.

Termination Value shall have the meaning set forth in Section 8 hereof.

## SECTION 2. 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. Lessor will deliver the Cars to Lessee on each Closing Date, as and when the Cars are delivered to Lessor by Lessee pursuant to the Purchase Agreement, at the location where the Lessee delivers possession of the Cars to Lessor. Lessee shall inspect each Car upon delivery, and the execution by Lessee (or by any one of its duly authorized representatives) of a Certificate of Acceptance with respect to a Car or Cars shall, without further act, for all purposes of this Lease be deemed to be conclusive evidence that such Car or 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 3. ACCEPTANCE, LEASE AND FUNDING.

(a) Acceptance, Lease and Funding. Subject to the conditions in paragraph (b) of this Section and provided that no Event of Default or no event which, but for the lapse of time or the giving of notice or both would be an Event of Default, shall have occurred and be continuing, on the applicable Closing Date Lessor shall purchase each Car from Lessee and

simultaneously lease such Car to Lessee hereunder. The aforesaid lease of a Car by Lessee shall be conclusively evidenced by the execution and delivery by Lessee of a Certificate of Acceptance relating to such Car. Lessor shall not be obligated to purchase or lease any Car from or to Lessee if the Closing Date for such Car is on or after December 31, 1986.

(b) Conditions of Acceptance, Leases and Funding: Document Closing Date. The obligation of Lessor to purchase any Car and lease such Car to Lessee hereunder on any Closing Date, shall be subject to fulfillment of the following conditions to the reasonable satisfaction of Lessor on or before the Document Closing Date:

(1) Lessor shall have received fully executed counterparts of this Lease and the Purchase Agreement.

(2) This Lease shall have been filed and recorded in all places which are, in Lessor's reasonable opinion, necessary or appropriate to protect Lessor's interest in such Car.

(3) Lessor shall have received certified copies of the corporate proceedings of Lessee with respect to the authorization of this Lease and other instruments contemplated herein and therein as to the execution, delivery and performance thereof by the appropriate party or parties.

(4) The representations and warranties of Lessee, contained in this Lease shall be true and correct on and as of the Document Closing Date with the same effect as though made on and as of the Document Closing Date; and there shall be no Event of Default hereunder or the occurrence of any event which, but for the lapse of time or the giving of notice or both, would be such an Event of Default; and Lessor shall have received from Lessee a certificate to such effect dated the Document Closing Date and executed by a duly authorized officer of Lessee.

(5) Lessor shall have received a signed opinion, dated the Document Closing Date, of such legal counsel for Lessee as are reasonably acceptable to Lessor, as described in Exhibit D hereto.

(6) Lessor shall have received an executed copy of certificates of such insurance, if any, as Lessee is required to maintain pursuant to Section 23 hereof.

(c) Conditions to Acceptance, Lease and Funding: Closing Dates. The obligation of Lessor to pay the purchase price of a Car on any Closing Date shall be subject to the fulfillment of the following conditions to the reasonable satisfaction of Lessor on or before such Closing Date:

(1) Lessor shall have received an executed Bill of Sale under, and as defined in, the Purchase Agreement from the seller of such Car.

(2) Lessor shall have received an executed bill of sale from the manufacturer of the Car, substantially in the form of Exhibit C to the Purchase Agreement.

(3) Lessor shall have received an executed Certificate of Acceptance from Lessee with respect to such Car.

(4) The representations and warranties of Lessee contained in this Lease and in any certificate delivered pursuant hereto shall be true and correct on and as of such Closing Date with the same effect as though made on and as of such Closing Date; and there shall be no Event of Default hereunder or the occurrence of any event which, but for the lapse of time or the giving of notice or both, would be such an Event of Default; and Lessor shall have received from Lessee a certificate to such effect dated such Closing Date and executed by a duly authorized officer of Lessee.

(5) There shall have been no material adverse change in the business, financial or operating condition of Lessee.

SECTION 4. TERM OF LEASE.

Subject to the provisions of Sections 7, 8 and 15 hereof, the original lease term of each Car (the "Primary Term") shall consist of the Interim Term for such Car plus the Basic Term for such Car. The Interim Term for each Car shall commence on the date appearing on the Certificate of Acceptance relating to such Car (the "Commencement Date") and shall continue through and including December 31, 1986.

The Basic Term for each of those Cars identified on Exhibit A-1 (hereinafter referred to as the "ITC Cars") shall commence on January 1, 1987 and shall continue for 145 calendar months.

The Basic Term for each of those Cars identified on Exhibit A-2 (hereinafter referred to as the "Non-ITC Cars") shall commence on January 1, 1987 and shall continue for 140 calendar months.

The Renewal Term for a Car shall be as defined in Section 7 hereof.

SECTION 5. BASIC RENT, PAYMENT DATES AND PLACE OF PAYMENT.

Lessee agrees to pay as interim rent for each Car for the Interim Term an amount equal to the Basic Rent for such Car divided by 30 and multiplied by the number of days in the Interim Term for such Car ("Interim Rent").

Lessee agrees to pay as monthly rent for each ITC Car for and during the Basic Term an amount equal to 0.80000% of the Lessor's Cost of such Car, and Lessee agrees to pay as monthly rent for each Non-ITC Car for and during the Basic Term an amount equal to 0.89434% of the Lessor's Cost of such Car ("Basic Rent").

The Basic Rent shall be payable in arrears on the 1st day of each calendar month for the previous calendar month ("Rent Payment Date").

During any Renewal Term, Lessee agrees to pay Renewal Rent (as defined in Section 7) in lieu of Basic Rent.

All payments of Basic Rent, Interim Rent and Renewal Rent remaining due and unpaid more than 10 days after the due date thereof shall bear interest from the due date thereof at the rate of 10% per annum (computed on the basis of a 360-day year of twelve 30-day months) 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.

All payments of Interim Rent, Basic Rent, Renewal Rent and Loss Value and certain other payments under this Lease may be assigned by the Lessor to a third-party lender. Lessee agrees that it will make all such payments as directed by Lessor in writing from time to time.

SECTION 6. ADDITIONAL RENT PAYABLE BY LESSEE.

In addition to the Basic Rent, Interim Rent and Renewal Rent payable by Lessee under Section 5, 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 7. RENEWAL OPTION.

Lessee shall have the option to extend this Lease beyond the Primary Term as to all, but not less than all, the Cars then subject to this Lease, on the terms and conditions herein except as otherwise provided in this Section, for a term of one or more whole years ("Renewal Term"), if the Reappraisal Opinion (as defined below in this Section) concludes that at the end of such Renewal Term (1) the remaining estimated useful life of the Cars will be at least equal to the longer of one year or 20% of the original estimated useful life of the Cars and (2) the fair market value of such Cars will be at least equal to 20% of the Lessor's Cost of such Cars, without adjustment for inflation or deflation.

At the end of the first Renewal Term, if any, or any subsequent Renewal Term, Lessee shall have the option to extend this Lease for any number of additional Renewal Terms, as long as the Reappraisal Opinion for each Renewal Term concludes that at the end of any such term the two conditions stated in the above paragraph (the "Renewal Factors") will be satisfied.

At the end of the 140th month of the Basic Term for the ITC Cars and at the end of the 135th month of the Basic Term for the Non-ITC Cars, and at the end of the month which is five months prior to the end of any Renewal Term, Lessee may hire, at its own expense, an appraiser (the "Lessee's Appraiser") who is knowledgeable about railroad cars similar to the Cars, and who has at least three years experience in appraising railroad equipment (both requirements hereinafter called the "Qualifications") to render an appraisal of the useful life and fair market value of the Cars as of the end of the Basic Term, or the Renewal Term, as the case may be, and as of one or more whole years after such dates, and an opinion concerning the fair rental value of the Cars at that time. The Lessee's Appraiser shall issue his opinion (the "Reappraisal Opinion") in writing to both Lessor and Lessee no later than 30 days following the above dates. The Reappraisal Opinion of the Lessee's Appraiser shall be binding on Lessor and Lessee as to all matters other than the fair rental value of the Cars.

If the Reappraisal Opinion indicates that the Renewal Factors are satisfied, then Lessee shall have the option to extend the Lease for a term of one or more such years. Lessee shall exercise its option, and shall notify Lessor in writing, within one month after the Reappraisal Opinion becomes binding.

If the Lessor does not agree with the fair rental value of the Cars as determined by the Lessee's Appraiser, the fair rental value of the Cars shall be determined in the same manner and according to the same procedures as the fair market value of the Cars are determined under Section 9. For this purpose, the fair rental value of the Cars initially determined by the Lessee's Appraiser shall be the only determination required on behalf of the Lessee.

The fair rental value of the Cars, as determined pursuant to the Section or in the manner and according to the procedures of Section 9, shall be the rent (the "Renewal Rent") payable by the Lessee during the Renewal Term.

The Reappraisal Opinion shall not constitute a representation or warranty by Lessee that the opinion of the estimated useful life or residual value of the Cars contained in any Reappraisal Opinion will actually be realized by Lessor or any other Person.

#### SECTION 8. EARLY TERMINATION OPTION.

Lessee shall have the option to terminate this Lease at the end of such months of the Basic Term as indicated on Exhibit C hereto and to purchase all, but not less than all, the Cars then subject to this Lease. If Lessee exercises its option pursuant to this Section, the purchase of, and closing for, the Cars shall take place on the first business day (the "Termination Date") following the last day of the month with respect to which the option has been exercised. At the closing for the Cars, Lessee shall make payment (i) of all due and unpaid Basic Rent (including the Basic Rent due on the Rent Payment Date occurring on or next preceding the Termination Date), (ii) of all due and unpaid Additional Rent, and (iii) of the purchase price therefor, in immediately available funds, against delivery of a Bill of Sale transferring and assigning to Lessee all right, title and interest of Lessor in and to such

Cars; provided, however, that Lessor shall have no obligation to sell, and Lessee shall have no obligation to purchase, any Car on a Termination Date if on such Termination Date with respect to such Car an Event of Default has occurred and is continuing, an Event of Loss has occurred or if Lessor has sold such Car pursuant to the terms of clauses (2) and (4) of paragraph (b) of Section 21 hereof. The purchase price for each Car shall be the greater of (1) its fair market value on the Termination Date or (2) the percentage of the Lessor's Cost of such Car as indicated on Exhibit C hereto (the "Termination Value"), subject in all cases to a maximum percentage of Lessor's Cost of such Car as indicated on Exhibit C hereto (the "Maximum Value").

If Lessee desires to exercise its option pursuant to this Section, it shall notify Lessor in writing of its intent to exercise such option prior to the end of the 6th month preceding the month with respect to which the option is exercisable. The fair market value of the Cars as of the Termination Date shall then be determined according to the procedure set forth in Section 9.

#### SECTION 9. 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 Basic Term or any Renewal Term, as the case may be. Subject to the provisions of the next paragraph, the purchase price for the Cars shall be equal to their fair market value as of the end of the Basic Term or such Renewal Term. If Lessee desires to exercise its option pursuant to this Section, it shall notify Lessor in writing prior to the end of the 6th month preceding the end of such Basic Term or such Renewal Term, as the case may be.

The purchase price for the Cars pursuant to this Section shall not exceed, in the case of the ITC Cars, 30% of the Lessor's Cost, and in the case of the Non-ITC Cars, 34% of the Lessor's Cost.

If Lessee exercises its option pursuant to this Section, the purchase of, and closing for, the Cars shall take place on the first business day (the "Purchase Date") following the last day of the Basic Term or such Renewal Term, as the case may be. At the closing for the Cars, Lessee shall make payment therefor in immediately available funds against delivery of a Bill of Sale transferring and assigning to Lessee all right, title and interest of Lessor in and to the Cars.

Lessee shall hire, at its own expense, an appraiser (the "Lessee's Appraiser") who is knowledgeable about railroad cars similar to the Cars, and who has at least three years experience in appraising railroad equipment (both requirements hereinafter called the "Qualifications") and who meets the reasonable approval of Lessor, to render an appraisal of the fair market value of the Cars as of the Purchase Date. The Lessee's Appraiser shall issue his opinion (the "Fair Market Value Opinion") in writing to both Lessor and Lessee by the end of the 5th month preceding the end of the Basic Term or such Renewal Term, as the case may be. If Lessor does not object, in writing, to any terms of the Fair Market Value Opinion of the Lessee's Appraiser within one month after receipt thereof, it will be deemed to have accepted and agreed to such Fair Market Value Opinion, and such Fair Market Value Opinion will become binding on Lessor and Lessee.

If Lessor does object to any term of the Fair Market Value Opinion of the Lessee's Appraiser, it shall so notify Lessee no later than one month after receipt of such Fair Market Value Opinion. In such case Lessor shall hire, at its own expense, an appraiser (the "Lessor's Appraiser") who meets the Qualifications, and who meets the reasonable approval of Lessee, to render a Fair Market Value Opinion. The Lessor's Appraiser shall issue a Fair Market Value Opinion to both Lessor and Lessee within one month after Lessor has sent its written objection to Lessee. If Lessee does not object, in writing, to any terms of the Fair Market Value Opinion of the Lessor's Appraiser within one month after receipt thereof, it will be deemed to have accepted and agreed to such Fair Market Value Opinion, and such Fair Market Value Opinion will become binding on Lessee and Lessor.

If Lessee does object to any term of the Fair Market Value Opinion of the Lessor's Appraiser, it shall so notify Lessor no later than one month after receipt of such Fair Market Value Opinion. In such case, the Lessor's Appraiser and the Lessee's Appraiser shall agree upon a third appraiser, who satisfies the Qualifications, to render a Fair Market Value Opinion. If the Lessee's Appraiser and the Lessor's Appraiser cannot agree upon a third appraiser within 10 days, the third appraiser shall be appointed by the San Francisco office of the American Arbitration Association. The fees and expenses of the third appraiser shall be borne equally by Lessee and Lessor. The third appraiser shall issue a Fair Market Value Opinion to both Lessor and Lessee within one month after Lessee has sent its written objection to Lessor. The two Fair Market Value Opinions the amounts of which are nearest, in dollars and cents, shall be averaged, and the average so determined shall be the fair market value amount which is binding on Lessor and Lessee for purposes of this Section.

The Fair Market Value Opinions of the Lessee's Appraiser, the Lessor's Appraiser and the third appraiser shall be solely for the purposes of ascertaining the purchase price of the Cars and shall not constitute representations or warranties by either party to the other party.

SECTION 10. 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, 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 financial condition or 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 11. 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 California 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 12. 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 negligent acts 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 amount ("Claims") (except Claims which are covered by Sections 13 or 14 hereof) 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 of enforcement 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.

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 wilful misconduct, criminal act or gross negligence 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 representations, 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 prohibited by Section 19 hereof, 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 13. 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, 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 (including the purchase by the Lessee pursuant to Section 8 or 9 hereof), 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 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, 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, or any Taxes which are based on, or measured by, the net worth of any indemnitee, imposed or levied as a consequence of Lessor's ownership of the Cars.

(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 (1) resisting payment thereof if Lessor in its sole discretion shall determine such course of action to be appropriate, (2) not paying the same except under protest, if protest is necessary and proper, or (3) 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 (other than property tax or ad valorem tax returns) 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 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 14. SPECIAL INCOME TAX INDEMNITY.**

(a) Assumptions. This Lease has been entered into on the assumptions that Lessor, as the owner of the Cars, shall be entitled to such deductions and credits (such deductions and credits being referred to herein as the "Benefits") as are provided by the Code to an owner of recovery property, as follows: (1) under Section 168 of the Code (the "Recovery Deductions") commencing in the year that the Cars are delivered to Lessor on the basis that (i) the Cars will have a basis for purposes of Section 168 of the Code at least equivalent to the Lessor's Cost of each Car, adjusted (in the case of the ITC Cars) as required by Section 48(q) of the Code and (ii) for Federal income tax purposes, the basis of the Cars will be recovered in accordance with the table set forth in the cost recovery schedule contained in Section 168(b)(1) of the Code with respect to 5-year property (unless Lessor has elected to use a straight line method of depreciation or a longer life for 5-year recovery property pursuant to Section 168(b)(3) of the Code, in which case the Lessor will be entitled to the percentages of the basis of each Car as provided in said Section); (2) deductions under Section 163 of the Code for interest paid or accrued on indebtedness incurred by Lessor with respect to the Cars (the "Interest Deductions"); and (3) an investment tax credit (the "Investment Credit") pursuant to Section 38 of the Code in the year that the ITC Cars are delivered to Lessor equal to not less than 10% of the Lessor's Cost of each ITC Car.

(b) Consistent Tax Returns. Lessee agrees that neither it nor any of its Affiliates will at any time enter into any transaction or agreement or take any other action, directly or indirectly, or file any returns, elections or other documents inconsistent with the availability of the intended Benefits to Lessor, and that Lessee and its Affiliates will maintain such records, take such actions, make such elections and execute such documents as may be reasonable and necessary to facilitate accomplishment of the availability of the intended Benefits to Lessor.

(c) Representations and Warranties. Lessee represents, warrants and covenants that (1) the ITC Cars constitute property which qualifies for the Investment Credit; (2) at the time Lessor becomes the owner (i) of the ITC Cars, the ITC Cars will constitute "new Section 38 property" within the meaning of Section 48(b) of the Code, (ii) of the Cars, the Cars will constitute "recovery property" within the meaning of Section 168(c)(1) of the Code (adjusted (in the case of the ITC Cars) as required by Section 48(q) of the Code), and "5-year property" within the meaning of Section 168(c)(2)(B) of the Code, and (iii) of the ITC Cars, the ITC Cars will not have been used by

any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with Lessor; (3) at the time Lessor becomes the owner of the Cars, no investment credit, depreciation, cost recovery or other tax benefits will have been claimed by any Person with respect to the Cars; (4) at all times during the Primary Term and any Renewal Term of this Lease, the ITC Cars will constitute "Section 38 property" within the meaning of Section 48(a) of the Code and will not be used predominantly outside the United States within the meaning of Section 48(a); (5) the ITC Cars are described in and will satisfy the terms and conditions of Sections 204(a)(5)(N) and 203(b)(3) of the Tax Reform Act of 1986, and of Code Section 49(e) as added by Section 211(a) of the Tax Reform Act of 1986; (6) Lessee will maintain or cause to be maintained sufficient records to verify such use and will supply such records to Lessor within 90 days after receipt of a written demand therefor; and (7) Lessor will be entitled to the Interest Deductions under Section 163 of the Code for interest paid or accrued on any indebtedness with respect to the Cars.

(d) Indemnification. If Lessor shall lose, or shall not have, or shall lose the right to claim, or there shall be disallowed or recaptured, any portion of the Benefits with respect to the Cars or any portion thereof (hereinafter called a "Loss") except as to any Loss which results from an Event of Loss or as to any sale of the Cars pursuant to Section 8 or 9, as a direct result of any of the following: (1) any representation or warranty of Lessee contained in this Lease shall prove to be untrue; (2) Lessee or any Person which acquires possession of the Cars from or through Lessee shall breach any covenant or undertaking contained in the Lease; or (3) any other act or omission to act by Lessee or any Person who acquires possession of the Cars from or through Lessee, 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 contemplated after-tax return on and rate of recovery of investment and the annual net cash flows (computed on the same assumptions as utilized by Lessor in originally evaluating the transactions contemplated hereby) which would have been realized by it had such Loss not occurred, plus an amount equal to all interest, penalties or additions to tax payable by Lessor as a result of such Loss, which amounts shall be payable to Lessor at the time such Loss occurs (but not sooner than 30 days after receipt by Lessee of a written demand therefor, accompanied by a written statement describing in reasonable detail the Loss and the computation of the amounts so payable).

(e) Determination of Loss. For purposes of this Section, a Loss shall occur upon the earliest of (1) the payment by Lessor to the appropriate taxing authority of the tax increase, interest or penalties resulting from such Loss, or (2) the adjustment of the tax return of Lessor to reflect such Loss.

(f) Contest. Upon the receipt of formal notification by Federal taxing authorities of a claim being made by such authorities which, if successful, would result in a Loss under circumstances which would require Lessee to indemnify for such Loss, Lessor hereby agrees to give Lessee written notice of such claim and to take such action in connection with contesting such claim as Lessee shall reasonably request in writing from time to time, provided that (1) within 30 days after notice by Lessor to Lessee of such claim, Lessee shall request that such claim be contested, (2) Lessor, at its

sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with such taxing authorities in respect of such claim and may, at its sole option, either pay the tax claimed and sue for a refund or contest the claim in any permissible forum considering, however, in good faith such request as Lessee shall make concerning the most appropriate forum in which to proceed, (3) prior to taking such action, Lessee shall have furnished Lessor with an opinion of independent tax counsel satisfactory to Lessor to the effect that a meritorious defense exists to such claim, and (4) Lessee shall have indemnified Lessor in a manner reasonably satisfactory to it for any liability or loss which Lessor may incur as the result of contesting such claim and shall have agreed to pay Lessor on demand all costs and expenses which Lessor may incur in connection with contesting such claim, including, without limitation, (i) reasonable attorneys', accountants and investigatory fees and disbursements and (ii) the amount of any interest, penalty or fine which may ultimately be payable as the result of contesting such claim. Notwithstanding anything to the contrary set forth above in this paragraph, Lessor may, in its sole discretion, refuse to contest the disallowance of the Benefits, but, in that event, if Lessee has met or complied with the requirements of clauses (1), (3), and (4) above, Lessee shall be discharged of its obligation to indemnify Lessor pursuant to this Section.

(g) All of Lessor's rights and privileges arising from the indemnities contained in this Section shall survive the expiration or other termination of the Lease with respect to the Cars and such indemnities are expressly made for the benefit of, and shall be enforceable by Lessor and its successors and assigns.

#### SECTION 15. RISK OF LOSS AND PAYMENT OF LOSS VALUE.

(a) 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 Interim Rent, Basic Rent, Renewal Rent and Additional Rent.

(b) Event of Loss. In the event that any Car shall be or become (1) lost, stolen or destroyed, (2) in the reasonable opinion of Lessee, irreparably damaged or damaged beyond economic repair, from any cause whatsoever or (3) seized, taken or requisitioned by condemnation or otherwise prior to the actual redelivery of such Car to Lessor, if such act results in loss of possession by Lessee for a period of more than 90 consecutive days or for a stated period which exceeds the then remaining term of this Lease with respect to such Car (any such event being herein called an "Event of Loss"), Lessee shall fully inform Lessor with respect thereto. Lessee shall pay Lessor, on the Loss Payment Date for such Car, in immediately available funds, an amount equal to the sum of (1) the Loss Value of such Car as of such Loss Payment Date plus (2) any accrued and unpaid Basic Rent as of the Rent Payment Date which is the same as the Loss Payment Date plus (3) all accrued and

unpaid Additional Rent (other than such Loss Value) hereunder. Upon the making of such payment by Lessee, Basic Rent with respect to such Car shall cease to accrue, the term of this Lease as to such Car shall terminate and all of Lessor's right, title and interest in such Car shall automatically pass to Lessee on an as-is, where-is basis and without recourse, representation or warranty, express or implied (except that such Car is free and clear of Lessor's Liens). Except as provided in this paragraph, Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any such Event of Loss to any Car on and after its Commencement Date hereunder and prior to termination of this Lease and the return by Lessee to Lessor of such Car pursuant to Section 22 hereof.

SECTION 16. 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 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 pursuant to Section 18 hereof or pursuant to its obligation to maintain and keep the Cars in good order, condition and repair under this Section 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 other additions or improvements to any Car (except those additions or replacements described in Section 18 hereof), 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. If Lessee shall cause such readily removable additions or improvements to be made to any Car, Lessee agrees that it will, prior to the return of such Car to Lessor hereunder, remove the same at its own expense without causing material damage to such Car.

SECTION 17. DISCLAIMER OF WARRANTIES.

LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, AS TO THE DESIGN, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, OR TITLE TO, THE CARS DELIVERED TO LESSEE HEREUNDER, AND LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE CARS FOR ANY PARTICULAR PURPOSE OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN LESSOR AND LESSEE, ARE TO BE BORNE BY LESSEE, AND THE BENEFITS OF ANY AND ALL IMPLIED WARRANTIES OF LESSOR ARE HEREBY WAIVED BY LESSEE. LESSOR SHALL NOT BE RESPONSIBLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.

Lessor hereby irrevocably appoints and constitutes Lessee its agent and attorney-in-fact during the term of this Lease, so long as Lessee shall not be in default hereunder, to assert from time to time, in the name of and for account of Lessor, but for the benefit of Lessee, whatever claims and rights including warranties of the Cars which Lessor may have against the manufacturer, any subcontractors of the manufacturer or any vendors. To the extent that any claims or rights of Lessor with respect to the Cars may not be assigned or otherwise made available to Lessee, Lessor will, at the request of

Lessee, use its best efforts, at Lessee's cost, to enforce such claims or rights. Lessee shall indemnify, protect, save, defend and hold harmless Lessor from and against any and all claims, and all costs, expenses, damages, losses and liabilities incurred or suffered by Lessor in connection therewith, as a result of, or incident to, any action by Lessee pursuant to the foregoing authorization or by Lessor acting at Lessee's request.

**SECTION 18. 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, with respect to the use, maintenance and operation of each Car subject to this Lease. 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 19. OWNERSHIP; LIENS; PERSONAL PROPERTY.**

Lessee acknowledges and agrees that the Cars shall at all times be and remain the sole and exclusive property of Lessor and that Lessee has not and by the execution hereof it does not have or obtain, and by payments and performance hereunder it does not and will not have or obtain any title to the Cars or any Car at any time subject to this Lease, nor any property right or interest, legal or equitable, therein, except solely as Lessee hereunder and subject to all the terms hereof.

Lessee will not directly or indirectly create, incur, assume or permit to exist any Lien on or with respect to the Cars or Lessor's title thereto except (1) the rights of Lessee under this Lease or any sublessee under any sublease pursuant to and subject to the provisions of paragraph (b) of Section 20 hereof, (2) Liens created or granted by Lessor or resulting from claims against Lessor not related to the transactions contemplated hereby (Liens described in this clause (2) being hereinafter called "Lessor's Liens"), (3) Liens for Taxes, either not due and delinquent or being contested in accordance with Section 13 hereof and (4) 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, either not delinquent or which shall have been bonded or the enforcement of which shall have been suspended (but only for the duration of such suspension). Lessee, at its own cost and expense, will promptly pay, satisfy and discharge or take such other action as may be necessary to keep the Cars free and clear of, and duly to discharge, any Lien other than the Liens excepted above.

It is the intention and understanding of both Lessor and Lessee that the Cars shall be and at all times remain separately identifiable personal property. Lessee shall not permit the Cars to be installed in, maintained with, stored or used in such manner or under such circumstances that such Cars might be or become an accession to or confused with such other personal property.

SECTION 20. 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. Lessee agrees that it will take such further actions and execute such further documents (including amendments to this Lease) as reasonably requested by the Lessor if necessary to enable Lessor to borrow based on an assignment of the Rents, provided that Lessee shall not be required to execute an amendment to this Lease if such an amendment would change a material term of the Lease or would otherwise impose additional obligations on the Lessee which are not insubstantial.

(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, or to permit their use under the terms of car contracts by, (i) Intermodal Systems, Inc., a Delaware corporation, or (ii) any other Person with the prior written consent of Lessor, provided such subleases (1) are necessary to the conduct of Lessee's ordinary business, (2) are consistent with prudent business practice with respect to equipment similar to the Cars, (3) are for a term (including any renewal or extension provisions) which does not extend beyond the Basic Term or Renewal Term, as the case may be, with respect to such Car, and (4) will not cause the Cars or any Car to not be used predominantly within the United States. 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 Cars, except to the extent permitted by the provisions of this paragraph.

No assignment, sublease or interchange entered into by Lessee hereunder shall relieve Lessee of any liabilities or obligations hereunder which shall be and remain those of a principal and not a surety.

SECTION 21. 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);

(1) Default by Lessee in making any payment of Interim Rent, Basic Rent, Renewal Rent or Additional Rent due hereunder, as and when the same shall become due and payable, and such default shall continue unremedied for 10 days; or

(2) Default by Lessee in the observance or performance of any of the covenants of Lessee set forth in Sections 20, 22 and 23 hereof; or

(3) Default by Lessee in the observance or performance of any other 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

(4) Any representation or warranty made by Lessee in this Lease (other than in paragraph (c) of Section 14 hereof), or in any other document or certificate furnished by Lessee to Lessor in connection herewith or therewith or pursuant hereto or thereto, shall prove to be untrue or incorrect in any material respect as of the date of issuance or making thereof; or

(5) 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

(6) A petition for reorganization under Title 11 of the United States Code (as now or hereafter constituted) is 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

(7) 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 pursuant hereto, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations or 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, if commenced against Lessee, are consented to or are not dismissed within 60 days after such proceedings shall have been commenced.

(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:

(1) 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;

(2) 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 at such place as Lessor shall designate pursuant to paragraph (b) of Section 22 of this Lease and in the condition required upon the return thereof at the expiration of this Lease;

(3) 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;

(4) 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, except to the extent required by clause (6) below in the event Lessor elects to exercise its rights under said clause in lieu of its rights under clause (5) below; provided, however, that the sale price to an Affiliate of the Lessor may not be less than fair market value;

(5) Whether or not Lessor shall have exercised, or shall thereafter at any time exercise, any of its rights under clauses (2), (3) or (4) above, Lessor, with respect to any Car, by written notice to Lessee specifying a payment date not earlier than 15 days from the date of such notice ("Payment Date"), may demand that Lessee pay to Lessor, whereupon Lessee shall pay to Lessor, on the Payment Date, as liquidated damages for loss of a bargain and not as a penalty (i) any unpaid Additional Rent, (ii) any unpaid Basic Rent with respect to such Car due up to and including the Rent Payment Date (or the date which would have been such Rent Payment Date but for the termination of this Lease) next preceding the Payment Date and (iii) whichever of the following amounts Lessor, in its sole discretion, shall specify in such notice (together with interest on such amount at the Late Payment Rate from the Payment Date to the date of actual payment):

(A) An amount equal to the Loss Value of such Car, such Loss Value computed as of the Rent Payment Date next preceding the Payment Date; provided, however, that Lessor shall be entitled without deduction to such amount for such Car only if Lessor shall have demanded the return of such Car pursuant to clause (2) above and lessee shall have failed to return such Car in accordance with the terms of said paragraph;

(B) An amount equal to the excess, if any, of the Loss Value of such Car computed as of the Rent Payment Date next preceding the Payment Date for the remainder of the Primary Term hereunder of such Car after discounting at the Late Payment Rate such fair market rental value on such periodic basis as Basic Rent is payable hereunder to present worth as of the Payment Date; or

(C) An amount equal to the excess, if any, of the Loss Value of such Car computed as of the Rent Payment Date next preceding the Payment Date over the fair market value of such Car as of the Payment Date.

For purposes of this clause, fair market value and fair market rental value shall be determined according to the procedure set forth in Section 9;

(6) In the event Lessor, pursuant to clause (4) above, shall have sold any Car, Lessor, in lieu of exercising its rights under clause (5) above with respect to such Car, may, if it shall so elect, demand that Lessee pay Lessor, whereupon Lessee shall pay to Lessor, as liquidated damages for loss of a bargain and not as a penalty (i) any unpaid Basic Rent with respect to such Car due up to but not including the Rent Payment Date (or the date which would have been such Rent Payment Date but for the termination of this Lease) preceding the date of such sale and (iii) the amount of any deficiency between the net proceeds of such sale and the Loss Value of such Car computed as of the date of such sale, together with interest at the Late Payment Rate on such amount from the date of such sale to the date of actual payment; and

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

No remedy referred to in this paragraph is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law, in equity or in bankruptcy, and the exercise or beginning of exercise by Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by Lessor of any or all such other remedies. No express or implied waiver by Lessor of any Event of Default hereunder shall in any way be or be construed to be a waiver of any future or subsequent Event of Default. To the extent permitted by applicable law, Lessee hereby waives any rights now or hereafter conferred by statute or otherwise which may require Lessor to take any judicial proceedings in connection with the Cars or to give any notice or to sell, lease or otherwise use any Car in mitigation of Lessor's damages as set forth in this paragraph or which may otherwise limit or modify any of Lessor's rights or remedies under this paragraph. Lessee shall be liable for any and all unpaid Additional Rent due hereunder before, after or during the exercise of any of the foregoing remedies and for all reasonable legal fees and other costs and expenses incurred by Lessor by reason of the occurrence of any Event of Default or the exercise of Lessor's remedies with respect thereto, including all costs and expenses incurred by Lessor in connection with the return of any Car in accordance with the terms hereof or the placing of such Car in the condition required hereunder.

## SECTION 22. SURRENDER OF THE CARS.

(a) Expiration. Unless Lessee shall have exercised its option under either Section 8 or Section 9 hereof, upon expiration of the Primary Term or any Renewal 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 upon such storage tracks of any railroad within the continental United States as Lessee may designate, or in the absence of such designation, as Lessor may select, and permit Lessor to store such Cars on such tracks for a period not exceeding 90 days and transport the same at any time within such

90-day period to any reasonable place on any railroad lines in the continental United States designated by Lessor upon not less than 30 days' written notice to Lessee. All such movement (but not to exceed one movement for each Car to the storage tracks described above and from such storage tracks to the redelivery location designated by Lessor as described above) and storage of each such Car is to be at the risk and expense of Lessee.

(b) Default. If this Lease shall terminate in respect of any of the Cars pursuant to Section 21 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: (1) forthwith and in the usual manner cause such Cars to be transported to such storage tracks of any railroad within the continental United States, as shall be designated by Lessor or in the absence of such designation, as Lessee may select, and there assembled; (2) furnish or arrange for Lessor to store such Cars on any lines of railroad or premises approved by Lessor until such Cars have been sold, leased or otherwise disposed of by Lessor; and (3) 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.

(c) General. All Cars returned to Lessor under this Lease shall be in the condition in which such Cars are required to be maintained pursuant to Section 16 hereof and shall be free and clear of all Liens other than Lessor's Liens; Lessee shall pay for any necessary repairs to place such Cars in such condition and will pay and discharge all such Liens. The assembling, delivery, storage and transporting of the Cars as provided above shall be at the expense and risk of Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, deliver, store and transport the Cars. During any storage period, Lessee will, at its own expense and risk, maintain and keep the Cars in good order and repair, will keep and maintain insurance in respect thereof in the manner provided in Section 23 hereof and will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Car, to inspect the same. All amounts earned in respect of Cars after the date of termination of this Lease with respect to such Cars shall belong to Lessor and, if received by Lessee, shall be promptly turned over to Lessor.

#### SECTION 23. INSURANCE.

During the Primary Term of this Lease and any Renewal Term and while the Cars are being assembled, stored and transported pursuant to Section 22 hereof, Lessee shall, at its own expense, keep or cause to be kept each Car insured against loss on an "all risk" basis in an amount at least equal to the Loss Value for such Car. Lessee shall also maintain general public liability insurance with respect to the Cars against damage because of bodily injury, including death, or damage to property of others, such insurance to afford protection to the limit of not less than \$25,000,000 per occurrence combined

single limit or such greater amount as Lessor shall reasonably require. All such insurance shall cover the interest of Lessor and Lessee in the Cars and liability insurance shall name Lessor as an additional insured in respect of risks arising out of the condition, the maintenance, use or ownership of the Cars and shall provide that losses, if any, in respect of the Cars shall be payable to Lessee and Lessor, as their respective interests may appear. All policies of insurance maintained pursuant to this Section shall provide that the insurer thereunder waives all rights of subrogation against Lessor and Lessee, that 30 days' prior written notice of expiration or termination shall be given to Lessor and that such insurance as to the interest of Lessor therein shall not be invalidated by any act or neglect of Lessee or by any foreclosure or other remedial proceedings or notices thereof relating to the Cars or any interest therein nor by any change in the title or ownership of the Cars or any interest therein or with respect thereto, or by the use or operation of the Cars for purposes more hazardous or in a manner more hazardous than is permitted by such policy. No such policy shall contain a provision relieving the insurer thereunder of liability to the extent that payment is made by a railroad company as compensation for the destruction beyond repair of a Car pursuant to applicable rules of the Interstate Commerce Commission, the United States Department of Transportation and the Association of American Railroads. The loss, if any, under the policy covering the Cars shall be adjusted with the insurance companies by Lessee, subject to the approval of Lessor if the loss exceeds \$100,000. All such policies shall provide that the loss, if any, thereunder shall be adjusted and paid as provided in this Lease. Lessee shall furnish Lessor with certificates of independent insurance brokers or other satisfactory evidence of maintenance of the insurance required hereunder and with respect to any renewal policy or policies shall furnish certificates evidencing such renewal prior to the expiration date of the original policy or policies. All such policies shall provide that the same shall not be cancelled or materially changed without at least 30 days' prior written notice to each assured named therein.

The proceeds of any insurance received by Lessor on account of or for any loss or casualty in respect of any Car shall be applied as follows: (1) if such Car has been repaired, such proceeds shall be paid to Lessee upon a written application signed by any authorized officer of Lessee for the payment of, or to reimburse Lessee for the payment of, the cost of repairing such Car so long as the repair parts become immediately subject to all of the terms and conditions of this Lease and all public filings, recordings and registrations necessary or expedient to vest title thereto in Lessor are accomplished by Lessee at its expense (which application shall be accompanied by satisfactory evidence of such cost and of the completion of such repair) or (2) if this Lease is terminated with respect to such Car as a result of an Event of Loss, such proceeds shall be applied in accordance with Section 15; provided that, if Lessee is at the time of the application in default in the payment of any other liability of Lessee to Lessor hereunder such proceeds shall be applied against such liability.

For so long as Lessee is and remains a qualified self-insurer under the applicable laws of the states within which it operates, the provision of this Section requiring Lessee to maintain insurance policies in the form and amounts set forth shall be waived.

SECTION 24. 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 obligations of Lessee be otherwise affected, by reason of any defect in the Cars, the condition, design, operation or fitness 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 Cars for any reason whatsoever, the interference with such use, operation or possession by any private person or entity, or by reason of any other indebtedness or liability, howsoever and whenever arising, of Lessor, Lessee or any lenders to any other Person or by any governmental authority, or by reason of any insolvency, bankruptcy or similar proceedings by or against Lessor or Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present law to the contrary notwithstanding, it being the intention of the parties hereto that the Rent payable by Lessee hereunder shall continue to be payable in all events and 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.

SECTION 25. NOTICES.

Any notice from one party to the other shall be in writing and shall be deemed to have been duly given when delivered personally or when deposited in the United States mail, postage prepaid, addressed as follows:

If to Lessor: Great Western Leasing Corporation  
555 California Street, Suite 4940  
San Francisco, California 94104  
Attention:

If to Lessee: The Chesapeake and Ohio Railway Company  
c/o CSX Transportation  
100 North Charles Street  
Baltimore, Maryland 21201  
Attention: Treasurer-CSX Equipment Group

Either Lessor or the Lessee may at any time change such address by delivering or mailing as aforesaid 10 days' prior written notice of such change in address.

SECTION 26. ANNUAL REPORTS AND INSPECTION.

Lessee agrees to maintain a standard and modern system of accounting in accordance with generally accepted principles of accounting, and will

furnish Lessor as soon as available and in any event within 90 days after the close of each fiscal year of Lessee, financial statements in the form furnished to its banks covering the financial condition and results of operations of Lessee for such fiscal year and containing a balance sheet as at the end of such year and statements of income and earned surplus for such year, each on a comparative basis with corresponding statements for the preceding fiscal year. Lessee shall also furnish from time to time to Lessor such additional information as to its financial condition and operations as either of them may reasonably request.

Lessee shall permit inspection of the Cars from time to time by agents of Lessor, at Lessor's sole cost, risk and expense, and Lessee shall furnish to Lessor on demand from time to time, at Lessee's sole cost and expense, if requested by Lessor, a statement showing the condition of the Cars, what, if any, substantial repairs, alterations, and additions have been made upon, in or to any Cars since the delivery thereof or the last preceding report, as the case may be, and such other information regarding the location, condition and state of repair of the Cars as Lessor may reasonably request.

SECTION 27. RECORDING.

Lessee, at its own expense, will cause this Lease to be filed with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303(a) on or prior to the Document Closing Date. Lessee will, at its own expense, from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, re-register, deposit and redeposit or record 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 interest in the Cars, or for the purpose of carrying out the intention of this Lease. Lessee will promptly furnish to Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for Lessee with respect thereto satisfactory to the Lessor.

SECTION 28. LESSOR'S RIGHT TO PERFORM FOR LESSEE.

If Lessee fails to duly and promptly pay, perform or comply with any of its obligations, covenants and agreements under this Lease, Lessor may itself pay, perform or comply with any of such obligations for the account of Lessee, without thereby waiving any Event of Default, and any amount paid or expense incurred by Lessor in connection therewith (including reasonable attorneys' fees) shall, together with interest at the Late Payment Rate, be payable to Lessor on demand.

SECTION 29. 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 30. SEVERABILITY.

Any provision of this Lease prohibited or unenforceable in any jurisdiction shall 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.

SECTION 31. LESSEE'S RIGHT TO POSSESSION AND USE.

Anything to the contrary herein contained notwithstanding, Lessee's right to possession and use of the Cars shall not be interfered with by Lessor, its successors or assigns, as long as Lessee is not in default and performs all of its obligations hereunder.

SECTION 32. GOVERNING LAW.

This Lease shall be construed in accordance with and shall be governed by the laws of the State of California.

SECTION 33. 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.

GREAT WESTERN LEASING CORPORATION

By \_\_\_\_\_

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

By A. D. Afton R & H

Title: Treasurer

STATE OF )  
 )ss:  
COUNTY OF )

On this \_\_\_ day of December, 1986, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that (s)he is the \_\_\_\_\_ of GREAT WESTERN LEASING CORPORATION, that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

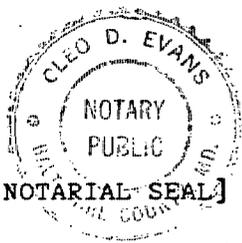
\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My commission expires:

STATE OF *Maryland*  
 )ss:  
COUNTY OF *Baltimore*

On this 18 day of December, 1986, before me personally appeared A.B. AFTOORA, to me personally known, who being by me duly sworn, says that (s)he is the 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 (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



[NOTARIAL SEAL]

My commission expires: 7/1/90

Cleo D. Evans  
Notary Public

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.

SECTION 31. LESSEE'S RIGHT TO POSSESSION AND USE.

Anything to the contrary herein contained notwithstanding, Lessee's right to possession and use of the Cars shall not be interfered with by Lessor, its successors or assigns, as long as Lessee is not in default and performs all of its obligations hereunder.

SECTION 32. GOVERNING LAW.

This Lease shall be construed in accordance with and shall be governed by the laws of the State of California.

SECTION 33. 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.

GREAT WESTERN LEASING CORPORATION

By Adam P. Sallaway  
Title: Senior Vice President

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

By \_\_\_\_\_

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



DESCRIPTION OF ITC CARS

<u>Number of Cars</u>	<u>Identifying Mark and Numbers</u>	<u>Lessor's Cost</u>
33	NYSW 6870 through NYSW 6902, inclusive	\$165,897
62	NYSW 7000 through NYSW 7061, inclusive	\$167,000

DESCRIPTION OF NON-ITC CARS

<u>Number of Cars</u>	<u>Identifying Mark and Numbers</u>	<u>Lessor's Cost</u>
23	NYSW 6813 through NYSW 6835, inclusive	\$169,750
9	NYSW 6861 through NYSW 6869, inclusive	\$165,897

Certificate of Acceptance

The Chesapeake and Ohio Railway Company, as Lessee under a Railroad Equipment Lease dated as of December 15, 1986, with Great Western Leasing Corporation (the "Lease"), hereby certifies that it has received and inspected the following railroad cars, in accordance with Section 2 of the Lease, specifically:

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 RAILROAD COMPANY

By \_\_\_\_\_

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

\_\_\_\_\_  
Date

TERMINATION VALUES

1. ITC Cars

<u>Month</u>	<u>Termination Value</u>	<u>Maximum Value</u>
120	36.40%	40.00%
132	28.91%	32.25%
144	20.92%	30.00%

2. Non-ITC Cars

<u>Month</u>	<u>Termination Value</u>	<u>Maximum Value</u>
120	39.90%	46.90%
132	31.65%	39.25%

DESCRIPTION OF OPINION  
OF COUNSEL FOR LESSEE

The opinion of counsel for Lessee, which is to be provided under the Lease on the Document Closing Date, shall be dated that date and addressed to Lessor, shall be satisfactory in form and substance to Lessor and shall be to the effect that:

1. 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 the Purchase Agreement and the 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 the Purchase Agreement and the Lease.

2. The execution, delivery and performance by Lessee of the Purchase Agreement and the Lease have been duly authorized by all necessary corporate action on the part of Lessee.

3. Each of the Purchase Agreement and the 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.

4. Neither the execution and delivery of the Purchase Agreement and the Lease by Lessee, nor the consummation by Lessee of the transactions contemplated thereby, nor the performance by Lessee of its obligations thereunder, 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, to the knowledge of such counsel, 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.

5. No approval, consent or withholding of objection on the part of, or filing, registration or qualification with, any governmental body, Federal, state or local, is necessary in the Purchase Agreement or the Lease or compliance by Lessee with any of the provisions thereof.

6. There are no proceedings pending or, to the knowledge of such counsel, 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 financial condition or on its ability to fulfill its obligations under the Purchase Agreement or the Lease.

7. The Bill of Sale delivered to Lessor pursuant to the Purchase Agreement has been duly authorized, executed and delivered by Lessee, in its capacity as seller thereunder and constitutes the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms, except as such terms may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by applicable principles affecting the availability of specific performance or other special or equitable remedies. Said Bill of Sale is valid and effective to transfer, and does transfer, good title to the Cars to Lessor, free and clear of all Liens and encumbrances excepting only the rights of Lessee under the Lease.

8. The Lease has been filed for record or recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. Section 11303 of the Interstate Commerce Act and no other filing, recording or depositing is necessary to protect Lessor's title to the Cars in the United States.

9. Title to the Cars has not been and will not be adversely affected as a result of Lessee's use of the Cars pursuant to Interim User Agreements among Gunderson, Inc., Intermodal Systems, Inc. and Lessee dated June 10, 1986, August 20, 1986 and November 1, 1986, all as amended and supplemented.

With respect to matters of fact upon which such opinion is based, counsel may rely on appropriate certificates of public officials and officers of Lessee.

LOSS VALUES  
FOR NON-ITC CARS

<u>Rent Payment Date</u> <u>Occuring in the</u> <u>Following Month</u>	<u>Percentage of</u> <u>Lessor's Cost</u> <u>of the Cars</u>
Dec 1986	102.98319703
Jan 1987	102.11849596
Feb 1987	101.94466750
Mar 1987	101.80782441
Apr 1987	101.61984514
May 1987	101.38237690
Jun 1987	101.21372766
Jul 1987	100.96108872
Aug 1987	100.74088939
Sep 1987	100.54979486
Oct 1987	100.27981160
Nov 1987	100.03954474
Dec 1987	99.82559750
Jan 1988	96.50943964
Feb 1988	96.23657188
Mar 1988	95.98677991
Apr 1988	95.70117656
May 1988	95.38230850
Jun 1988	95.10536075
Jul 1988	94.77361777
Aug 1988	94.46087690
Sep 1988	94.16470565
Oct 1988	93.81745465
Nov 1988	93.48718549
Dec 1988	93.17143340
Jan 1989	92.80637817
Feb 1989	92.46025081
Mar 1989	92.12609151
Apr 1989	91.76559900
May 1989	91.38031847
Jun 1989	91.01908251
Jul 1989	90.62030169
Aug 1989	90.23132339
Sep 1989	89.84963999
Oct 1989	89.43429045
Nov 1989	89.02663043
Dec 1989	88.62411856
Jan 1990	88.19188308
Feb 1990	87.76518868
Mar 1990	87.34295793
Apr 1990	86.90307004
May 1990	86.44717537
Jun 1990	85.99679334
Jul 1990	85.52673596
Aug 1990	85.05693873
Sep 1990	84.58481980
Oct 1990	84.09706709
Nov 1990	83.60736828
Dec 1990	83.11241360
Jan 1991	82.60671982
Feb 1991	82.09814040
Mar 1991	81.58447667
Apr 1991	81.06833776
May 1991	80.54795164
Jun 1991	80.02733747
Jul 1991	79.50254124
Aug 1991	78.97412119

LOSS VALUES  
FOR NON-ITC CARS

<u>Rent Payment Date</u> <u>Occuring in the</u> <u>Following Month</u>	<u>Percentage of</u> <u>Lessor's Cost</u> <u>of the Cars</u>
Sep 1991	78.44307802
Oct 1991	77.91016706
Nov 1991	77.37441677
Dec 1991	76.83682522
Jan 1992	76.29563026
Feb 1992	75.75237694
Mar 1992	75.20751957
Apr 1992	74.65942956
May 1992	74.10744915
Jun 1992	73.55890097
Jul 1992	73.00242197
Aug 1992	72.44603483
Sep 1992	71.89088651
Oct 1992	71.32712102
Nov 1992	70.76241134
Dec 1992	70.19892446
Jan 1993	69.62667638
Feb 1993	69.05346726
Mar 1993	68.48084857
Apr 1993	67.90274395
May 1993	67.31959052
Jun 1993	66.74074256
Jul 1993	66.15309707
Aug 1993	65.56439293
Sep 1993	64.97693719
Oct 1993	64.38053404
Nov 1993	63.78305544
Dec 1993	63.18680875
Jan 1994	62.58134760
Feb 1994	61.97500054
Mar 1994	61.36922884
Apr 1994	60.75750926
May 1994	60.13913005
Jun 1994	59.52930496
Jul 1994	58.90591236
Aug 1994	58.28499866
Sep 1994	57.66783811
Oct 1994	57.03489463
Nov 1994	56.40543773
Dec 1994	55.78076016
Jan 1995	55.13804475
Feb 1995	54.49984107
Mar 1995	53.86675517
Apr 1995	53.22294474
May 1995	52.56758897
Jun 1995	51.93051329
Jul 1995	51.26999003
Aug 1995	50.61656016
Sep 1995	49.97196209
Oct 1995	49.30125570
Nov 1995	48.63900238
Dec 1995	47.98669069
Jan 1996	47.30565695
Feb 1996	46.63427501

LOSS VALUES  
FOR NON-ITC CARS

Rent Payment Date  
Occuring in the  
Following Month

Percentage of  
Lessor's Cost  
of the Cars

Mar	1996	45.97328801
Apr	1996	45.29609606
May	1996	44.60172260
Jun	1996	43.93687695
Jul	1996	43.23699364
Aug	1996	42.54993916
Sep	1996	41.87739797
Oct	1996	41.16685241
Nov	1996	40.47050740
Dec	1996	39.79007073
Jan	1997	39.06861343
Feb	1997	38.36275057
Mar	1997	37.67338011
Apr	1997	36.96150559
May	1997	36.22597556
Jun	1997	35.53292127
Jul	1997	34.79162093
Aug	1997	34.06955548
Sep	1997	33.36865020
Oct	1997	32.61609000
Nov	1997	31.88435123
Dec	1997	31.17538610
Jan	1998	30.41130027
Feb	1998	29.66964810
Mar	1998	28.95150203
Apr	1998	28.20715105
May	1998	27.43854923
Jun	1998	26.73662814
Jul	1998	25.97462288
Aug	1998	25.31658262

LOSS VALUES  
FOR ITC CARS

Rent Payment Date Occuring in the Following Month	Percentage of Lessor's Cost of the Cars
Dec 1986	102.96055717
Jan 1987	102.17617706
Feb 1987	102.02428504
Mar 1987	101.90868393
Apr 1987	101.73691541
May 1987	101.51811078
Jun 1987	101.36880496
Jul 1987	101.13713157
Aug 1987	100.93880685
Sep 1987	100.77045391
Oct 1987	100.52384065
Nov 1987	100.30837951
Dec 1987	98.12066215
Jan 1988	95.12984775
Feb 1988	94.88195254
Mar 1988	94.65874652
Apr 1988	94.39961507
May 1988	94.10698961
Jun 1988	93.86120400
Jul 1988	93.55762317
Aug 1988	93.27597588
Sep 1988	93.01373515
Oct 1988	92.69683527
Nov 1988	92.40017179
Dec 1988	90.12119350
Jan 1989	89.79073798
Feb 1989	89.47879645
Mar 1989	89.18413248
Apr 1989	88.86125259
May 1989	88.51176944
Jun 1989	88.19445743
Jul 1989	87.83352687
Aug 1989	87.48696530
Sep 1989	87.15219056
Oct 1989	86.77707304
Nov 1989	86.41454890
Dec 1989	84.06201064
Jan 1990	83.67245325
Feb 1990	83.29368718
Mar 1990	82.92438924
Apr 1990	82.53401394
May 1990	82.12425236
Jun 1990	81.73138825
Jul 1990	81.30962642
Aug 1990	80.89435909
Sep 1990	80.48297929
Oct 1990	80.04610925
Nov 1990	79.51388807
Dec 1990	77.18365233
Jan 1991	76.73140376
Feb 1991	76.28192076
Mar 1991	75.83379117
Apr 1991	75.37518501
May 1991	74.91017443
Jun 1991	74.45347412
Jul 1991	73.98465340
Aug 1991	73.51829522

LOSS VALUES  
FOR ITC CARS

Rent Payment Date Occuring in the Following Month	Percentage of Lessor's Cost of the Cars
Sep 1991	73.05496296
Oct 1991	72.57900355
Nov 1991	72.10568380
Dec 1991	69.63557006
Jan 1992	69.15231463
Feb 1992	68.67187820
Mar 1992	68.19429868
Apr 1992	67.70921644
May 1992	67.21645326
Jun 1992	66.73434223
Jul 1992	66.23754084
Aug 1992	65.74428589
Sep 1992	65.25522605
Oct 1992	64.75084295
Nov 1992	64.25024145
Dec 1992	63.75407408
Jan 1993	63.24194085
Feb 1993	62.73382742
Mar 1993	62.22982110
Apr 1993	61.71682257
May 1993	61.19459482
Jun 1993	60.68589895
Jul 1993	60.15939196
Aug 1993	59.63777962
Sep 1993	59.12180579
Oct 1993	58.58724594
Nov 1993	58.05788151
Dec 1993	57.53446122
Jan 1994	56.99166818
Feb 1994	56.45437533
Mar 1994	55.92272613
Apr 1994	55.38029776
May 1994	54.82678676
Jun 1994	54.29029224
Jul 1994	53.73224729
Aug 1994	53.18074278
Sep 1994	52.63662870
Oct 1994	52.07002980
Nov 1994	51.51034611
Dec 1994	50.95843357
Jan 1995	50.38308761
Feb 1995	49.81503666
Mar 1995	49.25448797
Apr 1995	48.68103960
May 1995	48.09431321
Jun 1995	47.52876683
Jul 1995	46.93723736
Aug 1995	46.35422852
Sep 1995	45.78070840
Oct 1995	45.18009201
Nov 1995	44.58845425
Dec 1995	44.00677047
Jan 1996	43.39686032
Feb 1996	42.79639306

LOSS VALUES  
FOR ITC CARS

<u>Rent Payment Date</u> <u>Occuring in the</u> <u>Following Month</u>	<u>Percentage of</u> <u>Lessor's Cost</u> <u>of the Cars</u>
Mar 1996	42.20564811
Apr 1996	41.59950965
May 1996	40.97751508
Jun 1996	40.38162480
Jul 1996	39.75454282
Aug 1996	39.13833669
Sep 1996	38.53410589
Oct 1996	37.89737005
Nov 1996	37.27206158
Dec 1996	36.65928858
Jan 1997	36.01267733
Feb 1997	35.37805253
Mar 1997	34.75577507
Apr 1997	34.11519304
May 1997	33.45574924
Jun 1997	32.82818504
Jul 1997	32.16335345
Aug 1997	31.51217289
Sep 1997	30.87588876
Oct 1997	30.20080022
Nov 1997	29.54001904
Dec 1997	28.89480082
Jan 1998	28.20921195
Feb 1998	27.53860783
Mar 1998	26.88342315
Apr 1998	26.20654490
May 1998	25.50730103
Jun 1998	24.84663489
Jul 1998	24.14185227
Aug 1998	23.45527295
Sep 1998	22.78499527
Oct 1998	22.07223036
Nov 1998	21.37495607
Dec 1998	20.69167101
Jan 1999	20.00681037