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1 5366
RECORDATION NO. _____ Filed 1425
NOV 4 1987-2 45 PM
INTERSTATE COMMERCE COMMISSION

November 4, 1987

HAND-DELIVERY

Interstate Commerce Commission
12th Street & Constitution
Ave., N.W.
Washington, D.C. 20423
Atten: Mildred Lee, Room 2303

1 5366 A
RECORDATION NO. _____ Filed 1425

NOV 4 1987-2 45 PM

INTERSTATE COMMERCE COMMISSION

Date: 11/4/87
Fee: 20.00
100 Washington, D.C.

Dear Ms. Lee:

I have enclosed herein an original and one (1) notarized copy of a Purchase Agreement and a Loan and Security Agreement to be recorded pursuant to Section 11303 of Title 49 of the United States Code.

The names and addresses of the parties to each of the documents are as follows:

Purchase Agreement

Seller: Evans Railcar Leasing Company
450 E. Devon
Suite 300
Itasca, Illinois 60143

Purchaser: United States Rail Services, Inc.
615 Battery Street
San Francisco, California 94111

Other

Parties: Equitable Bank, National Association
100 S. Charles Street
Baltimore, Maryland 21201

Evans Transportation Company
450 E. Devon
Suite 300
Itasca, Illinois 60143

Lucy Stoff
(Handwritten signature)

GEBHARDT & SMITH

Interstate Commerce Commission

November 4, 1987

Page 2

Loan and Security Agreement

Debtor: U.S. Rail Services
615 Battery Street
San Francisco, California 94119

Secured
Party: Equitable Bank, National Association
100 S. Charles Street
Baltimore, Maryland 21201

A description of the equipment covered by the documents is attached hereto as Exhibit "A."

I am enclosing herein a check in the amount of \$20.00 for the filing fees related to the above-referenced two (2) documents.

I would appreciate your returning the original documents to me upon completion of the registration.

Thank you for your assistance in this matter.

Sincerely,



Louis J. Ebert

LJE/rp

Enclosures

6253j.1et

EXHIBIT A

Number of Cars	Type Built	Lot Number	Lessee	Date Built	Car Numbers
100	Gondolas	1919-01	Illinois Central Gulf Railroad	1981	ICG 246850-246949
25	Bulkhead Flats	2023-12	McCloud River	1981	FRDN 6025-6049
22	Bulkhead Flats	1948-00	Willamina & Grand Ronde	1981	FRDN 6000-6005; 6007-6015; 6018-6024
24	Bulkheads Flats	1975-00,02	Columbia & Silver Creek	1982	CLSL 2800-2808; 2810-2824
50	XM Boxes	2001-04	Oklahoma Kansas & Texas	1982	OKKT 700000-700049
10	XL Boxes	1929-00	Maine Central	1980	LNAC 1003; 1032; 1043; 1048; 1053; 1057; 1061; 1064; 1065; 1069
4	XL Boxes	1929-00	Storage	1980	MRCX 1019; 1027; 1046; 1074
6	XL Boxes	2116-06	Columbus & Greenville	1980	CAGY 901-906
3	Covered Hoppers	1609-03	Storage	1980	USLX 26744; 26745; 26748
2	Covered Hoppers	2161-19	General Chemical	1980	USLX 26743; 26747
1	Covered Hoppers	2088-07	Canadian Pacific	1980	USLX 26746
25	Tanks	1942-00	Rohm & Haas	1981	USLX 21945-21969
10	Tanks	1989-02	Riceland Foods	1982	USLX 21843; 22117; 22119; 22141; 22166; 22171; 22211; 22219; 22225; 22226
1	Tanks	1775-16	Air Products	1982	ERLX 122
1	Tanks	2133-01	Bunge	1981	ERLX 123

Exhibit A
Page 2

Number of Cars	Type Built	Lot Number	Lessee	Date Built	Car Numbers
2	Tanks	2110-02	GAF	1982	ERLX 129; USLX 21841
1	Tank	1995-02	Carolina By-Products	1981	ERLX 124
3	Tanks	2162-01,02	Universal Oil	1981	ERLX 128; USLX 21834; 22223
3	Tanks	1575-19	FMC	1980	ERLX 120; 121; 126
3	Tanks	1575-20	FMC	1982	USLX 22106; 22127; 22136
8	Tanks	2100-07,10	Ciba-Geigy	1982	ERLX 125; USLX 21845; 22118; 22135; 22138; 22173; 22196; 22220
2	Tanks	2008-17	Storage	1981	ERLX 127; USLX 22029

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

11/4/87

Louis J. Ebert
Gebhardt & Smith
The World Trade Center 9th FL.
Baltimore, Maryland 21202

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 11/4/87 at 2:45pm, and assigned recordation number(s). 15366 & 15366-A

Sincerely yours,

Noreta R. McGee
Secretary

Enclosure(s)

SE-30
(7/79)

1 5366

RECORDATION NO. _____ Filed 1125

NOV 4 1987 -2 45 PM

INTERSTATE COMMERCE COMMISSION

PURCHASE AGREEMENT

AMONG

EQUITABLE BANK, NATIONAL ASSOCIATION

and

UNITED STATES RAIL SERVICES, INC.

and

EVANS RAILCAR LEASING COMPANY

and

EVANS TRANSPORTATION COMPANY

Dated: August 1, 1987

TABLE OF CONTENTS

	<u>Page</u>
Recitals.....	1
Article I: Definitions.....	3
Article II: Sale of Cars.....	7
Article III: Equipment Warranties and Covenants.....	8
Article IV: Inspection and Acceptance.....	10
Article V: Delivery, Title, Risk of Loss.....	14
Article VI: Interim Closings.....	16
Article VII: Final Closing.....	24
Article VIII: Warranties, Representations and Covenants of Sellers.....	27
Article IX: Representations, Warranties and Covenants of Buyer.....	32
Article X: Representations, Warranties and Covenants of the Bank.....	34
Article XI: Insurance.....	37
Article XII: TBT Agreements.....	39
Article XIII: Casualties.....	41
Article XIV: Markings.....	43
Article XV: Taxes.....	44
Article XVI: The Leases.....	45
Article XVII: Conditions Precedent to Delivery.....	46
Article XVIII: Execution of Other Documents.....	47
Article IX: Forbearance by Bank.....	48
Article XX: Default, Remedies.....	49
Article XXI: Arbitration.....	52
Article XXII: Miscellaneous.....	54

PURCHASE AGREEMENT

THIS AGREEMENT ("AGREEMENT") is made as of the 1st day of August, 1987, among Equitable Bank, National Association (the "BANK"), a national banking association with its principal place of business at 100 S. Charles Street, Baltimore, Maryland 21201, United States Rail Services, Inc. ("BUYER"), a California corporation, with its principal place of business at 615 Battery Street, San Francisco, California 94111, Evans Railcar Leasing Company ("EVANS"), an Illinois corporation with its principal place of business at 450 East Devon, Suite 300, Itasca, Illinois 60143 and Evans Transportation Company ("ETC"), an Illinois corporation with its principal place of business at 450 East Devon, Suite 300, Itasca, Illinois 60143. (Evans and ETC are sometimes collectively referred to as "SELLERS.")

Recitals

WHEREAS, on or about April 1, 1983 the BANK made a loan ("EVANS LOAN") to EVANS in the original principal amount of Ten Million Dollars (\$10,000,000.00). The LOAN was evidenced by EVANS' 13% Equipment Promissory Note, Issue AX ("EVANS NOTE") dated May 4, 1983. The EVANS NOTE was secured pursuant to a Security Agreement ("EVANS SECURITY AGREEMENT") dated as of April 1, 1983 pursuant to which EVANS granted to the BANK a security interest in 310 railroad cars and in the leases relating to the cars. The EVANS NOTE was guaranteed by ETC pursuant to a guaranty agreement ("GUARANTY") dated as of April 1, 1983 (The

EVANS NOTE, EVANS SECURITY AGREEMENT, GUARANTY and other documents relating to the EVANS LOAN collectively are referred to as the "EVANS LOAN DOCUMENTS"); and

WHEREAS, EVANS defaulted under the EVANS NOTE and the BANK demanded payment of the EVANS NOTE in full from the SELLERS. The SELLERS failed to pay the EVANS NOTE and the BANK instituted legal proceedings in the United States District Court for the Northern District of Illinois (the "COURT"). On July 10, 1986 the COURT awarded judgment ("JUDGMENT") in favor of the BANK against the SELLERS in the amount of \$10,440,424.14; and

WHEREAS, in December 1986, the BANK obtained a judgment lien in its favor on certain of the property of SELLERS ("JUDGMENT LIEN"); and

WHEREAS, BUYER desires to purchase the railroad cars and certain of the leases related thereto which serve as collateral for the EVANS NOTE, which cars are listed on Exhibit "A" attached hereto (the "CARS"), and which leases are listed on Exhibit "B" attached hereto ("ASSIGNED LEASES"); and

WHEREAS, the BANK offered to release the JUDGMENT and JUDGMENT LIEN against the SELLERS provided that EVANS transfer the CARS and the ASSIGNED LEASES to BUYER, and the SELLERS agree to certain other terms and conditions as described below; and

WHEREAS, the SELLERS accepted the BANK's offer and the parties memorialized their understanding in a non-binding letter of intent dated April 20, 1987; and

WHEREAS, the BANK and BUYER memorialized their

understanding of the essential terms and conditions under which the BUYER would purchase the CARS and the ASSIGNED LEASES from the BANK or EVANS in a memorandum of understanding dated May 27, 1987; and

WHEREAS, all of the parties hereto now wish to memorialize all of the terms and conditions pursuant to which EVANS shall transfer the CARS and the ASSIGNED LEASES to BUYER in satisfaction of the JUDGMENT, the BANK shall release the JUDGMENT LIEN and BUYER shall pay the BANK for the CARS and the ASSIGNED LEASES.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, including without limitation, the mutual consent of the parties hereto, the parties do hereby agree as follows:

ARTICLE I

Definitions

Primary Definitions. In addition to words and terms elsewhere defined in this AGREEMENT, the following words and terms as used herein shall have the following meanings unless some other meaning is apparent from the context in which the words and terms are used.

"AAR SETTLEMENT PROCEEDS" means a payment from any source of AAR SETTLEMENT VALUE.

"AAR SETTLEMENT VALUE" means the settlement value of a CAR as determined under Rule 107 of the Field Manual of the

A.A.R. Interchange Rules (1981).

"ASSIGNED LEASES" means those leases listed in Exhibit "B," as the same relate and pertain to CARS delivered and accepted by BUYER hereunder, including but not limited to, the right to all payments due or to become due under the ASSIGNED LEASES and any renewals or extensions thereof, whether as rent, late charges, damages, insurance payments, termination payments, loss payments, indemnities or otherwise, any and all proceeds of the ASSIGNED LEASES (as proceeds are defined by the Uniform Commercial Code), and any renewals or extensions thereof, together with all of the rights and remedies of EVANS to enforce, collect and receive any and all of the foregoing sums assigned to the extent to which the same accrue on and after DELIVERY of the CARS.

"ASSIGNMENT AND ASSUMPTION AGREEMENT" means the agreement to be executed by BUYER in favor of SELLERS and the TBT PURCHASER wherein the BUYER agrees to assume the ASSUMED TBT OBLIGATIONS listed in Section 12.01, in the form of Exhibit "C" attached hereto.

"ASSIGNMENT OF LEASES" means the agreement to be executed by EVANS in favor of the BUYER transferring all of EVANS' right, title and interest in the ASSIGNED LEASES to BUYER, in the form of Exhibit "D" attached hereto.

"BANK AGENT" means R.M. Haber & Associates, Inc.

"BANK'S FIRST LIEN" means the lien created as the result of EVANS' execution of the EVANS SECURITY AGREEMENT.

"BANK'S SECOND LIEN" means the lien to be created as the result of the BUYER'S execution of the BUYER'S SECURITY AGREEMENT.

"BUYER'S SECURITY AGREEMENT" means the security agreement to be executed by BUYER in favor of the BANK wherein the BANK is granted a security interest in the CARS and REVENUES as collateral for the BUYER'S obligations under the NOTE, in the form of Exhibit "E" attached hereto.

"CAR" means a railroad car which is being transferred by EVANS to the BUYER pursuant to this AGREEMENT, as listed on Exhibit "A," together with any and all parts, equipment, accessories, additions, repairs, replacements or other components thereof, thereto or therefor, and transferable warranties, if any, with respect thereto.

"CAR PURCHASE PRICE" means the price of each CAR by type as listed in Exhibit "F" attached hereto.

"CASUALTY PAYMENT" means any payment in respect of a DESTROYED CAR, including, but not limited to, insurance proceeds and AAR SETTLEMENT VALUE.

"DESTROYED" or "DESTROYED CAR" means a CAR which is worn out, lost, stolen, destroyed, damaged beyond economic repair or otherwise rendered unsuitable or unfit for use from any cause whatsoever.

"INTERIM CLOSING" means a series of transactions as described in Article 6 herein.

"FINAL CLOSING" means a series of transactions as

described in Article 7 herein.

"LEASES" means all of the leases pertaining to the CARS, which leases are listed on Exhibit "G" attached hereto.

"MANUAL" means the Office Manual of the A.A.R. Interchange Rules (1981).

"NOTE" means the master purchase money promissory note to be executed by BUYER in favor of the BANK as consideration for the transfer of CARS from EVANS, in the form of Exhibit "H" attached hereto.

"PRIOR LIENS" means: (1) the rights of the BANK pursuant to the BANK'S FIRST LIEN; (2) the rights, if any, of the BANK under the JUDGMENT LIEN; (3) certain of the rights of the TBT PURCHASERS under the TBT AGREEMENTS, as described in Section 12.01 herein; and (4) the rights of the lessees under the ASSIGNED LEASES.

"PURCHASE PRICE" means the agreed upon price to be paid by BUYER to the BANK for the CARS and the ASSIGNED LEASES of Five Million Five Hundred Seventy-Five Thousand Dollars (\$5,575,000.00), subject to adjustment as provided in this AGREEMENT.

"REVENUES" means all rents, mileage credits, per diem payments, car hire, CASUALTY PAYMENTS and other payments generated by or attributable to the CARS.

"TBT AGREEMENTS" means the Safe Harbor Leases listed in Exhibit "M" attached hereto.

"TBT PURCHASERS" means the lessors under the TBT

AGREEMENTS.

ARTICLE 2

Sale of Cars

Section 2.01. Conveyance. Subject to the terms and conditions hereof, EVANS agrees to sell to BUYER, and BUYER agrees to purchase from EVANS, the CARS and the ASSIGNED LEASES for the PURCHASE PRICE, which PURCHASE PRICE shall be paid by BUYER to BANK as herein provided. BUYER agrees to assume from EVANS all of EVANS' obligations and duties as lessor under the ASSIGNED LEASES to the extent that such obligations and duties accrue subsequent to DELIVERY of the CARS. This sale is expressly made subject and subordinate to the PRIOR LIENS.

Section 2.02. Purchase Price; Other Consideration.

The price to be paid by the BUYER to the BANK for the CARS and the ASSIGNED LEASES is Five Million Five Hundred Seventy-Five Thousand Dollars (\$5,575,000.00), as set forth in more detail on Exhibit "F" attached hereto, subject to adjustment as provided herein. The consideration to be given by the BANK to the SELLERS for the transfer of the CARS to BUYER consists of partial satisfaction of the JUDGMENT for each CAR transferred to BUYER; furthermore, a complete release and satisfaction of the JUDGMENT and a release of all of its liens upon the assets of the SELLERS will be provided by the BANK to SELLERS provided that either all of the CARS are conveyed by EVANS to BUYER in accordance with this AGREEMENT or, if less than all of the CARS

are so transferred, the BANK receives from EVANS the payments described in Section 13.01 (i).

Section 2.03. Method of Payment. All payments to be made by BUYER hereunder shall be made by BUYER by wire transfer to Equitable Bank, National Association, 100 S. Charles Street, Baltimore, Maryland 21201, Attention: Michael J. Fina, "For the credit of United States Rail Services, Inc." in immediately available United States funds, such payment to be applied to the NOTE. Such payments shall be confirmed by BUYER by written notice to BANK and to each of the SELLERS.

ARTICLE 3

Equipment Warranties and Covenants

Section 3.01. Warranties. EVANS warrants to the BANK, and EVANS and the BANK warrant to the BUYER, that, at the time of DELIVERY:

(i) BUYER shall receive good title to the CARS and to the ASSIGNED LEASES;

(ii) the CARS and the ASSIGNED LEASES shall be free and clear from any encumbrances of any persons claiming by, through or under EVANS, except for the PRIOR LIENS;

(iii) the CARS shall conform in all material respects to the applicable rules of the MANUAL and of the United States Department of Transportation; and

(iv) the CARS shall be clean, suitable for the function for which they were designed and the service for which

they were generally used, in good condition considering their age, and tank CARS shall be free of any product residue, mil scale or other interior tank rust or corrosion such that such tank CARS are suitable for crude vegetable oil service; provided however, that the CARS listed on Exhibit "B" shall not be required to be so clean and tank CARS listed on Exhibit "B" shall also not be required to be so free of any product residue, mil scale or other interior tank rust or corrosion.

SECTION 3.02. LIMITATION OF WARRANTY. THE WARRANTIES IN SECTION 3.01 ARE EXPRESSLY IN LIEU OF, AND BUYER ACKNOWLEDGES THAT NEITHER THE BANK NOR EITHER OF THE SELLERS HAVE MADE AND WILL NOT BE DEEMED TO HAVE MADE, AND THE BANK AND EACH OF THE SELLERS DISCLAIM, ANY OTHER REPRESENTATIONS, WARRANTIES AND GUARANTEES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, CONCERNING THE CARS OR ANY PART OR COMPONENT THEREOF, INCLUDING, BUT NOT LIMITED TO, ANY EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITION OF THE CARS, WORKMANSHIP, INFRINGEMENT OF ANY PATENT, TRADEMARK OR OTHER RIGHT IN RESPECT OF THE CARS, VALUE, DESIGN, QUALITY, DURABILITY, OPERATION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. BUYER WAIVES ANY AND ALL RIGHTS AND REMEDIES IT MAY HAVE AGAINST THE BANK AND SELLERS RELATING TO ANY OTHER REPRESENTATIONS AND WARRANTIES ALLEGEDLY MADE BY THE BANK OR BY EITHER OF THE SELLERS. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 3.01 HEREOF, BUYER ACKNOWLEDGES THAT THE CARS ARE BEING SOLD ON DELIVERY OF SUCH CARS "AS-IS-WHERE-IS AND WITH ALL FAULTS." BUYER WAIVES ALL CLAIMS IT NOW HAS OR MAY HAVE

AGAINST EITHER OF THE SELLERS OR THE BANK FOR TORT LIABILITY OR PRODUCT LIABILITY WITH RESPECT TO THE CARS OR ANY PART OR COMPONENT THEREOF, IT BEING AGREED THAT, EXCEPT WITH RESPECT TO THE WARRANTIES SET FORTH IN SECTION 3.01 HEREOF, ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY BUYER IN THE EVENT OF ANY DEFECT OR DEFICIENCY IN THE CARS OR ANY PART OR COMPONENT THEREOF, WHETHER PATENT OR LATENT, AND THAT NEITHER THE BANK NOR EITHER OF THE SELLERS SHALL HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

ONCE A CAR IS DELIVERED, THE BUYER AGREES THAT NEITHER OF THE SELLERS NOR THE BANK SHALL BE LIABLE TO THE BUYER FOR ANY LIABILITY, CLAIM, LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY ANY CAR OR ANY INADEQUACY THEREOF FOR ANY PURPOSE, OR ANY DEFICIENCY OR DEFECT THEREIN, OR THE USE OR MAINTENANCE THEREOF, OR ANY REPAIRS, SERVICING OR ADJUSTMENTS THERETO, OR ANY INTERRUPTION OR LOSS OF SERVICE OR USE THEREOF, OR ANY LOSS OF BUSINESS, OR ANY DAMAGE WHATSOEVER AND HOWSOEVER CAUSED.

NO AGREEMENT ALTERING OR EXTENDING THE BANK'S OR EITHER OF THE SELLERS' LIABILITY FOR REPRESENTATIONS AND WARRANTIES SHALL BE BINDING UPON THE BANK OR EITHER OF THE SELLERS UNLESS IN WRITING AND EXECUTED BY BOTH OF THE SELLERS, THE BANK AND BUYER.

ARTICLE 4

Inspection and Acceptance

Section 4.01. Inspection. EVANS shall periodically notify BUYER and the BANK AGENT orally, then confirm in writing,

of the location(s) where CARS may be inspected ("INSPECTION NOTICE"). The INSPECTION NOTICE shall state:

(i) the address (or other location-identifying information) where the CARS are being stored or will be awaiting inspection;

(ii) if the CARS are listed on Exhibit "B", for how long the CARS will be at such location;

(iii) the number of CARS which will be available for inspection;

(iv) the type of CARS; and

(v) CAR numbers.

Section 4.02. Inspection Procedure.

(a) As soon as possible, but no later than within twenty-one (21) days of oral notification of the information set forth in Section 4.01, representatives of BUYER shall inspect the CARS at the location described in the INSPECTION NOTICE for the purpose of accepting or rejecting the CARS. The CARS shall be deemed "ACCEPTABLE" if they meet the standards set forth in Section 3.01 above. The BANK AGENT shall assist BUYER and EVANS in the inspection process, if requested, and draw its own conclusions concerning whether a CAR is ACCEPTABLE.

(b) If the BUYER finds a CAR NON-ACCEPTABLE, it shall, within five (5) days of the inspection, notify EVANS and the BANK AGENT orally, then confirm in writing, of:

(i) the CAR type;

(ii) the CAR number;

(iii) the CAR location; and

(iv) the deficiencies in CAR condition ("CAR DEFICIENCIES") (said notice hereinafter referred to as the "DEFICIENCY NOTICE").

(c) EVANS shall, within five (5) days of receipt of oral notification of the information set forth in Section 4.02 (b), inform the BUYER orally, then confirm in writing, with a copy to the BANK AGENT, whether it agrees with the DEFICIENCY NOTICE as to each CAR listed therein. As to that part of the notice with which it agrees, it shall proceed to correct the CAR DEFICIENCIES as soon as practicable at its sole expense. If it disagrees with the DEFICIENCY NOTICE as to any CARS, a meeting shall be held promptly among the BUYER, the BANK AGENT and EVANS to attempt to resolve the disagreement. If, after such meeting there is still a disagreement, the parties agree to the resolution of such disagreement in accordance with Article 21 hereof.

(d) If a CAR conforms to the specifications contained in Section 3.01, BUYER shall execute and deliver to EVANS, with a copy to the BANK AGENT, an EQUIPMENT ACCEPTANCE RECEIPT substantially in the form attached hereto as Exhibit "I," stating that such CAR or CARS have been inspected and accepted on behalf of BUYER. The BUYER's execution and delivery of the EQUIPMENT ACCEPTANCE RECEIPT shall conclusively establish that such CAR is ACCEPTABLE to, and has been accepted by, BUYER.

Section 4.03. Repairs. If BUYER issues a DEFICIENCY

NOTICE as to CARS as to which EVANS agrees, and EVANS proceeds to make repairs to the CARS, BUYER shall be obligated to execute and deliver an EQUIPMENT ACCEPTANCE RECEIPT and to purchase such CARS if the repairs are completed to correct or cure the CAR DEFICIENCIES within a reasonable period of time as determined by an inspection in accordance with Article 4 hereof as to solely the CAR DEFICIENCY sought to be cured or corrected. If the repairs are not so completed within a reasonable period of time, which shall be no later than the FINAL CLOSING, BUYER shall not be obligated to purchase such CARS and the CAR PURCHASE PRICES of such CARS shall be deducted from the PURCHASE PRICE; provided however that BUYER may make an offer to the BANK and SELLERS to purchase such CARS at a reduced price.

Section 4.04. Costs of Inspection. All of BUYER's inspection costs shall be borne by BUYER. All costs of repairs to correct or cure CAR DEFICIENCIES shall be borne by EVANS.

Section 4.05. Waiver of Inspection Rights. If twenty-one (21) days elapse from BUYER's receipt of oral notification of the information set forth in Section 4.01, and BUYER has not inspected any or some of the CARS listed on said notice, BUYER shall be deemed automatically to have found such uninspected CARS listed on such INSPECTION NOTICE "ACCEPTABLE," and to have accepted all such CARS for all purposes hereunder. BUYER hereby irrevocably grants a power of attorney, coupled with an interest, to EVANS to execute an EQUIPMENT ACCEPTANCE RECEIPT with respect to such uninspected CARS.

ARTICLE 5

Delivery, Title, Risk of Loss

Section 5.01. Delivery. Subject to the provisions of Section 5.02 hereof, EVANS shall be deemed to have delivered the CARS to BUYER and BUYER shall be deemed to have accepted delivery of the CARS from EVANS immediately upon their acceptance by BUYER f.o.t. at the various locations designated by EVANS in the INSPECTION NOTICE relating to such CARS or at such other locations within the continental United States as designated by EVANS. EVANS shall use reasonable efforts to: (1) have CARS available for inspection as soon as possible subsequent to the execution of this AGREEMENT; (2) have all of the CARS available for inspection and delivery within six (6) months of the execution of this AGREEMENT; and (3) store CARS for the purpose of inspection and delivery in as few locations as is reasonably practical. EVANS shall have no obligation to store, pay or reimburse BUYER for the payment of storage costs for CARS after they have been delivered to BUYER. The parties shall cooperate with BUYER regarding delivery of CARS so as to minimize or eliminate sales taxes and transportation charges.

Section 5.02. Delivery Procedure. At the time of delivery of a CAR, the following transactions shall occur:

(a) BUYER shall execute and deliver to EVANS, with copies to the BANK and BANK AGENT, an EQUIPMENT ACCEPTANCE RECEIPT, substantially in the form of Exhibit "I" attached hereto; and

(b) EVANS shall tender possession of the CAR to the BUYER.

DELIVERY shall be deemed to have occurred once items (a) and (b) have taken place, provided that there has not been a material EVENT OF DEFAULT, as defined herein, by SELLERS or the BANK under this AGREEMENT.

Section 5.03. Automatic Events. Upon DELIVERY of a CAR, the following events shall automatically be deemed to have occurred:

(a) legal title to the DELIVERED CAR shall pass to BUYER;

(b) there shall be deemed to be an advance under the NOTE in a principal amount equal to the CAR PURCHASE PRICE of the DELIVERED CAR, and interest shall commence accruing as of the date of DELIVERY of such CAR at the rate provided for in the NOTE;

(c) the BANK'S SECOND LIEN shall be deemed to attach to the DELIVERED CAR pursuant to Section 2.4 of the BUYER'S SECURITY AGREEMENT, and the EQUIPMENT ACCEPTANCE RECEIPT relating to such CAR shall become a schedule ("SCHEDULE") to the BUYER'S SECURITY AGREEMENT;

(d) the ASSIGNMENT and ASSUMPTION AGREEMENT shall become effective with respect to such CAR;

(e) the ASSIGNMENT OF LEASES shall become effective with respect to such CAR if such CAR is listed on Exhibit "B."

Section 5.04. REVENUES. BUYER shall be entitled to

all REVENUES as of the date of DELIVERY. From and after DELIVERY of any CAR, EVANS will turn over to BUYER: (i) all amounts received by it on account of mileage payments for such CARS bearing EVANS reporting marks, at no cost or expense to BUYER; and (ii) all amounts received by it on account of per diem payments received for such CARS bearing the lessee's railroad reporting marks, after deducting therefrom reasonable charges for the collection, handling and disbursement to BUYER of such per diem payments, such charges to commence after the sixtieth day following DELIVERY of such CARS. Upon reasonable request, EVANS shall permit BUYER to audit its books and records to verify proper disposition of such charges and payments.

Section 5.05. Risk of Loss. Any and all risks relating to or pertaining to the CARS and their ownership, use, operation, condition or otherwise, including but not limited to, risk of loss, damage and destruction of the CARS shall transfer from EVANS to BUYER upon DELIVERY of such CARS to BUYER.

Section 5.06. Delivery Costs. BUYER shall be liable for all costs relating to the CARS subsequent to DELIVERY of the CARS. EVANS shall be liable for all costs in bringing CARS to inspection locations.

ARTICLE 6

Interim Closings

Section 6.01. Timing. On the first business day of each month following the commencement of inspections, there shall

be a closing ("INTERIM CLOSING").

Section 6.02. Documentation. At each INTERIM CLOSING the following documents shall be executed and delivered (the "INTERIM CLOSING DOCUMENTS"):

a. EVANS shall execute and deliver to BUYER a bill of sale ("BILL OF SALE") in the form of Exhibit "J" attached hereto, dated as of the date of DELIVERY.

b. EVANS shall execute all other documents reasonably requested by BUYER to enable BUYER to have its ownership of the CARS registered in the UMLER file.

c. BUYER shall execute and deliver to the BANK any other documents deemed necessary by the BANK in order to properly perfect the BANK's SECOND LIEN on the CARS with the Interstate Commerce Commission in accordance with Section 11303 of Title 49 of the United States Code;

d. BUYER shall acknowledge in writing its approval of the entries by the BANK on the "grid" portion of the NOTE representing advances made during the previous month.

e. BUYER shall deliver at the first INTERIM CLOSING to the BANK and SELLERS an opinion of counsel of BUYER, dated as of the date of the first INTERIM CLOSING, to the effect that: (i) The BUYER is duly organized and is a validly existing corporation in good standing under the laws of the State of California, has the corporate power to own its respective properties and conduct its businesses and is duly qualified and/or licensed to transact business in the State of California. The BUYER has full power,

authority and legal right under the laws of the State of California to execute and deliver the AGREEMENT, the NOTE, BUYER'S SECURITY AGREEMENT, the ASSIGNMENT and ASSUMPTION AGREEMENT, the INTERIM CLOSING DOCUMENTS and all other documents contemplated by this AGREEMENT to be executed by BUYER (the NOTE, BUYER'S SECURITY AGREEMENT, ASSIGNMENT and ASSUMPTION AGREEMENT, the INTERIM CLOSING DOCUMENTS and all other documents contemplated by this AGREEMENT to be executed by BUYER are hereinafter referred to as the "BUYER'S OTHER DOCUMENTS") and to perform and observe the terms and conditions of each thereof, and the execution and delivery of the AGREEMENT and the BUYER'S OTHER DOCUMENTS does not conflict with or result in a violation of, or constitute a default under, any of the terms, conditions or provisions of its articles of incorporation or by-laws, any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or of any indenture, credit agreement, lease, guaranty, document, agreement or other instrument to which the BUYER is now a party or by which it is bound; (ii) that no consent or approval of any governmental agency or commission or public or quasi-public body is necessary for the due execution and delivery of the AGREEMENT and the BUYER'S OTHER DOCUMENTS or for the validity, payment or enforceability of any thereof; (iii) that the AGREEMENT and the BUYER'S OTHER DOCUMENTS have been duly authorized, executed and delivered by BUYER and, assuming the due authorization, execution and delivery of each thereof by the parties thereto other than

the BUYER, constitute legal, valid and binding obligations of the BUYER enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium, or other laws affecting the enforcement of creditors' rights generally from time to time in effect and to all applicable principles of equity if equitable remedies are sought; (iv) that the NOTE is entitled to the benefits and security of the BUYER'S SECURITY AGREEMENT, and the CARS which have been DELIVERED and the REVENUES relating thereto are subject to the lien and security interest of the BUYER'S SECURITY AGREEMENT; (v) that after the BUYER'S SECURITY AGREEMENT has been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 11303 of Title 49 of the United States Code, no other filing or recording thereof will be necessary to perfect the lien and security interest of the BANK in and to the CARS and REVENUES under the BUYER'S SECURITY AGREEMENT in any state of the United States of America or the District of Columbia; (vi) that there has been no change in the title to the CARS from the title which was conveyed to BUYER by EVANS upon DELIVERY; (vii) that, to the knowledge of counsel after due inquiry, the CARS are free of all claims, liens and encumbrances of persons claiming by, under or through BUYER except only liens arising in the ordinary course of business with respect to amounts not yet due and payable and the PRIOR LIENS; (viii) that the BUYER'S SECURITY AGREEMENT constitutes a valid and subsisting lien and security interest of record according to its terms on all of the CARS

which are DELIVERED; and (ix) that there are no tax liens (including without limitation, tax liens filed pursuant to section 6323 of the Internal Revenue Code of 1954, as amended) which have been filed against BUYER or are currently in effect which would adversely affect the security interest of the BANK. In rendering such opinion, counsel may assume that the laws of California and of the United States are applicable to the matters covered by such opinion.

f. The BANK shall execute and deliver to the SELLERS a partial satisfaction of the JUDGMENT for each CAR DELIVERED during the previous month and for payments made pursuant to Section 13.01 (i) based on Exhibit "K" attached hereto.

g. SELLERS shall deliver at the FIRST INTERIM CLOSING to the BANK and the BUYER an opinion of counsel to the SELLERS, dated as of the date of the first INTERIM CLOSING, to the effect that: (i) The SELLERS are duly organized and validly existing corporations in good standing under the laws of the State of Illinois and have the corporate power to own their respective properties and conduct their businesses. The SELLERS have full power, authority and legal right under the laws of the State of Illinois to execute and deliver the AGREEMENT, the BILL OF SALE, the ASSIGNMENT OF LEASES, ASSIGNMENT AND ASSUMPTION AGREEMENT, the INTERIM CLOSING DOCUMENTS and all other documents contemplated by this AGREEMENT to be executed by SELLERS or by either of them (the BILL OF SALE, ASSIGNMENT OF LEASES, ASSIGNMENT AND ASSUMPTION AGREEMENT, the INTERIM CLOSING

DOCUMENTS and all other documents contemplated by this AGREEMENT to be executed by SELLERS or by either of them are hereinafter referred to as SELLERS' OTHER DOCUMENTS"), and to perform and observe the terms and conditions of each thereof, and the execution and delivery of the AGREEMENT and the SELLERS' OTHER DOCUMENTS does not conflict with or result in a violation of, or constitute a default under: (a) any of the terms, conditions or provisions of their respective articles of incorporation or by-laws, any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign; or (b) except for TBT AGREEMENTS relating to CARS not DELIVERED on or prior to the date of such opinion, any indenture, credit agreement, lease, guaranty, document, agreement or any other instrument to which the SELLERS are now a party or by which they are bound (the "INSTRUMENTS"), the conflict with, the violation of or the default under any of such INSTRUMENTS renders this AGREEMENT, the SELLERS' OTHER DOCUMENTS and/or any of the transactions contemplated thereby, void or voidable; (ii) that no consent or approval of any governmental agency or commission or public or quasi-public body is necessary for the due execution and delivery by the SELLERS of the AGREEMENT or the SELLERS' OTHER DOCUMENTS or for the validity, payment or enforceability of any thereof; (iii) that the AGREEMENT and the SELLERS' OTHER DOCUMENTS have been duly authorized, executed and delivered by the SELLERS and, assuming the due authorization, execution and delivery of each thereof by the parties thereto other than the

SELLERS, constitute legal, valid and binding obligations of the SELLERS executing the same, enforceable in accordance with their respective terms subject to bankruptcy, insolvency, reorganization, moratorium, or other laws affecting the enforcement of creditors' rights generally from time to time in effect and to applicable principles of equity if equitable remedies are sought; (iv) that there are no liens of record on the CARS or the ASSIGNED LEASES at the Interstate Commerce Commission or with the Secretary of State of Illinois or of which counsel is aware, after searching such records at the Interstate Commerce Commission and the Secretary of State of Illinois, except the PRIOR LIENS; and (v) that DELIVERY is effective to transfer legal title to CARS and the ASSIGNED LEASES as they pertain to CARS to BUYER. In rendering such opinion, counsel may assume that the laws of Illinois and of the United States are applicable to the matters covered by such opinion.

h. The BANK shall deliver at the first INTERIM CLOSING to the BUYER and SELLERS an opinion of counsel of BANK, dated as of the date of the FIRST INTERIM CLOSING, to the effect that: (i) The BANK is a duly and validly organized and existing national banking association in good standing under the federal banking laws. The BANK has full power and authority to enter into this AGREEMENT. The BANK has authority to execute and deliver the AGREEMENT, the INTERIM CLOSING DOCUMENTS and any other documents contemplated by this AGREEMENT to be executed by the BANK (the BANK'S INTERIM CLOSING DOCUMENTS and all other documents

contemplated by this AGREEMENT to be executed by the BANK are hereinafter referred to as the "BANK'S OTHER DOCUMENTS"), and to consummate the transactions contemplated thereby. This AGREEMENT and the BANK'S OTHER DOCUMENTS have been duly authorized by all necessary corporate and other action of the BANK; (ii) that the execution and delivery of the AGREEMENT and the BANK'S OTHER DOCUMENTS will not conflict with or result in a violation of, or constitute a default under, any of the terms, conditions or provisions of its articles of incorporation or by-laws, any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or of any indenture, credit agreement, lease, guaranty, document, agreement or other instrument to which the BANK is now a party or by which it is bound; (iii) that no consent or approval of any governmental agency or commission or public or quasi-public body is necessary for the due execution and delivery of the AGREEMENT of the BANK'S OTHER DOCUMENTS or for the validity, payment or enforceability of any thereof; and (iv) that the AGREEMENT and the BANK'S OTHER DOCUMENTS has been duly authorized, executed and delivered by the BANK and, assuming the due authorization, execution and delivery of each thereof by the parties thereto other than the BANK, constitute legal, valid and binding obligations of the BANK enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium, or other laws affecting the enforcement of creditors' rights generally from time to time in

effect and to all applicable principles of equity if equitable remedies are sought. In rendering such opinion, counsel may assume that the laws of Maryland and of the United States are applicable to the matters covered by such opinion.

i. Each party shall deliver to the other parties hereto a certificate dated as of the date of such INTERIM CLOSING, stating that there is not currently existing any action, event, or condition which would with the giving of notice, the passage of time, or both, constitute an EVENT OF DEFAULT under the AGREEMENT, and no action, event or condition has occurred and is continuing to occur which, with notice or the passage of time or both, would constitute an EVENT OF DEFAULT under the AGREEMENT.

Section 6.03. Location. All INTERIM CLOSINGS shall be held at the offices of Gebhardt & Smith, 9th Floor, World Trade Center, Baltimore, Maryland 21202.

ARTICLE 7

Final Closing

Section 7.01. Timing. On the first business day of the month which is six (6) months from the first INTERIM CLOSING there shall be a final closing ("FINAL CLOSING").

Section 7.02. Transactions. At the FINAL CLOSING the following transactions shall take place:

(a) An INTERIM CLOSING shall first be held for any DELIVERED CARS with respect to which an INTERIM CLOSING shall not

have been held.

(b) EVANS shall deliver to the BANK and BUYER a list of all CARS which have been DELIVERED to date to BUYER, as well as a list of all CARS which have not been DELIVERED and with respect to the latter list, it shall be accompanied by a writing stating:

(i) why the CAR has not been DELIVERED;

(ii) if the CAR is not DESTROYED, when it can be inspected, or DELIVERED; and

(iii) if the CAR is not DESTROYED, but cannot meet the requirements contained in Section 3.01 herein, the terms, if any, under which SELLERS are willing to transfer the CAR; however BUYER shall have no obligation to accept said offer.

(c) The BANK shall make an advance to BUYER under the NOTE equal to the sum of the TBT REDUCTION PRICES added to the PURCHASE PRICE pursuant to Section 12.03 below.

(d) BUYER shall pay to the BANK all sums due and owing under the NOTE, including, but not limited to, principal, interest and expenses.

(e) Each party shall deliver to the other parties a certificate dated as of the date of the FINAL CLOSING stating that there is not currently existing any action, event, or condition which would with the giving of notice, the passage of time, or both, constitute an EVENT OF DEFAULT under the AGREEMENT, and no action, event or condition has occurred and is continuing to occur which, with notice or the passage of time or

both, would constitute an EVENT OF DEFAULT under the AGREEMENT.

(f) The BANK shall execute and deliver to SELLERS a partial satisfaction of the JUDGMENT equal to the product of (x) the sum of the TBT REDUCTION PRICES added to the PURCHASE PRICE pursuant to Section 12.03 below times (y) the multiplier described on Exhibit "K" Section B.

(g) If all of the CARS have been DELIVERED by EVANS to BUYER, or with respect to all CARS not DELIVERED, EVANS has made payments to the BANK as provided in Section 13.01 (i), the BANK shall execute such documents and pleadings as are prepared by counsel for SELLERS which will: (a) enable the COURT to enter an order noting a complete satisfaction of the JUDGMENT; and (b) release the JUDGMENT LIEN and any and all other liens held by the BANK against the SELLERS or their assets.

(h) Irrespective of whether all of the CARS have been DELIVERED by EVANS to BUYER, or with respect to any CARS not DELIVERED, EVANS has made payments to the BANK as provided in Section 13.01 (i), if BUYER has fulfilled its obligations under sub-paragraph (c) hereof, the BANK shall execute any and all documents necessary to release the BANK'S SECOND LIEN, and to release all CARS DELIVERED to BUYER from the legal operation and effect of the JUDGMENT LIEN and of the BANK'S FIRST LIEN, including but not limited to, any and all documents necessary to be filed with the COURT and the Interstate Commerce Commission. The documents described in sub-paragraphs (d) and (e) above are referred to as the "FINAL CLOSING DOCUMENTS."

Section 7.03. Location. The FINAL CLOSING shall be held at the offices of Gebhardt & Smith, 9th Floor, World Trade Center, Baltimore, Maryland 21202.

ARTICLE 8

Warranties, Representations and Covenants of SELLERS

SELLERS represent, warrant and covenant to the BANK and the BUYER as follows:

Section 8.01. Good Standing; Binding Obligation. SELLERS are duly and validly organized and existing corporations in good standing under the laws of the State of Illinois. SELLERS have full power and authority to enter into this AGREEMENT and the SELLERS' OTHER DOCUMENTS. EVANS had full power and authority to enter into the ASSIGNED LEASES. SELLERS have, and at all relevant times had, full power and authority to execute and deliver this AGREEMENT and all other instruments and documents executed and delivered in connection with or relating to this AGREEMENT, the SELLERS' OTHER DOCUMENTS and the transactions contemplated thereby, and to consummate the transactions contemplated thereby. This AGREEMENT, the SELLERS' OTHER DOCUMENTS and the consummation of the transactions contemplated thereby, have been duly authorized by all necessary corporate and other action of SELLERS, and this AGREEMENT and the SELLERS' OTHER DOCUMENTS have been duly executed and delivered by, and, assuming the due authorization, execution and delivery of each thereof by the parties thereto other than the SELLERS,

constitutes the legal, valid and binding obligations of SELLERS. There is no action, suit or proceeding pending against SELLERS and no law or any other, writ, injunction, decree, rule or regulation of any court, administrative agency or other governmental authority which brings into question the validity of, or might in any way impair, the execution, delivery or performance by SELLERS of this AGREEMENT or the SELLERS' OTHER DOCUMENTS. No giving of notice to, registration with or taking any action in respect of or by any federal, state or local governmental body is required and no governmental authorization or approval is required for the execution and delivery of this AGREEMENT or the SELLERS' OTHER DOCUMENTS or for the validity and enforceability thereof. Except for the TBT PURCHASERS, no approval of, or consent from, any other third party not already obtained is required for the execution, delivery or performance by SELLERS of this AGREEMENT or the SELLERS' OTHER DOCUMENTS.

Section 8.02. Inconsistent Agreements. The execution, delivery and performance by SELLERS of this AGREEMENT, the SELLERS' OTHER DOCUMENTS and the transactions contemplated thereby: (a) do not contravene, violate or conflict with any provisions of the articles of incorporation or by-laws of either of the SELLERS or any law or any order, writ, injunction, decree, rule or regulation of any court, administrative agency or any other governmental authority applicable to SELLERS; (b) except for the TBT AGREEMENTS, do not conflict with and are not inconsistent with, and will not result (with or without the

giving of notice or passage of time or both) in a breach of or constitute a default or require any consent not heretofore obtained under the terms of any INSTRUMENTS to which either of the SELLERS is a party, by which SELLERS or their property is or may be bound, or to which SELLERS or their property may be subject, the conflict or inconsistency with, the breach of or default under any of such INSTRUMENTS renders this AGREEMENT, the SELLERS' OTHER DOCUMENTS and/or any of the transactions contemplated thereby void or voidable: (c) shall not result in the creation of any lien, charge or encumbrance on the CARS of any party claiming by, through or under EVANS; or (d) be in violation or go beyond the authority conferred by either of SELLERS' articles of incorporation or by-laws.

Section 8.03. Taxes; Permits. All sales, use, or value added, property or other taxes, licenses, tolls, inspection or other fees, bonds, permits or certificates which were or may be required to be paid or obtained in connection with the acquisition by EVANS of the CARS and the ASSIGNED LEASES have been paid in full or obtained or, when due, will be paid in full or obtained promptly.

Section 8.04. The ASSIGNED LEASES; TBT AGREEMENTS. The ASSIGNED LEASES and TBT AGREEMENTS have been duly executed by EVANS, are in full force and effect, and constitute the valid and binding obligations of the parties thereto. No default or condition now exists which, with or without the passage of time or giving of notice or both, would constitute a default under the

ASSIGNED LEASES as the same pertain to the CARS. Each of the ASSIGNED LEASES and TBT AGREEMENTS constitutes the entire agreement between the parties thereto concerning the CARS. The TBT AGREEMENTS relate to 250 of the CARS, a list of which CARS is attached hereto as Exhibit "L." EVANS heretofore has delivered to BUYER a copy of each of the ASSIGNED LEASES and TBT AGREEMENTS and all amendments thereto, all of which are true, correct and complete copies thereof, and there are no amendments, modifications or alterations which have not been so delivered to BUYER. EVANS is not a party to any agreements or leases, which create any liens or encumbrances affecting the CARS other than the EVANS LOAN DOCUMENTS, the LEASES and the TBT AGREEMENTS. To the date hereof, EVANS has observed and complied with, and hereafter, to the extent applicable, EVANS shall observe and comply with all of the terms and conditions of the ASSIGNED LEASES and the TBT AGREEMENTS as the same pertain to the CARS, provided however that SELLERS shall not be obligated to comply with requirements relating to maintenance of net worth in any TBT AGREEMENT or any guaranty relating thereto, or, after DELIVERY, with the ASSUMED TBT OBLIGATIONS.

Section 8.05. Patents. Trademarks. Nothing has come to EVANS' attention which would lead EVANS to believe that the sale, use, or operation of the CARS violates or infringes the patent, trademark, trade names or other rights of any party.

Section 8.06. Title. EVANS shall transfer to BUYER at DELIVERY legal title in and to the CARS and the ASSIGNED LEASES

relating to such CARS, free and clear of all leases, liens, claims, charges, equities and encumbrances arising by, through or under SELLER of any kind or nature whatsoever, except for the PRIOR LIENS.

Section 8.07. Documentation. SELLERS have furnished to BUYER and the BANK true, correct and complete copies of a listing of the CARS, the LEASES as listed on Exhibit "G" attached hereto, names of builders, builders' specifications, drawings, original builders' invoices or other documentation to support UMLER value, tank CAR construction certificates, built dates for all CARS and information regarding the transfer of the tax benefits relating to the CARS, and will, prior to DELIVERY of tank CARS, provide information concerning the commodity most recently transported or stored in the tank CARS so DELIVERED. SELLERS shall also provide BUYER with the original ASSIGNED LEASES.

Section 8.08. True Sale. EVANS shall account for the transactions referred to herein as a true sale of the CARS and shall not take any position on its tax returns or in any other document or instrument relating thereto that is inconsistent therewith, except as may be required under the TBT AGREEMENTS.

Section 8.09. No Default. There is not currently existing any EVENT OF DEFAULT or any action, event, or condition which would with the giving of notice, the passage of time, or both, constitute an EVENT OF DEFAULT on the part of either of the SELLERS under this AGREEMENT.

ARTICLE 9

Representations, Warranties and Covenants of BUYER

BUYER represents, warrants and covenants to the BANK and SELLERS as follows:

Section 9.01. Good Standing; Binding Obligation. BUYER is a duly and validly organized and existing corporation in good standing under the laws of the State of California. BUYER has full power and authority to enter into this AGREEMENT and the BUYER'S OTHER DOCUMENTS. BUYER has, and at all relevant times had, full power and authority to execute and deliver all other instruments and documents executed and delivered in connection with or relating to the AGREEMENT, the BUYER'S OTHER DOCUMENTS and the transactions contemplated thereby and to consummate the transactions contemplated thereby. THIS AGREEMENT, the BUYER'S OTHER DOCUMENTS and the consummation of the transactions contemplated thereby have been duly authorized by all necessary corporate and other action of BUYER, and this AGREEMENT and the BUYER'S OTHER DOCUMENTS have been duly executed and delivered by, and assuming the due authorization, execution and delivery of each thereof by the parties thereto other than the BUYER, constitute the legal, valid and binding obligations of BUYER. There is no action, suit or proceeding pending against BUYER and no law or any order, writ, injunction, decree, rule or regulation of any court, administrative agency or other governmental authority which brings into question the validity of, or might in any way impair, the execution, delivery or performance by BUYER

of this AGREEMENT or the BUYER'S OTHER DOCUMENTS. No giving of notice to, registration with or taking any action in respect of or by any federal, state or local governmental body is required and no governmental authorization or approval is required for the execution and delivery of this AGREEMENT or the BUYER'S OTHER DOCUMENTS or for the validity and enforceability thereof. No approval of, or consent from, any other third party not already obtained is required for the execution, delivery or performance by BUYER of this AGREEMENT or the BUYER'S OTHER DOCUMENTS.

Section 9.02. Inconsistent Agreements. The execution, delivery and performance by BUYER of this AGREEMENT or the BUYER'S OTHER DOCUMENTS and the transactions contemplated thereby do not contravene, violate or conflict with any provisions of the articles of incorporation or by-laws of BUYER or any law or any order, writ, injunction, decree, rule or regulation of any court, administrative agency or any other governmental authority applicable to BUYER, and do not conflict with and are not inconsistent with, and will not result (with or without the giving of notice or passage of time or both) in a breach of or constitute a default or require any consent not heretofore obtained under the terms of any credit agreement, lease, guaranty, document, agreement or instrument to which BUYER is a party, by which BUYER or its property is or may be bound, or to which BUYER or its property may be subject, and will not result in the creation of any lien, charge or encumbrance on the CARS or be in violation of or go beyond the authority conferred by

BUYER'S articles or incorporation or by-laws.

Section 9.03. Priority of Bank Liens. BUYER agrees, at the request of the BANK, to execute and deliver such documents, instruments and agreements as reasonably may be required to evidence, perfect and maintain the priority of the BANK'S SECOND LIEN, including any subordination or security agreement and any financing statements in form acceptable for recording in any appropriate jurisdiction.

Section 9.04. No Default. There is not currently existing any EVENT OF DEFAULT or any action, event, or condition which would with the giving of notice, the passage of time, or both, constitute an EVENT OF DEFAULT on the part of BUYER under this AGREEMENT.

ARTICLE 10

Representations, Warranties and Covenants of the BANK

The BANK represents, warrants and covenants to the SELLERS and BUYER as follows:

Section 10.01. Good Standing; Binding Obligation. The BANK is a duly and validly organized and existing national banking association in good standing under the federal banking laws. The BANK has full power and authority to enter into this AGREEMENT and the BANK'S OTHER DOCUMENTS. The BANK has authority to execute and deliver the AGREEMENT, the BANK'S OTHER DOCUMENTS and any other documents in connection with or relating to the transactions contemplated thereby, and to consummate the transactions contemplated thereby. This AGREEMENT, the BANK'S

OTHER DOCUMENTS and the consummation of the transactions contemplated thereby have been duly authorized by all necessary corporate and other action of the BANK, and this AGREEMENT and the BANK'S OTHER DOCUMENTS have been duly executed and delivered by, and, assuming the due authorization, execution and delivery thereof by the parties thereto other than the BANK, constitutes the legal, valid and binding obligations of the BANK. There is no action, suit or proceeding pending against the BANK and no law or any order, writ, injunction, decree, rule or regulation of any court, administrative agency or other governmental authority which brings into question the validity of, or might in any way impair, the execution, delivery or performance by the BANK of this AGREEMENT or the BANK'S OTHER DOCUMENTS. No giving of notice to, registration with or taking any action in respect of or by any federal, state or local governmental body is required and no governmental authorization or approval is required for the execution and delivery of this AGREEMENT, the BANK'S OTHER DOCUMENTS or for the validity and enforceability thereof. No approval of, or consent from, any other third party not already obtained is required for the execution, delivery or performance by the BANK of this AGREEMENT or the BANK'S OTHER DOCUMENTS.

Section 10.02. Inconsistent Agreements. The execution, delivery and performance by the BANK of this AGREEMENT, the BANK'S OTHER DOCUMENTS and the transactions contemplated thereby do not contravene, violate or conflict with any provisions of the BANK's charter or by-laws, any law or any

order, writ, injunction, decree, rule or regulation of any court, administrative agency or any other governmental authority applicable to the BANK, and do not conflict with and are not inconsistent with, and will not result (with or without the giving of notice or passage of time or both) in a breach of or constitute a default or require any consent not heretofore obtained under the terms of any credit agreement, lease, guaranty, document, agreement or instrument to which the BANK is a party, by which BANK or its property is or may be bound, or to which the BANK or its property may be subject or be in violation of or beyond the authority conferred by the BANK's charter or by-laws.

Section 10.03. No Action on Liens. The BANK in no event may take any action against BUYER or any DELIVERED CARS pursuant to the BANK'S FIRST LIEN or the JUDGMENT LIEN unless there is an EVENT OF DEFAULT under this AGREEMENT by BUYER, or unless this AGREEMENT and/or the transactions contemplated herein, are set aside or terminated by a court of competent jurisdiction.

Section 10.04. Indemnification. So long as there is not an EVENT OF DEFAULT by BUYER under this AGREEMENT, the BANK shall indemnify, defend and hold harmless the BUYER against any and all suits, claims, actions, losses, costs, damages, injuries or expenses (including court costs and reasonable attorneys fees) which the BUYER may suffer or incur relating to or as the result of the BANK'S FIRST LIEN or the JUDGMENT LIEN remaining on the

CARS subsequent to DELIVERY until the FINAL CLOSING.

Section 10.05. No Default. There is not currently existing any EVENT OF DEFAULT or any action, event, or condition which would with the giving of notice, the passage of time, or both, constitute an EVENT OF DEFAULT on the part of the BANK under this AGREEMENT.

ARTICLE 11

Insurance

Section 11.01. BUYER's Insurance Obligations.

(a) In addition to its obligations to maintain insurance pursuant to the TBT AGREEMENTS, BUYER shall continuously and uninterruptedly maintain at all times during the period between DELIVERY and FINAL CLOSING, at its own expense, property insurance and public liability insurance (which ° property insurance may be self-insurance) on each DELIVERED CAR in amounts (subject to customary deductibles prudent within the railroad industry) and against risks customarily insured and, in any event, comparable in amounts and against risks customarily insured against by BUYER in respect of similar equipment owned or leased by it. BUYER shall deliver to the BANK, upon the execution of this AGREEMENT, a certificate naming the BANK as an additional insured with respect to liability insurance and a certificate of insurance evidencing the property insurance effected or in force in accordance with this Section, showing also that the BANK has been named as an additional insured under the policy. All insurance policies evidenced by certificates of

insurance shall be from insurers or carriers acceptable to the BANK and shall contain an agreement of the insurers or carriers that such policies shall not be cancelled without at least thirty (30) days prior written notice to the BANK in the event of non-payment of the premiums by the BUYER when due or any other grounds for cancellation of such policies.

(b) The BANK shall not be liable for the payment of premiums and/or assessments under any insurance policy carried by BUYER. The BANK shall have the right, but not the obligation, to make such payments in the event that BUYER fails to do such, and such amounts shall be deemed an advance pursuant to the BUYER'S SECURITY AGREEMENT. Such insurance shall be primary without right of contribution from any other insurance which may be carried by the BANK to the extent that such other insurance provides it with contingent and/or excess liability insurance with respect to its interest as such in the CARS.

Section 11.02. EVANS' Insurance Obligations. EVANS shall maintain for each CAR at all times until DELIVERY of such CAR, at its own expense, appropriate liability insurance to the same extent as such insurance is being maintained as of the date of this AGREEMENT. EVANS shall deliver to the BANK, at the BANK'S request, certificates of insurance evidencing the liability insurance effected or in force with respect to the CARS in accordance with this Section. Such insurance shall cover the BANK to the same extent as EVANS is covered. All policies evidenced by certificates of insurance shall be from insurers or

carriers acceptable to the BANK and shall contain an agreement of the insurers or carriers that such policies shall not be cancelled without at least 30 days prior written notice to the BANK in the event of non-payment of the premiums by the BUYER when due or any other grounds for cancellation of such policies. The BANK shall have the right, but not the obligation to make payments of insurance premiums on behalf of EVANS, and in the event it shall make such payments, it shall be reimbursed by EVANS.

ARTICLE 12

TBT Agreements

Section 12.01. BUYER'S Obligations under the TBT AGREEMENTS. BUYER shall purchase the CARS subject to the TBT AGREEMENTS, a list of which is attached hereto as Exhibit "M." BUYER shall also comply with all applicable Internal Revenue Service regulations (the "REGULATIONS"), as they may be amended from time to time, including but not limited to Temporary Reg. Section 5c. 168(f)(8), attached hereto as Exhibit "N" and incorporated by reference herein, necessary to preserve the tax benefits for the TBT PURCHASERS, as such is within the control of the BUYER with regard to its ownership of the CARS. BUYER shall file all documents required by the REGULATIONS and shall comply with all reasonable requests from the TBT PURCHASERS and/or SELLERS which the TBT PURCHASERS and/or SELLERS reasonably determine to be necessary in order to preserve the tax benefits

for the TBT PURCHASERS. Subject to the foregoing, BUYER shall assume the following obligations of EVANS under the TBT AGREEMENTS ("ASSUMED TBT OBLIGATIONS") as the same pertain to DELIVERED CARS and which obligations come into existence and arise out of events occurring subsequent to DELIVERY of such CARS:

(i) GLGT, Inc.

- (a) Section 10
- (b) Section 11 (a), (b), (c), (d) (except information relating to the financial condition of the Lessee and its parent, Evans Transportation) and (f)
- (c) Section 12 (except (a) (ii) and (d))
- (d) Section 14 (a) (except for "taxes or other governmental charges imposed by any authority on or with respect to the Agreement...")
- (e) Section 16 (as such section relates to payments due from BUYER)

(ii) AMOCO Tax Leasing XV Corporation

- (a) Section 4 (b) (ii) (as such relates to transfers of the "Property"), (iii), (iv) (EVANS and/or Amoco to advise BUYER of what reports are required) and (vi)
- (b) Section 6
- (c) Section 7
- (d) Section 9
- (e) Section 11 (d) (as such relates to payments due from BUYER)

(iii) Carson Pirie Scott & Company

- (a) Section 3.2 (B), (C), (E) (the certification to be only with respect to BUYER'S ASSUMED TBT OBLIGATIONS) and (F)
- (b) Section 4.1 and 4.2
- (c) Section 5.2
- (d) Section 7.1, 7.2, and 7.3 (D) (as such relates to the payments due from BUYER).

(iv) Northwest Industries Leasing Company 1

- (a) Section 5 (b), (c)
- (b) Section 7, 7A
- (c) Section 8
- (d) Section 10

*

(v) Northwest Industries Leasing Company 2

- (a) Section 5 (b), (c)
- (b) Section 7, 7A
- (c) Section 8
- (d) Section 10

*

Section 12.02. SELLERS' Obligations under the TBT AGREEMENTS. SELLERS shall remain liable for all of their obligations under the TBT AGREEMENTS, except for the ASSUMED TBT OBLIGATIONS.

Section 12.03. Adjustment of Purchase Price. BUYER acknowledges that the PURCHASE PRICE reflects the BUYER'S assumption of the ASSUMED TBT OBLIGATIONS. Therefore, if a CAR which is covered by a TBT AGREEMENT is either DESTROYED prior to DELIVERY or is not DELIVERED for any other reason, the CAR PURCHASE PRICE of each such CAR shall be subtracted from the PURCHASE PRICE and the TBT REDUCTION PRICE for the CAR, as shown on Exhibit "O" shall be added to the PURCHASE PRICE, such adjustments to be made at the FINAL CLOSING; **

ARTICLE 13

Casualties

Section 13.01. Prior to DELIVERY. In the event that, prior to DELIVERY, any CAR is DESTROYED: (i) notwithstanding Section 2.1 of the EVANS SECURITY AGREEMENT to the contrary, EVANS shall immediately pay to the BANK the AAR SETTLEMENT VALUE for each such DESTROYED CAR; (ii) the BANK shall execute a

*(e) Section 13(b) (as such relates to payments due from Buyer)

** - provided, however, that the PURCHASE PRICE may not exceed the sum of the CAR PURCHASE PRICES of all DELIVERED CARS plus \$500 for each DELIVERED CAR.

partial satisfaction of the JUDGMENT on a dollar for dollar basis equal to the payment received from EVANS pursuant to sub-section (i) herein; (iii) the SELLERS and the BANK shall be relieved of any and all of their obligations to transfer the DESTROYED CAR to BUYER; (iv) there shall be deducted from the PURCHASE PRICE the CAR PURCHASE PRICE of the DESTROYED CAR; (v) if the DESTROYED CAR is subject to a TBT AGREEMENT as shown on Exhibit "M," the TBT REDUCTION PRICE for the CAR, as shown on Exhibit "O" attached hereto, shall be added to the PURCHASE PRICE, after the adjustment made pursuant to sub-section (iv) herein has been made; and (vi) SELLERS shall be liable to the TBT PURCHASERS for the casualty payment due under the TBT AGREEMENT covering such DESTROYED CAR. In the event that, prior to DELIVERY, a CAR is damaged (but not beyond economic repair), SELLERS shall be obligated to repair said CAR to the extent that its condition shall be in conformance with the warranties stated in Section 3.01 herein.

Section 13.02. Between DELIVERY and the FINAL CLOSING.

(a) In the event that a CAR is DESTROYED between DELIVERY of such CAR and the FINAL CLOSING: (i) All CASUALTY PAYMENTS (excluding public liability insurance) received by BUYER subsequent to DELIVERY and prior to the FINAL CLOSING shall be deposited in the BANK in a special interest bearing escrow account ("ESCROW ACCOUNT") with Michael J. Fina to serve as the escrow agent ("ESCROW AGENT"). Upon payment of the NOTE by BUYER at the FINAL CLOSING in accordance with Section 7.01 (c), the

BANK shall instruct the ESCROW AGENT to release to BUYER all funds held in the ESCROW ACCOUNT with the interest earned thereon. If, however, the BUYER does not make the payment in accordance with Section 7.01 (c), the BANK may instruct the ESCROW AGENT to pay all of the funds then held in the ESCROW ACCOUNT, including the interest earned thereon, to the BANK. Such a payment shall be deemed a partial payment on the NOTE. The acceptance by the BANK of such partial payment shall not cure any existing default under this AGREEMENT or the NOTE, nor shall it constitute a waiver of any of the BANK'S rights under this AGREEMENT or the NOTE; and (ii) BUYER shall pay to the TBT PURCHASER such amount which is due under the TBT AGREEMENT relating to such DESTROYED CAR.

(b) The fact that a CAR is DESTROYED between DELIVERY and the FINAL CLOSING shall have no effect on: (i) the BANK'S obligations to execute and deliver the FINAL CLOSING DOCUMENTS; or (ii) the BUYER'S obligations to pay the NOTE or the portion of the NOTE equal to the CAR PURCHASE PRICE of the DESTROYED CAR.

ARTICLE 14

Markings

BUYER shall be responsible and pay for changing the markings on CARS to the extent such is required within 150 days of DELIVERY thereof. EVANS shall cooperate with BUYER in such process. At the BANK'S election, all CARS may be marked to indicate the security interest of the BANK in the CARS.

ARTICLE 15

Taxes

All payments to be made by the BUYER hereunder shall be free of expense to the BANK and SELLERS for collection or other charge and shall be free of expenses to the BANK and SELLERS with respect to the amount of any local, state, federal or foreign taxes or license or registration fees, assessments, charges, fines, levies, imposts, duties, withholdings, stamp taxes and penalties hereafter levied or imposed upon or in connection with or measured by this AGREEMENT or any sale, use, payment, or transfer of title or other disposition of the CARS or the rights of EVANS under the ASSIGNED LEASES pursuant to this AGREEMENT (all such expenses, taxes, license fees, assessments, charges, fines, levies, imposts, duties, withholdings, stamp taxes and penalties, together with any interest payable with respect thereto, being hereinafter called "IMPOSITIONS"), all of which IMPOSITIONS, the BUYER assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. Without limiting the foregoing, the BUYER shall also pay promptly all IMPOSITIONS which may be imposed upon the CARS DELIVERED to it or for the use or operation thereof or upon the earnings arising therefrom or upon the BANK or SELLERS solely by reason of its interest therein and will keep at all times all and every part of the CARS free and clear of all IMPOSITIONS which might in any way affect the security interest of the BANK or result in a lien upon the CARS. Notwithstanding the foregoing, the BUYER

shall be under no obligation to pay any of the foregoing so long as it is contesting the same in good faith by appropriate legal proceedings and the non-payment thereof, in the reasonable opinion of the BANK and SELLERS, does not affect the title, security interest, rights or property of the SELLERS or the BANK hereunder.

ARTICLE 16

The LEASES

Section 16.01. Termination. EVANS has initiated or shall initiate, as soon as practicable, procedures and notices necessary or desirable to terminate all LEASES except the ASSIGNED LEASES, and EVANS agrees and warrants that all such LEASES shall be validly terminated no later than the date of DELIVERY of the CARS relating to such LEASES.

Section 16.02. REVENUES Prior to Delivery. The BANK shall be entitled to all REVENUES until DELIVERY of the CARS in the same manner and to the same extent as the BANK has experienced prior to the execution of this AGREEMENT. Upon demand, the BANK shall execute a partial satisfaction of the JUDGMENT on a dollar for dollar basis for all REVENUES actually received by the BANK.

Section 16.03. REVENUES Subsequent to Delivery. All REVENUES attributable to the period subsequent to their DELIVERY shall be the sole property of the BUYER, subject however to the BANK'S rights under the BUYER'S SECURITY AGREEMENT.

ARTICLE 17

CONDITIONS PRECEDENT TO DELIVERY

Notwithstanding Articles 4 and 5 to the contrary, EVANS MAY NOT SEND AN INSPECTION NOTICE TO BUYER, EVANS shall not be required to DELIVER a CAR AND BUYER shall not be required to accept DELIVERY of a CAR subject to a TBT AGREEMENT unless and until SELLERS have first delivered to the BANK and the BUYER:

- (i) a certificate to the effect that with respect to the TBT AGREEMENT relating to the CAR to be DELIVERED there either: (a) exists no defaults under such TBT AGREEMENT; or (b) that, although there is a default under such TBT AGREEMENT, such default does not change, increase or adversely affect the BUYER'S ASSUMED TBT OBLIGATIONS and shall not result in any additional liability on BUYER under the applicable TBT AGREEMENT. If the certificate is under clause (b), said certificate shall be accompanied by a letter from the applicable TBT PURCHASER certifying that the statements made in the certificate are true, accurate and correct; and
- (ii) the written consent of the TBT PURCHASER to: (a) the transfer of the CAR from EVANS to the BUYER pursuant to this AGREEMENT; and (b) to the ASSIGNMENT and ASSUMPTION AGREEMENT. The consent shall make specific reference to one of the

following sections of the TBT AGREEMENTS,
whichever is applicable:

GLGT, Inc. - Section 12
Amoco - Section 4(b) (ii)
Carson Pirie Scott & Co. - Section 3.2 (B)
Northwest I - Section 5(c) (iii) and (iv)
Northwest II - Section 5(c) (iii) and (iv)

SELLERS shall diligently and in good faith pursue obtaining the aforementioned consents of the TBT PURCHASERS. As soon as is reasonably practicable, but no later than thirty (30) days from the execution of this AGREEMENT, SELLERS shall make a request to each of the TBT PURCHASERS for such consents.

Neither the BANK nor the BUYER shall have any obligations under this AGREEMENT with respect to any CARS covered by a TBT AGREEMENT for which consents have not been obtained from the pertinent TBT PURCHASERS within ninety (90) days of the execution of this AGREEMENT.

ARTICLE 18

Execution of Other Documents

The NOTE, BUYER'S SECURITY AGREEMENT, ASSIGNMENT and ASSUMPTION AGREEMENT and ASSIGNMENT OF LEASES shall be executed by the respective parties to such agreements concurrently with the execution of this AGREEMENT. The NOTE, BUYER'S SECURITY AGREEMENT, ASSIGNMENT and ASSUMPTION AGREEMENT, and ASSIGNMENT OF LEASES shall become effective automatically pursuant to their respective terms and Section 5.03 herein with regard to those DELIVERED CARS listed on an EQUIPMENT ACCEPTANCE RECEIPT.

ARTICLE 19

Forbearance By Bank

Pending the FINAL CLOSING, the BANK shall take no action to execute on or enforce the JUDGMENT, provided that there is not an EVENT OF DEFAULT by either of the SELLERS or BUYER under this AGREEMENT. If there is an EVENT OF DEFAULT by BUYER under this AGREEMENT, and the BANK elects to pursue its legal remedies against BUYER, the BANK agrees not to take any action against either of the SELLERS under the JUDGMENT during the pendency of such proceedings, provided that during such time, neither EVANS nor ETC terminate this AGREEMENT or take any action inconsistent with their obligations under this AGREEMENT. If the result of the proceedings is an award or money judgment which is paid to the BANK, SELLERS shall receive credit in the form of a partial satisfaction of the JUDGMENT for such payment in accordance with Exhibit "K" as if the amount received by the BANK were received as payment for the sale of CARS to BUYER. If the result of the proceedings is specific performance, SELLERS shall comply with their obligations under this AGREEMENT. If the BANK does not obtain any relief against BUYER, either because it elected not to pursue its legal remedies or because it was unsuccessful in pursuing its legal remedies, the BANK'S rights under the JUDGMENT shall remain in full force and effect, except to the extent of any partial satisfactions of the JUDGMENT given to SELLERS pursuant to Section 6.02(f) herein; provided however that the BANK shall take no action to execute on the JUDGMENT

for ninety (90) days following its decision not to pursue its legal remedies or from the date of a final decision against it if the BANK, in its sole discretion, elects to find another purchaser for the CARS or of the EVANS LOAN DOCUMENTS, and SELLERS are cooperating with the BANK in finding another bona fide purchaser for the CARS or of the EVANS LOAN DOCUMENTS.

If, in accordance with this AGREEMENT, the BANK does not DELIVER a full satisfaction of the JUDGMENT at the FINAL CLOSING, the BANK may pursue any and all of its rights under the JUDGMENT.

ARTICLE 20

Default, Remedies

Section 20.01. Events of Default. The following shall constitute an event of default ("EVENT OF DEFAULT") under this AGREEMENT:

(a) If BUYER or either of the SELLERS shall default in the punctual payment when due of any sum required to be paid by them hereunder, the NOTE, BUYER'S SECURITY AGREEMENT, or the ASSIGNMENT and ASSUMPTION AGREEMENT;

(b) If any party shall default in the performance of any of the provisions of this AGREEMENT, the NOTE, the BUYER'S SECURITY AGREEMENT, the ASSIGNMENT OF LEASES or the ASSIGNMENT and ASSUMPTION AGREEMENT, other than provisions relating to the payment of amounts referred to in clause (a) of this Section 20.01, which default shall continue for ten (10) business days after written notice of default from any non-defaulting party to

the defaulting party or if such default cannot reasonably be cured within ten (10) business days, the failure of said defaulting party to commence attempts to cure such default within ten (10) business days, or to diligently continue to attempt to cure such default;

(c) If any party shall file a voluntary petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file any petition in bankruptcy, or shall file any petition or answer seeking any reorganization, composition, readjustment, liquidation or similar relief for itself under any present or future statutes, law or regulations, or shall seek or consent to or acquiesce in the appointment of any trustee, or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due;

(d) If a petition shall be filed against any party seeking any reorganization, composition, readjustment, liquidation or similar relief under any present or future statutes, law or regulations, and shall remain undismitted or unstayed for an aggregate of ninety (90) days (whether or not consecutive), or if any trustee, receiver or liquidator of either party is appointed, which appointment shall remain unvacated, or unstayed for an aggregate of ninety (90) days (whether or not consecutive);

(e) If any representation or warranty made by any party or made in any statement or certificate furnished or

required hereunder, or in connection with the execution and delivery of this AGREEMENT proves untrue in any material respect as of the date of the issuance or making thereof.

The party declaring an EVENT of DEFAULT shall send written notice to the defaulting party pursuant to Section 22.01 herein, with a copy to the non-defaulting party (the "DEFAULT NOTICE").

Section 20.02. Remedies. If an EVENT OF DEFAULT has occurred, any of the parties not in default may exercise any of the following remedies:

(a) terminate the AGREEMENT if the EVENT OF DEFAULT is under Section 20.01 (c) or (d) or the EVENT OF DEFAULT relates to all of the CARS;

(b) exercise any remedies, other than termination of this AGREEMENT, provided for by applicable law and consistent with Article 21, including but not limited to specific performance. In the event that a party shall bring any arbitration proceeding or suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such proceeding or suit, the party may recover its expenses incurred in prosecuting such proceeding or suit, including but not limited to, costs and reasonable attorneys fees. In the event that the EVENT of DEFAULT is by BUYER, and if such EVENT of DEFAULT occurs subsequent to the DELIVERY of any CARS, the BANK may, in addition to its other remedies, exercise its rights under the BUYER'S SECURITY AGREEMENT. If the EVENT OF DEFAULT is by either of the

SELLERS, the BANK may, in addition to its other remedies, exercise any and all of its rights under the JUDGMENT.

(c) Notwithstanding the foregoing, neither of the SELLERS may terminate this AGREEMENT in the EVENT of DEFAULT by BUYER under sub-section (a), (b) or (e) above, if, within ten (10) days of the BANK'S receipt of the DEFAULT NOTICE, the BANK delivers to the SELLERS a writing stating that such EVENT of DEFAULT shall not adversely affect its delivering to SELLERS the FINAL CLOSING DOCUMENTS described in Section 7.02 (h) herein.

ARTICLE 21

Arbitration

Any controversy arising out of, or relating to, this AGREEMENT, or to any agreement contemplated by this AGREEMENT or to any modification of extension thereof, including any claim for damages, specific performance or rescission, or both, shall be settled by arbitration in accordance with the rules then obtaining of the American Arbitration Association ("ASSOCIATION"). Said arbitration proceedings shall be held in Baltimore, Maryland, except if the proceeding solely involves a dispute with respect to the acceptability of a CAR under Article 4 hereof, in which case the arbitration shall be held in a city of reasonable proximity to the location of the CAR whose acceptability is in dispute. The parties consent to the jurisdiction of the state courts of the State of Maryland, and the United States District Court for the District of Maryland,

for all purposes in connection with arbitration, or this AGREEMENT. The parties consent that any process or notice of motion or other application to either of said courts, and any paper in connection with arbitration, may be served by certified mail, return receipt requested or by personal service or in such other manner as may be permissible under the rules of the applicable court or arbitration tribunal, provided a reasonable time for appearance is allowed. The parties further agree that arbitration proceedings must be instituted within one year after the claimed breach or dispute occurred, and that the failure to institute arbitration proceedings within such period shall constitute an absolute bar to the institution of any proceedings and a waiver of all claims. In the event of a dispute under Section 4.02 (c), each of the parties to the arbitration shall pay its own expenses of the arbitration plus a proportionate share of the arbitration costs, including the fees of the arbitrator, unless the arbitrator makes a finding that the position asserted by one of the parties was "frivolous," in which case such party shall pay all of the expenses of each of the parties to the arbitration, as well as all of the arbitration costs, including the fees of the arbitrator. A "frivolous" position shall mean a position devoid of any material justification. With regard to all other matters brought before the arbitrator, the losing party shall pay all of the expenses of each of the parties to the arbitration as well as all of the arbitration costs, including the fees of the arbitrator.

ARTICLE 22

Miscellaneous

Section 22.01. Notices. Except as provided elsewhere in this AGREEMENT notices given hereunder shall be in writing and shall be deemed to have been adequately given, unless otherwise specifically provided in this AGREEMENT, five days after deposited in the U.S. mails, first-class postage prepaid or if delivered personally, by telegram, telex, facsimile or overnight courier service, upon receipt. Such notices shall be addressed to:

If to BUYER: David A. Summers, President
U.S. Rail Services, Inc.
615 Battery Street
San Francisco, CA 94111
Telecopier Number: (415) 627-9412

With a Copy To: Kathleen H. Dunbar, Esq.
733 Front Street
San Francisco, CA 94111
Telecopier Number: (415) 627-9412

If to SELLERS: Richard E. Dessimoz
Evans Railcar Leasing Company
450 East Devon, Suite 300
Itasca, IL 60143-1263
Telecopier Number: (312) 250-0491

With a Copy To: I. Walter Deitch, Esq.
Rosenthal and Schanfield
Mid-Continental Plaza - Suite 4620
55 East Monroe Street
Chicago, IL 60603
Telecopier Number: (312) 236-7274

If to the BANK: Equitable Bank, National Association
100 South Charles Street
Baltimore, MD 21201
Atten: Michael J. Fina
Telecopier Number: (301) 547-5689

With a Copy To: Louis J. Ebert, Esq.
Gebhardt & Smith
World Trade Center, 9th Floor
Baltimore, Maryland 21201
Telecopier Number: (301) 659-9482

If to the BANK
AGENT: R.M. Haber & Associates, Inc.
400 East Lancaster Avenue
Suite 4
Wayne, PA 19087

Section 22.02. Exhibits. All Exhibits described in this AGREEMENT shall be deemed to be incorporated herein and made a part of this AGREEMENT.

Section 22.03. Captions. Captions and section endings set forth herein are for convenience of reference only and shall not in any manner be deemed to limit or restrict the context of the article or section to which they relate.

Section 22.04. Broker's Commissions. The parties declare this AGREEMENT has been negotiated through the BANK AGENT, R.M. Haber & Associates, Inc., without the help or participation of any other intermediary or agent. The fee of the BANK AGENT shall be paid by the BANK. Neither SELLERS nor BUYER shall have any liability for the fee of the BANK AGENT or any other person claiming an interest or fee as a result of this AGREEMENT or the transactions contemplated hereby.

Section 22.05. Payment of Transaction Expenses. Except as provided in Article 21 or if an EVENT OF DEFAULT shall have occurred, each party hereto shall pay their own costs and expenses incident to this AGREEMENT.

Section 22.06. Assigns. This AGREEMENT shall be

binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 22.07. Recording. The BANK shall, at its expense, cause this AGREEMENT, any assignments hereof, and any amendments or supplements hereto or thereto, to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. Section 11303; and the other parties shall from time to time do and perform any other act and shall execute, acknowledge, deliver, file, register, deposit, and record any and all further instruments required by law or reasonably requested by the BANK for the purpose of proper protection, to the satisfaction of counsel for the BANK, of its interest in the CARS and its rights under this AGREEMENT or for the purpose of carrying out the intention of this AGREEMENT.

Section 22.08. Modifications. No modification or waiver of any provision of this AGREEMENT, and no consent by any of the parties to any departure by another party therefrom shall in any event be effective unless the same shall be in writing signed by all of the parties hereto and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given.

Section 22.09. Invalidity. If any term, provision or condition, or any part thereof, of this AGREEMENT shall for any reason be found or held invalid or unenforceable by any court, arbitrator or governmental agency of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of

such term, provision or condition nor any other term, provision or condition and this AGREEMENT shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

Section 22.10. Applicable Law. This AGREEMENT is entered into within, and will be governed by and interpreted in accordance with, the laws of the State of Maryland.

Section 22.11. Entire Agreement. This AGREEMENT supersedes all prior understandings, representations, negotiations and correspondence between the parties hereto with respect to the transactions contemplated herein and shall not in any manner be supplemented, amended or modified except by a written instrument executed on behalf of the parties hereto by their duly authorized representative of even date herewith or subsequent hereto.

Section 22.12. Execution. This AGREEMENT may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this AGREEMENT is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

Section 22.13. Course of Dealing. No course of dealing between EVANS and BUYER, or any delay in exercising any

rights or remedies hereunder or otherwise by any of the parties shall operate as a waiver of any of the rights and remedies of the parties hereto.

Section 22.14. Plural and Singular Terms. As used herein, the singular number shall include the plural and the plural the singular.

Section 22.15. Further Assurances. The parties hereto agree to execute and deliver, or cause to be executed and delivered, such further instruments or documents and take such other action as may be required to effectively carry out the transactions contemplated herein.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed, this AGREEMENT under seal as of the date first written above.

ATTEST:

UNITED STATES RAIL SERVICES, INC.

Tatiana H. Quibar
Secretary

By: *David A. Summers*
David A. Summers, President

ATTEST:

EQUITABLE BANK, NATIONAL
ASSOCIATION

Helen P. Rose

ATTEST:

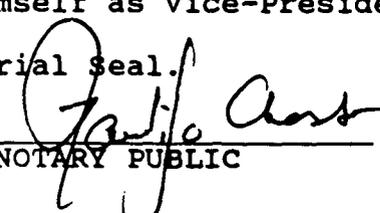
By: *Elizabeth*
EVANS RAILCAR LEASING COMPANY

Helen P. Rose
Ass't. Secretary

By: *R. E. Dessimoz*
R. E. DESSIMOZ, Vice-President

1987 10 before me, the undersigned Notary Public of the State of Illinois, personally appeared R. E. DESSIMOZ, and acknowledged himself to be a Vice-President of Evans Transportation Company, a corporation, and that he, as such Vice-President being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of Evans Transportation Company by himself as Vice-President.

IN WITNESS MY Hand and Notarial Seal.

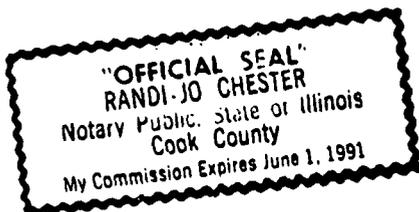


NOTARY PUBLIC (SEAL)

My Commission Expires:

6-1-91

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LIST OF EXHIBITS

- Exhibit A - List of Cars Being Transferred
- Exhibit B - List of Assigned Leases

- Exhibit C - Assumption and Assignment Agreement
- Exhibit D - Assignment of Leases
- Exhibit E - Buyer's Security Agreement
- Exhibit F - Purchase Prices of Cars by Type

- Exhibit G - List of CAR Leases
- Exhibit H - Master Purchase Money Promissory Note
- Exhibit I - Equipment Acceptance Receipt
- Exhibit J - Bill of Sale
- Exhibit K - Partial Satisfaction Schedule
- Exhibit L - List of CARS covered by TBT AGREEMENTS
- Exhibit M - List of TBT Agreements
- Exhibit N - I.R.S. Regulations for Safe Harbor Leases
- Exhibit O - List of TBT Reduction Prices

EXHIBIT A

Number of Cars	Type Built	Lot Number	Lessee	Date Built	Car Numbers
100	Gondolas	1919-01	Illinois Central Gulf Railroad	1981	ICG 246850-246949
25	Bulkhead Flats	2023-12	McCloud River	1981	FRDN 6025-6049
22	Bulkhead Flats	1948-00	Willamina & Grand Ronde	1981	FRDN 6000-6005; 6007-6015; 6018-6024
24	Bulkheads Flats	1975-00,02	Columbia & Silver Creek	1982	CLSL 2800-2808; 2810-2824
50	XM Boxes	2001-04	Oklahoma Kansas & Texas	1982	OKKT 700000-700049
10	XL Boxes	1929-00	Maine Central	1980	LNAC 1003; 1032; 1043; 1048; 1053; 1057; 1061; 1064; 1065; 1069
4	XL Boxes	1929-00	Storage	1980	MRCX 1019; 1027; 1046; 1074
6	XL Boxes	2116-06	Columbus & Greenville	1980	CAGY 901-906
3	Covered Hoppers	1609-03	Storage	1980	USLX 26744; 26745; 26748
2	Covered Hoppers	2161-19	General Chemical	1980	USLX 26743; 26747
1	Covered Hoppers	2088-07	Canadian Pacific	1980	USLX 26746
25	Tanks	1942-00	Rohm & Haas	1981	USLX 21945-21969
10	Tanks	1989-02	Riceland Foods	1982	USLX 21843; 22117; 22119; 22141; 22166; 22171; 22211; 22219; 22225; 22226
1	Tanks	1775-16	Air Products	1982	ERLX 122
1	Tanks	2133-01	Bunge	1981	ERLX 123

Exhibit A
Page 2

Number of Cars	Type Built	Lot Number	Lessee	Date Built	Car Numbers
2	Tanks	2110-02	GAF	1982	ERLX 129; USLX 21841
1	Tank	1995-02	Carolina By-Products	1981	ERLX 124
3	Tanks	2162-01,02	Universal Oil	1981	ERLX 128; USLX 21834; 22223
3	Tanks	1575-19	FMC	1980	ERLX 120; 121; 126
3	Tanks	1575-20	FMC	1982	USLX 22106; 22127; 22136
8	Tanks	2100-07,10	Ciba-Geigy	1982	ERLX 125; USLX 21845; 22118; 22135; 22138; 22173; 22196; 22220
2	Tanks	2008-17	Storage	1981	ERLX 127; USLX 22029

EXHIBIT B

LEASES TO BE ASSIGNED

<u>Number of Cars</u>	<u>Type of Cars</u>	<u>Lot Numbers</u>	<u>Lessee</u>	<u>Lease Expires</u>
22	Bulkhead Flats	2023-12	Willamina & Grand Ronde	5/17/97
24	Bulkhead Flats	1975-00,02	Columbia & Silver Creek	7/7/97
25	Tank	1942-00	Rohm & Haas	12/31/88
10	Tank	1989-02	Riceland Foods	1/31/88
1	Tank	1775-16	Air Products	9/30/88

82

EXHIBIT C

ASSIGNMENT, ASSUMPTION AND CONSENT

This Assignment, Assumption and Consent made and entered into by and between EVANS RAILCAR LEASING COMPANY, an Illinois corporation ("EVANS"), with its principal place of business at 450 East Devon Avenue, Itasca, Illinois, and UNITED STATES RAIL SERVICES, INC., a California corporation ("Assignee"), with its principal place of business at 615 Battery Street, San Francisco, California, 94111.

W I T N E S S E T H

WHEREAS, EVANS has heretofore entered into that certain _____ (1) _____ dated _____ (2) _____ (the "Lease") with _____ (3) _____ ("Lessor") pursuant to which, for income tax purposes only, EVANS sold to Lessor and Lessor leased to EVANS, among other items, the railroad cars described in Exhibit A attached hereto (the "Cars"); and

WHEREAS, EVANS has agreed to sell to Assignee and Assignee has agreed to purchase from EVANS the Cars pursuant to that certain Purchase Agreement dated as of August 1, 1987 (the "Purchase Agreement") among EVANS,

Evans Transportation Company, Assignee and Equitable Bank, National Association; and

WHEREAS, pursuant to the Purchase Agreement, Assignee has agreed to purchase the Cars from time to time delivered in accordance with the provision of Section 5 of the Purchase Agreement (the Cars, so delivered, being herein called "Delivered Cars") subject to the Lease and to assume all of EVANS' obligations, covenants and agreements set forth in the sections of the Lease hereinafter referred to as the same relate and pertain to the Delivered Cars.

NOW THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1. Assignment. EVANS hereby sells, assigns, transfers and sets over unto Assignee all of EVANS' rights, titles and interests in and to the Delivered Cars, such assignment and transfer to be effective upon delivery of such Delivered Cars as provided in Section 5 of the Purchase Agreement.

2. Acceptance and Assumption. Assignee hereby accepts the foregoing assignment and assumes and agrees to timely keep, perform and observe the duties, obligations,

covenants and agreements of EVANS to be kept, performed and observed pursuant to sections (4) of the Lease as the same relate and pertain to the Delivered Cars, such acceptance, assumption and agreement to be effective upon delivery of such Delivered Cars.

3. Evidence of Delivery. EVANS shall deliver to Lessor an Equipment Acceptance Receipt in the form and text attached hereto as Exhibit B (the "Receipt") for Delivered Cars. The date of such Receipt shall be conclusively deemed to be the effective date of the assignment by EVANS of its rights, titles and interests in and to the Delivered Cars described in such Receipt and the effective date of the acceptance, assumption and agreement by Assignee of the Lease as the same relates and pertains to such Delivered Cars as herein provided.

4. Assignee's Covenants. To induce Lessor to consent to the assignment by EVANS, Assignee agrees to comply with all applicable Internal Revenue Service regulations (the "Regulations"), as they may be amended from time to time, including but not limited to Temporary Regulation §5c.168(f)(8), necessary to preserve the tax benefits for Lessor, as such is within the control of Assignee with regard to its ownership of the Delivered Cars. Assignee shall file all documents required by the

Regulations and shall comply with all reasonable requests from Lessor and/or EVANS which Lessor and/or EVANS reasonably determine to be necessary in order to preserve the tax benefits for Lessor.

As further inducement to Lessor to consent to EVANS' assignment of its rights under the Lease, Assignee (i) certifies that it intends that more than 50% of the use of the Delivered Cars is to be in its business, and (ii) acknowledges that it has been advised that it will not be treated as the owner of the Delivered Cars for Federal income tax purposes.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their duly authorized offices as of this _____ day of _____, 1987.

EVANS RAILCAR LEASING COMPANY

By: _____
Its: Vice President

(SIGNATURES CONTINUED ON FOLLOWING PAGE)

UNITED STATES RAIL SERVICES,
INC.

By: _____
Its: _____

Consented to this _____ day of _____,
1987. [GLGT, INC. certifies that it is not aware of any
defaults under the Lease excepting only that the "Tangible
Net Worth" of Evans Transportation Company is below the
minimum established in paragraph 6 of its Guaranty Agreement
and that such default does not change, increase, or adversely
affect the obligations hereinabove assumed by Assignee]*

(5)

By: _____
Its: _____

*To be inserted in the Assignment, Assumption and Consent
respecting the GLGT, INC. Lease.

SCHEDULE OF VARIABLES

GLGT:

- (1) Safe Harbor Lease Agreement
- (2) June 30, 1982
- (3) GLGT, INC.
- (4) 10, 11(a), 11(b), 11(c), 11(d) (except information relating to the financial condition of Evans and its parent, Evans Transportation Company), 11(f), 12 (except 12(a)(ii) and 12(d)), 14(a) (except for taxes or other governmental charges imposed by any authority on or with respect to the Purchase Agreement), and 16 (as such section relates to payments due from Assignee)
- (5) GLGT, INC.

AMOCO:

- (1) Agreement
- (2) November 12, 1981
- (3) AMOCO TAX LEASING XV CORPORAITON
- (4) 4(b)(ii) (as such relates to transfers of the Delivered Cars), 4(b)(iii), 4(b)(iv) (Evans and/or Lessor to advise Assignee of what reports are required), 4(b)(vi), 6, 7, 9 and 11(d) (as such relates to payments due from Assignee)
- (5) AMOCO TAX LEASING XV CORPORATION

Carson Pirie Scott:

- (1) Agreement
- (2) January 29, 1982

- (3) CARSON PIRIE SCOTT & COMPANY
- (4) 3.2(B), 3.2(C), 3.2(E) (the certification to be only with respect to obligations herein specifically assumed by Assignee), 3.2(F), 4.1, 4.2, 5.2, 7.1, 7.2, and 7.3(D) (as such relates to payments due from Assignee)
- (5) CARSON PIRIE SCOTT & COMPANY

NORTHWEST #1:

- (1) Safe Harbor Lease Agreement
- (2) April 22, 1982
- (3) NORTHWEST INDUSTRIES LEASING COMPANY
- (4) 5(b), 5(c), 7, 7A, 8 and 10
- (5) NORTHWEST INDUSTRIES LEASING COMPANY

NORTHWEST #2:

- (1) Agreement
- (2) May 14, 1982
- (3) NORTHWEST INDUSTRIES LEASING COMPANY
- (4) 5(b), 5(c), 7, 7A, 8 and 10
- (5) NORTHWEST INDUSTRIES LEASING COMPANY

EXHIBIT D

ASSIGNMENT OF LEASES

IN CONSIDERATION of the Acceptance and Assumption below and other valuable consideration, EVANS RAILCAR LEASING COMPANY ("EVANS") hereby assigns, transfers, and sets over unto UNITED STATES RAIL SERVICES, INC. a California corporation ("Assignee"), as of the Effective Dates (as hereinafter defined), all of EVANS' right, title and interest in, to and under each of those certain equipment leases described on Exhibit A attached hereto and by this reference made a part hereof (the "Leases") pursuant to which EVANS leased the railroad cars described in said Exhibit A (the "Cars") to the lessees described in said Exhibit A.

For purposes of this Assignment of Leases, the "Effective Date" with respect to any particular Lease as it relates to any particular Car shall be the date on which such Car is delivered to Assignee in accordance with the provisions of Section 5.02 of that certain Purchase Agreement dated as of August 1, 1987 (the "Agreement"), among EVANS, Evans Transportation Company, Assignee and Equitable Bank, National Association. The parties hereto shall attach hereto each Equipment Acceptance Receipt referred to in

the Agreement from time to time delivered pursuant to said Section 5.02 to evidence such delivery and the Effective Date of this Assignment with respect to the Cars described in such Equipment Acceptance Receipt.

EVANS agrees, at the cost and expense of Assignee, to execute and deliver such other and further documents and to take such other and further action as Assignee may reasonably request to consummate, effectuate, record, perfect or give requisite notice of, the transactions herein contemplated.

Dated as of this 1st day of August, 1987.

EVANS RAILCAR LEASING COMPANY

By: _____
Its: Vice President

ACCEPTANCE AND ASSUMPTION

UNITED STATES RAIL SERVICES, INC., hereby accepts the foregoing Assignment of Leases and assumes and agrees to keep, observe and perform all of the terms, covenants and agreements in the Leases and each of them to be kept,

observed and performed by EVANS with respect to each Car
from and after the Effective Date respecting such Car.

Dated as of this 1st day of August, 1987.

UNITED STATES RAIL SERVICES,
INC.

By: _____
Its: _____

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that RICHARD E. DESSIMOZ, a Vice President of EVANS RAILCAR LEASING COMPANY, an Illinois corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President, appeared before me in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____, 1987.

Notary Public

My commission expires:

STATE OF _____)
) SS
COUNTY OF _____)

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that _____ of UNITED STATES RAIL SERVICES, INC., a California corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, appeared before me in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____, 1987.

Notary Public

My commission expires:

EXHIBIT E

**LOAN AND
SECURITY AGREEMENT**

between

UNITED STATES RAIL SERVICES, INC.

and

EQUITABLE BANK, NATIONAL ASSOCIATION

Dated as of: August 1, 1987.

LOAN AND SECURITY AGREEMENT

This LOAN AND SECURITY AGREEMENT ("AGREEMENT") is made as of this 1st day of August, 1987 between Equitable Bank, National Association (the "BANK"), a national banking association with its principal place of business at 100 S. Charles Street, Baltimore, Maryland 21201 and United States Rail Services, Inc., the ("BORROWER"), a California corporation, with its principal place of business at 615 Battery Street, San Francisco, California 94119.

Recitals

WHEREAS, the BORROWER has agreed to purchase 306 railroad cars, as listed on Exhibit "A" attached hereto ("CARS") pursuant to the terms of a Purchase Agreement ("PURCHASE AGREEMENT") dated as of August 1, 1987 among the BANK, the BORROWER, Evans Railcar Leasing Company ("EVANS") and Evans Transportation Company wherein EVANS shall transfer the CARS to the BORROWER and the BORROWER shall pay the BANK for the CARS; and

WHEREAS, the BORROWER has applied to the BANK for a term loan facility ("LOAN") to finance its acquisition of the CARS; and

WHEREAS, the BANK is willing to provide the requested credit accommodation to the BORROWER upon the terms and conditions of this AGREEMENT, and upon the granting by the

BORROWER to the BANK of the security interests, liens, and other assurances of payment provided for in this AGREEMENT; and

WHEREAS, the BANK and the BORROWER have entered into this AGREEMENT to accomplish the above-described transactions.

W I T N E S S E T H

NOW, THEREFORE, in consideration of the premises, the covenants and agreements of the parties hereinafter set forth, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

Section 1. DEFINITIONS. All capitalized terms not otherwise defined in this AGREEMENT shall have the meanings assigned to them in the PURCHASE AGREEMENT, which PURCHASE AGREEMENT is incorporated by reference herein in its entirety, unless some other meaning is apparent from the context in which it is used.

Section 2. TERMS AND PURPOSE OF THE LOAN.

Section 2.1. Principal Amount. Subject to the terms and conditions stated herein and the continued satisfaction of all conditions necessary for disbursement, the BANK agrees to extend to the BORROWER a credit facility pursuant to which it shall make advances to the BORROWER, as described in Paragraph four (4) of the NOTE ("ADVANCE"), in the aggregate principal

amount of up to Five Million Five Hundred Seventy Five Thousand Dollars (\$5,575,000.00).

Section 2.2. Interest And Repayment. The LOAN shall bear interest and be repaid in accordance with the stated terms and conditions of the NOTE.

Section 2.3. Purpose. The proceeds of the LOAN shall be used solely for the purpose of the acquisition of the CARS and the ASSIGNED LEASES.

Section 2.4. Procedure. Immediately prior to the DELIVERY of a CAR, BORROWER shall execute an EQUIPMENT ACCEPTANCE RECEIPT in the form attached hereto as Exhibit "B." The execution of such EQUIPMENT ACCEPTANCE RECEIPT shall be deemed to constitute a requisition for an advance under this AGREEMENT. The BANK is hereby authorized to make an ADVANCE under the NOTE and this AGREEMENT upon DELIVERY of each CAR to BORROWER by EVANS, and to attach the EQUIPMENT ACCEPTANCE RECEIPT to this AGREEMENT as a SCHEDULE hereto.

Section 3. SECURITY FOR THE LOAN

The repayment of the NOTE, the satisfaction of all other sums at any time due or owing from or required to be paid by the BORROWER under this AGREEMENT or the PURCHASE AGREEMENT, the performance and observance of all covenants and agreements in the NOTE, PURCHASE AGREEMENT and this AGREEMENT and all other obligations of the BORROWER under any other agreements with the BANK pursuant to the PURCHASE AGREEMENT (collectively, the

"OBLIGATIONS") shall be secured by the following described security interests, liens, assignments and pledges:

Section 3.1. Grant of Security Interest. The BORROWER hereby assigns to the BANK all of the BORROWER'S right, title, and interest in and to, and grants to the BANK a continuing security interest in and to all of the following property of the BORROWER or in which the BORROWER has any rights, wherever located, whether now owned or hereafter acquired by the BORROWER, together with all substitutions therefor, and all replacements and renewals thereof, and all accessions, additions, replacement parts, manuals, warranties and packaging relating thereto (the "MORTGAGED PROPERTY"):

(a) The 306 CARS described in Exhibit "A" attached hereto;

(b) All accessories, equipment, parts and appurtenances appertaining or attached to any of the CARS hereinabove described, whether now owned or hereafter acquired, and all of substitutions, renewals and replacements of and additions, improvements, accessions and accumulations to any and all of said CARS, including all additions thereto which are now or shall hereafter be incorporated therein;

(c) All CASUALTY PAYMENTS relating to the CARS;

(d) All leases relating to the CARS, including the ASSIGNED LEASES ("LEASES"), together with the right to all payments due or to become due under the LEASES and any renewals or extensions thereof, whether as rent, late charges, damages,

insurance payments, termination payments, loss payments, indemnities or otherwise, any and all proceeds of the LEASES (as proceeds are defined by the Uniform Commercial Code), and any renewals or extensions thereof, together with all of the rights and remedies of BORROWER to enforce, collect and receive any and all of the foregoing sums ("RENTS").

(e) All "RECORDS" relating to the above items (a), (b), (c) and (d). The term "RECORDS" shall mean correspondence, memoranda, tapes, discs, papers, books and other documents, or transcribed information of any type, whether expressed in ordinary, computer or machine language.

In addition to the previously described kinds and types of property owned by the BORROWER, the BORROWER hereby assigns, transfers and sets over to the BANK all of the BORROWER'S right, title and interest in and to, and grants to the BANK a continuing security interest in the ESCROW ACCOUNT.

Section 3.2. Future Advances. The security interests granted by the BORROWER to the BANK hereunder shall secure all current and all future advances made by the BANK to the BORROWER, or for the account or benefit of the BORROWER, pursuant to the PURCHASE AGREEMENT or this AGREEMENT and any such advancement shall be fully secured by the security interests created by this AGREEMENT.

Section 3.3. Subject to PRIOR LIENS. The security interest granted herein shall be subject and subordinate to the PRIOR LIENS.

Section 4. REPRESENTATIONS, COVENANTS and WARRANTIES.

4.1. Good Standing; Binding Obligations. BORROWER is a duly and validly organized and existing corporation in good standing under the laws of the State of California. BORROWER has full power and authority to execute and deliver this AGREEMENT and all other instruments and documents executed and delivered in connection with or relating to this AGREEMENT and the transactions contemplated hereby and to consummate the transactions contemplated hereby. This AGREEMENT and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate and other action of BORROWER, and this AGREEMENT has been duly executed and delivered by, and constitutes the legal, valid and binding obligations of BORROWER. There is no action, suit or proceedings pending against BORROWER and no law or any order, writ, injunction, decree, rule or regulation of any court, administrative agency or other governmental authority which brings into question the validity of, or might in any way impair, the execution, delivery or performance by BORROWER of this AGREEMENT. No giving of notice to, registration with or taking any action in respect of or by any federal, state or local governmental body is required and no governmental authorization or approval is required for the execution and delivery of this AGREEMENT or for the validity and enforceability thereof. No approval of, or consent from, any other third party is required for the execution, delivery or performance by BORROWER of this AGREEMENT.

4.2. Inconsistent Agreements. The execution, delivery and performance by BORROWER of this AGREEMENT and the transactions contemplated hereby do not contravene, violate or conflict with any provisions of the articles of incorporation or by-laws of BORROWER or any order, writ, injunction, decree, rule or regulation of any court, administrative agency or any other governmental authority applicable to BORROWER, and do not conflict with and are not inconsistent with, and will not result (with or without the giving of notice or passage of time or both) in the breach of or constitute a default or require any consent not heretofore obtained under the terms of any credit agreement, lease, guaranty, document, agreement or instrument to which BORROWER is a party, by which BORROWER or its property is or may be bound, or to which BORROWER or its property may be subject, and will not result in the creation of any lien, charge or encumbrance on the CARS or be in violation of or go beyond the authority conferred by BORROWER'S articles of incorporation or by-laws.

4.3. Further Assurances. BORROWER agrees, at the request of the BANK, to execute and deliver such documents, instruments and agreements as reasonably may be required to evidence, perfect and maintain the priority of the lien created by this AGREEMENT (the "BANK'S SECOND LIEN"), including any subordination or other security agreements and any financing statements in form acceptable for recording in any appropriate jurisdiction. Furthermore, BORROWER hereby irrevocably grants a

power of attorney, coupled with an interest, to BANK to execute on behalf of BORROWER any and all documents described in this sub-section 4.3.

4.4. Good Title. The BORROWER is the owner, has good title to and is lawfully seized and possessed of the MORTGAGED PROPERTY in existence and has or will so have good right, full power and authority to convey, transfer and mortgage the same to the BANK, and such MORTGAGED PROPERTY is free from any and all liens and encumbrances except the PRIOR LIENS. The BORROWER shall warrant and defend such title thereto against all claims and demands whatsoever.

4.5. Filing. The BORROWER shall promptly cause this AGREEMENT and each supplement or amendment hereto to be duly filed and recorded with the Interstate Commerce Commission in accordance with section 11303 of Title 49 of the United States Code. The BORROWER will do, execute, acknowledge, deliver, file, register and record all and every further acts, deeds, conveyances, transfers and assurances requested by the BANK which are necessary or proper for the better assuring, conveying, assigning and confirming unto the BANK of all of the MORTGAGED PROPERTY or property intended so to be, whether now owned or hereafter acquired.

4.6. Payments. The BORROWER shall promptly pay the NOTE and the OBLIGATIONS hereby secured as and when the same or any part thereof becomes due (whether by lapse of time, acceleration, demand or otherwise), and may prepay any part or

all of the OBLIGATIONS without any penalty imposed by the holder of the NOTE.

4.7. Maintenance of CARS. Subject to the rights of the lessees under the LEASES ("LESSEES"), the BORROWER shall cause the CARS and each and every part thereof to be maintained, preserved and kept in safe and good repair, working order and condition and acceptable for use in interchange, and will from time to time make or cause to be made all necessary and proper repairs, renewals, and replacements so that the value and efficiency of the CARS shall not be impaired.

4.8. Taxes. The BORROWER shall from time to time duly pay and discharge or cause to be paid and discharged all taxes, assessments and governmental charges lawfully imposed upon or against the MORTGAGED PROPERTY or any part thereof, and shall not suffer to exist any mechanics', laborers', statutory or other liens on the CARS or any part thereof; provided, however, that nothing herein contained shall be deemed to require the BORROWER to pay any tax, assessment, charge or lien, or any claim or demand of mechanics, laborers or other, prior to the due date thereof, or to require the BORROWER to pay or discharge any tax, assessment, lien, claim or charge (whether or not due or delinquent), the validity or amount of which is being contested in good faith by appropriate proceedings and which has been adequately reserved against; provided, however, that the BORROWER shall pay or discharge such tax, assessments, lien, claim or charge if seizure of the CARS is imminent.

4.9. LEASES. True and accurate copies of all LEASES, and all amendments thereto, shall be provided to the BANK within five (5) business days of their execution. The BORROWER shall at its own expense duly comply with and perform all the covenants and obligations of the BORROWER under the LEASES and will at its own expense seek to cause the LESSEES to comply with and observe all of the terms and conditions of the LEASES and, without limiting the foregoing, at the request of the BANK, the BORROWER will at its own expense take such action with respect to the enforcement of the LEASES, and the duties and obligations of the LESSEES thereunder, as the BANK may from time to time direct. Notwithstanding anything to the contrary in this AGREEMENT contained, so long as BORROWER is not in default hereunder, BORROWER shall have the right, without the BANK'S prior consent, to amend, modify and terminate any of the LEASES and to settle, adjust, compound and compromise any claims of the BORROWER against any of the LESSEES thereunder. The BANK shall have the right to receive all rentals and other sums from time to time payable on account of the LEASES, provided that unless and until an EVENT OF DEFAULT under Section 6 has occurred and is continuing, the BORROWER shall have a license to collect all rentals and other sums from time to time payable on account of the LEASES. BORROWER at its sole cost and expense will appear and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of BORROWER as lessor under the LEASES.

4.10. Other Liens. The BORROWER shall not, without the prior written consent of the BANK, consent to the creation or existence of any mortgage, security interest or other lien against the MORTGAGED PROPERTY other than the lien hereof and the PRIOR LIENS.

4.11. Advances. If the BORROWER shall fail to observe and perform any of the covenants set forth in this Section 4, the BANK may, but shall not be obligated to, advance sums to, and may, perform the same, and all advances made by the BANK shall, with interest thereon at the rate of interest specified in Section 11 of the NOTE ("DEFAULT INTEREST RATE") be added to the OBLIGATIONS and shall be payable forthwith; but no such act or expenditure by the BANK shall relieve the BORROWER from the consequence of any default.

4.12. Possession of Mortgaged Property. It shall be lawful for the BORROWER to retain possession of the MORTGAGED PROPERTY, and at its own expense to keep and use the same, until an EVENT OF DEFAULT, as hereinafter defined, shall occur hereunder.

4.13. Other Acts. BORROWER shall from time to time do all such acts and execute all such instruments of further assurance as shall be necessary to execute for the purpose of fully carrying out and effectuating this AGREEMENT and the intent hereof, including, but not limited to, promptly filing with the Interstate Commerce Commission an amendment hereto with respect to any LEASE which at any time is added to or substituted for any

LEASE which is part of the MORTGAGED PROPERTY, if such filing is necessary to perfect the BANK'S security interest.

4.14. Examine Books. The BORROWER shall permit the BANK to examine its RECORDS with respect to the MORTGAGED PROPERTY during regular business hours upon reasonable notice to the BORROWER.

Section 5. CASUALTY OCCURRENCES.

5.1. Notice. In the event that any CAR is DESTROYED during the term of this AGREEMENT, BORROWER shall immediately notify the BANK in writing of such, which notice shall also inform the BANK in detail of what claims have been made by BORROWER to receive a CASUALTY PAYMENT. All CASUALTY PAYMENTS in respect of such DESTROYED CAR received by the BORROWER or eligible to be received by the BORROWER shall be paid to the BANK in accordance with Section 13.02 (a) of the PURCHASE AGREEMENT and such Section shall govern the disbursement of such funds.

5.2. TBT Payments. In the event that a CAR is DESTROYED, BORROWER shall also furnish to the BANK proof in writing that it has made the payment required under the TBT AGREEMENTS, if such DESTROYED CAR was subject to one of the TBT AGREEMENTS.

5.3. Damaged Cars. If any CAR is damaged but not DESTROYED, BORROWER shall be obligated to repair such CAR or cause such CAR to be repaired promptly in accordance with Section 4.7 herein.

Section 6. Default and Remedies.

6.1. Events of Default. The following shall constitute an event of default ("EVENT OF DEFAULT") under this AGREEMENT:

(a) If BORROWER shall default in the due and punctual payment of any sum due under the NOTE, this AGREEMENT or any of its OBLIGATIONS to the BANK;

(b) If BORROWER shall default in the performance of any of the provisions of this AGREEMENT, other than provisions relating to the payment of amounts referred to in clause (a) of this Section 6, which default shall continue for ten (10) business days after written notice of default from the BANK or if such default cannot reasonably be cured within ten (10) business days, the failure of BORROWER to commence attempts to cure such default within ten (10) business days or to diligently continue to attempt to cure such default;

(c) If there shall be an EVENT OF DEFAULT by BORROWER under the PURCHASE AGREEMENT;

(d) If BORROWER shall file a voluntary petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file any petition in bankruptcy, or shall file any petition or answer seeking any reorganization, composition, readjustment, liquidation or similar relief for itself under any present or future statutes, law or regulations, or shall seek or consent to or acquiesce in the appointment of any trustee, or shall make any general assignment for the benefit of creditors, or shall admit

in writing its inability to pay its debts generally as they become due;

(e) If a petition shall be filed against BORROWER seeking any reorganization, composition, readjustment, liquidation or similar relief under any present or future statutes, laws or regulations, and such petition shall remain undismissed or unstayed for an aggregate of ninety (90) days (whether or not consecutive), or if any trustee, receiver or liquidator of either party is appointed, which appointment shall remain unvacated or unstayed for an aggregate of ninety (90) days) whether or not consecutive);

(f) If any representation or warranty made by BORROWER or made in any statement or certificate furnished or required hereunder, or in connection with the execution and delivery of this AGREEMENT proves untrue in any material respect as of the date of the issuance or making thereof;

6.2. Remedies. When any such EVENT OF DEFAULT has occurred and is continuing, the BANK may exercise any one or more or all, and in any order, of the remedies hereinafter set forth, it being expressly understood that no remedy herein conferred is intended to be exclusive of any other remedy or remedies; but each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute:

(a) The BANK may, upon the occurrence of an EVENT of DEFAULT under Section 6.1(a), (b), (c) or (f), by

notice in writing to the BORROWER, declare the entire unpaid balance of the NOTE to be immediately due and payable, and thereupon all of such unpaid balance, together with all accrued interest thereon, shall be and become immediately due and payable; provided, however, that upon the occurrence of a default under Section 6.1(d) and (e), the entire unpaid balance of the NOTE, together with all accrued interest thereon, shall be and become immediately due and payable without notice by the BANK;

(b) Subject always to then existing rights, if any, of the LESSEES under the LEASES, the BANK, personally or by agents or attorneys, shall have the right (subject to compliance with any applicable mandatory legal requirements) to take immediate possession of the MORTGAGED PROPERTY, or any portion thereof, and for that purpose may pursue the same wherever it may be found, and may enter upon any of the premises of the BORROWER, with or without notice, demand, process of law or legal procedure, and search for, take possession of, remove, keep, assemble and store the same, or use and operate the same until sold; it being understood, without limiting the foregoing, that the BANK may, and is hereby given the right and authority to, keep and store said MORTGAGED PROPERTY, or any part thereof at the expense of the BORROWER, on

the premises of the BORROWER, and that the BANK shall not thereby be deemed to have surrendered, or to have failed to take, possession of the such MORTGAGED PROPERTY;

(c) Subject always to then existing rights, if any, of the LESSEES, the BANK may, if at the time such action is lawful and always subject to compliance with any mandatory legal requirements, either with or without taking possession, and either before or after taking possession, and without instituting any legal proceedings whatsoever and having first given notice of such sale by registered mail to the BORROWER once at least 10 days prior to the date of such sale, and any other notice which may be required by law, sell and dispose of said MORTGAGED PROPERTY, or any part thereof, at public auction or private sale, to the highest bidder, in one lot as an entirety or in separate lots, and either for cash or on credit and on such terms as the BANK may determine, and at any place (whether or not if be the location of the MORTGAGED PROPERTY or any part thereof) designated in the notice referred to above. Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales, or for any such adjourned sale or sales, without further published notice; and the BANK or holder or holders of the NOTE,

or of any interest therein, may bid and become the purchaser at any such sale;

(d) The BANK may proceed to protect and enforce this AGREEMENT and the NOTE by suit or suits or proceedings, consistent with Article 21 of the PURCHASE AGREEMENT, except to the extent that it determines in its sole judgment, that under applicable state law judicial proceedings are required in which case it may proceed in equity, at law or in bankruptcy or reorganization proceedings, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted, or for foreclosure hereunder, or for the appointment of a receiver or receivers for the MORTGAGED PROPERTY or any part thereof, or for the recovery of judgment for the indebtedness hereby secured, or for the enforcement of any other proper legal or equitable remedy available under applicable law;

(e) The BANK may proceed to exercise in respect of the LEASES and the property covered thereby and the duties, obligations and liabilities of the LESSEES thereunder, all rights, privileges and remedies in said LEASES or by applicable law permitted or provided to be exercised by the BORROWER, including but not limited to the right to receive and collect all RENTS and other

monies due or to become due thereunder and may exercise all such rights and remedies either in the name of the BANK or in the name of the BORROWER for the use and benefit of the BANK; and

(f) The BANK may sell the rentals reserved under the LEASES, and all right, title and interest of the BANK with respect thereto, at public auction or private sale and either for cash or on credit, the BANK to give the BORROWER ten (10) days' prior written notice of the time and place of holding any such sale, and provided always that the BANK shall also comply with any applicable mandatory legal requirements in connection with such sale.

6.3. Proceeds from Sale of MORTGAGED PROPERTY. If the BANK shall be receiving or shall have received monies under the LEASES pursuant hereto, or if proceedings have been commenced for the sale of the MORTGAGED PROPERTY, then all sums so received and the purchase money proceeds and avails of any sale of the MORTGAGED PROPERTY or any part thereof, and the proceeds and avails of any other remedy hereunder, or other realization of the security hereby given, and the proceeds of any sale pursuant to subparagraph section 6.2(f) hereof, shall be applied:

(a) First, to the payment of the costs and expenses of the sale, proceedings or other realization, including all costs and expenses and charges for pursuing, searching for, removing, keeping, storing,

advertising and selling such MORTGAGED PROPERTY and the reasonable fees and expenses of the attorneys and agents of the BANK in connection therewith, and to the payment of all taxes, assessments or similar liens on the MORTGAGED PROPERTY which may at that time be superior to the BANK'S SECOND LIEN (unless such sale or other realization is made subject to any such superior liens);

(b) Second, to the payment of all advances made by the BANK hereunder or pursuant to the PURCHASE AGREEMENT, together with all interest thereon;

(c) Third, to the payment of the whole amount remaining unpaid on the NOTE, both for principal, interest, expenses, including but not limited to, attorneys fees, and to the payment of any other OBLIGATIONS of the BORROWER hereunder or secured hereby, so far as such proceeds may reach; and

(d) Fourth, to the payment of the surplus, if any, to the BORROWER or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

6.4. Miscellaneous Provisions Relating to Remedies.

(a) Upon any conveyance, assignment or transfer under this Section 6.2 of the AGREEMENT, the BANK shall have the power to execute and deliver to the accepted purchaser or purchasers a bill of sale or other instruments conveying, assigning and

transferring the MORTGAGED PROPERTY sold, which bill of sale is as good and sufficient as the bill of sale or other instruments by which the BORROWER acquired the MORTGAGED PROPERTY. The BANK hereby is irrevocably appointed the true and lawful attorneys of the BORROWER, in its name and stead to make all such conveyances, assignment and transfers of the MORTGAGED PROPERTY; and, for that purpose, the BANK may execute all requisite deeds and instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, the BORROWER hereby ratifying and confirming all that its said attorneys or such substitute or substitutes shall lawfully do by virtue hereof which is in conformity with this AGREEMENT, the PURCHASE AGREEMENT and applicable law, to the extent not waived hereunder. Nevertheless, the BORROWER shall, if so requested by the BANK, promptly ratify and confirm any conveyance, assignment or transfer by executing and delivering to the BANK or to such purchaser or purchasers all such instruments as may be requested by the BANK. In addition, the BORROWER shall, if so requested by the BANK, promptly execute and deliver to the BANK such deeds, instruments of assignment and other documents as the BANK may deem necessary or appropriate to enable the BANK or any agent or representative designated by the BANK to obtain possession of all or any portion or portions of the MORTGAGED PROPERTY to enjoy the benefits of any other right or remedy hereunder, subject to the terms of this AGREEMENT.

(b) Effect of Sale. Any conveyance, assignment or transfer made under or by virtue of this AGREEMENT, whether under the power of sale herein granted and conferred or under or by virtue of judicial proceedings, shall operate to divest all estate, right, title, interest, claim and demand whatsoever, either at law or in equity, of the BORROWER of, in and to the MORTGAGED PROPERTY so conveyed, assigned or transferred, and shall be a perpetual bar, both at law and in equity, against the BORROWER, its successors and assigns, and against any and all persons claiming or to claim the MORTGAGED PROPERTY conveyed, assigned or transferred, from, through or under the BORROWER, its successors or assigns.

(c) Purchaser Discharged. The receipt by the BANK of the consideration paid at any such conveyance, assignment or transfer shall be a sufficient discharge therefor to any purchaser of the MORTGAGED PROPERTY; and no such purchaser or his representatives, grantees or assigns, after paying such consideration and receiving such receipt, shall be bound to see to the application of such consideration or any part thereof upon or for any trust or purpose of this AGREEMENT, or in any manner whatsoever be answerable for any loss, misapplication or non-application of any such consideration or any part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

(d) MORTGAGED PROPERTY in More Than One County. The BORROWER, for itself and all persons claiming under or through

it, to the fullest extent allowed by applicable law, hereby agrees that, if any MORTGAGED PROPERTY proposed to be conveyed, assigned or transferred hereunder should be situated in two or more counties or judicial districts, the BANK shall have full power in connection with such conveyance, assignment or sale to select in which county or judicial district any or all such MORTGAGED PROPERTY shall be conveyed, assigned or transferred.

(e) Delay Not Waiver. No delay or omission of the BANK to exercise any right or power accruing upon any EVENT OF DEFAULT shall impair any such right or power or shall be construed to be a waiver of any such EVENT OF DEFAULT, or an acquiescence therein; and every power and remedy given by this AGREEMENT may be exercised from time to time, and as often as may be deemed expedient, by the BANK.

(f) Abandonment Not Waiver. In the event that the BANK shall have proceeded to enforce any right under this AGREEMENT by foreclosure, entry or otherwise, and such proceeding shall have been discontinued or abandoned because of waiver or for any other reason, or shall have been determined adversely to the BANK, then, and in every such case, the BORROWER and the BANK shall severally and respectively be restored to their former positions and rights hereunder in respect of the MORTGAGED PROPERTY, and all rights, remedies and powers of the BANK and of the BORROWER shall continue as though no such proceedings had been taken.

(g) Right to Buy at Sale. To the fullest extent allowed by applicable law, the BANK or any other person entitled to the benefit of any of the obligations may be a purchaser of the MORTGAGED PROPERTY or any part thereof or any interest therein at any sale or otherwise. The BANK may apply against the purchase price therefor the amount then due in respect of the OBLIGATIONS. The BANK or any such person shall, upon any such purchase, acquire good title to the property so purchased, free of the BANK'S SECOND LIEN.

(h) Appointment of Receiver. The BANK shall, as a matter of right, be entitled to the appointment of a receiver (who may be the BANK or any successor or nominee thereof) for all or any part of the MORTGAGED PROPERTY, whether such receivership be incidental to a proposed sale of MORTGAGED PROPERTY or the taking of possession thereof or otherwise, and the BORROWER hereby consents to the appointment of such a receiver and will not oppose any such appointment. Any such receiver appointed for all or any part of the MORTGAGED PROPERTY shall be entitled to exercise all the rights and powers with respect to the MORTGAGED PROPERTY to the extent instructed to do so by the BANK.

(i) Right of the BANK To Perform the BORROWER'S Covenants. If the BORROWER shall fail to make any payment or perform any act required to be made or performed hereunder or under the PURCHASE AGREEMENT, the BANK, upon notice to the BORROWER and expiration of any applicable grace period (except in cases of emergency that threatens bodily injury or material

damage to property, in which case the BORROWER waives such notice and grace period, if any, as is reasonable in the circumstances), but without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of the BORROWER, and, to the extent permitted by applicable law, may enter unto and upon the MORTGAGED PROPERTY for such purpose and take all such action thereon as, in the BANK'S opinion, may be necessary or appropriate therefore, subject to the rights of the LESSEES. All sums so paid by the BANK and all reasonable costs and expenses (including, without limitation, attorneys' fees and expenses) so incurred, together with interest thereon at the DEFAULT INTEREST RATE from the date of payment or incurring of the expense until paid, shall constitute additional OBLIGATIONS secured by this AGREEMENT and shall be paid by the BORROWER to the BANK upon demand therefor.

(j) Remedies Cumulative. Each right, power and remedy of the BANK provided for in this AGREEMENT or now or hereafter existing at law, in equity, by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this AGREEMENT or now or hereafter existing at law or in equity or by statute (including, without limitation, the applicable Uniform Commercial Code or other commercial law) or otherwise, and the exercise or beginning of the exercise by the BANK of any one or more of the rights, powers or remedies provided for in this AGREEMENT or now or

hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or late exercise by the BANK of any or all of such other rights, powers or remedies.

(k) Limitations on Remedies and Other Rights;
Liability for Exercise of Remedies and Other Rights.

Notwithstanding any provision of this AGREEMENT, the remedies and other rights specified hereunder are subject to the rights, if any, of the LESSEES and the TBT PURCHASERS. The BANK shall be under no liability for or by reason of any taking of possession, entry, renewal or holding, operation or management of the MORTGAGED PROPERTY or exercise of any other remedy or right hereunder, except for its gross negligence or willful misconduct.

(l) The BORROWER shall pay all reasonable attorney's fees and expenses which the BANK may incur as a result or in consequence of the happening of an EVENT OF DEFAULT, even if the EVENT OF DEFAULT is subsequently cured and the LOAN is placed in good standing.

Section 7. LEASES and RENTS.

(a) Assignment. The pledge of LEASES AND RENTS contained above shall be fully operative without any further action on the part of the BORROWER or the BANK and shall, in the EVENT OF DEFAULT, entitle the BANK to all RENTS whether or not the BANK takes possession of any of the CARS. The BORROWER hereby further grants to the BANK the right (i) to enter upon and take possession of the CARS for the purpose of collecting the RENTS (ii) to dispossess by the usual summary proceedings any

LESSEE, tenant or other obligor defaulting in the payment thereof to the BANK, (iii) to let or re-let the CARS or any part thereof, and (iv) to apply the RENTS, after payment of all necessary changes and expenses, toward payment of the OBLIGATIONS in such priority and proportions as the BANK, in its discretion, shall deem proper, or to the operation, maintenance and repair of the CARS, in each case whether or not sale or foreclosure has been instituted. Such assignment and grant shall continue in effect until the OBLIGATIONS have been fully paid and shall be cumulative of all other rights and remedies available to the BANK under this AGREEMENT or otherwise. The foregoing provisions shall constitute an absolute and present assignment of the LEASES AND RENTS to the Bank, subject, however, to the conditional permission given to the BORROWER to collect the RENTS until the occurrence of an EVENT OF DEFAULT.

(b) Payment of RENTS. The BORROWER hereby irrevocably authorizes and directs each LESSEE upon receipt of notice from the BANK that an EVENT OF DEFAULT has occurred, to pay directly to, or as directed by the BANK, all RENTS accruing or due under its LEASE from and after the receipt of such notice. The BORROWER agrees that the LESSEE or other person shall have the right to rely upon the notice from the BANK, and shall pay such RENT to or as directed by the BANK without any obligation to inquire into the actual existence of any EVENT OF DEFAULT claimed by the BANK, and notwithstanding any notice from or contrary by the BORROWER, and the BORROWER shall have no right or claim

against such LESSEES or other person for any RENT so paid to the BANK. Such RENT shall continue to be paid to the BANK unless and until the EVENT OF DEFAULT which gave rise to the termination of the BORROWER'S conditional permission to collect the RENTS is cured to the satisfaction of the BANK or until the OBLIGATIONS are paid in full. Following an EVENT OF DEFAULT, the BANK shall enjoy all the benefits and be entitled (but shall not be obligated) to exercise all rights of the lessor under the LEASES, including but not limited to rights of amendment and termination. In the event any such EVENT OF DEFAULT is cured as aforesaid, the Bank shall direct each LESSEE or other person by written notice to resume the payment of RENT accruing due under its LEASE directly to the BORROWER from and after such LESSEE'S or other person's receipt of such notice from the BANK.

(c) Enforcement of LEASES. The BORROWER at its expense shall enforce the LEASES in accordance with their terms. Neither this AGREEMENT nor any action or inaction on the part of the BANK shall release any LESSEE or other person or the BORROWER from any of their respective obligations under the LEASES or constitute an assumption of any such obligation on the part of the BANK. No action or failure to act on the part of the BORROWER shall adversely affect or limit the rights of the BANK under this AGREEMENT, or through this AGREEMENT, under the LEASES.

(d) Further Assurances. During the term hereof, all rights, powers and privileges of the BANK herein set forth are

coupled with an interest and are irrevocable, subject to the terms and conditions hereof, and the BORROWER shall not take any action under the LEASES or otherwise which is inconsistent with this AGREEMENT or any of the terms hereof. The BORROWER shall, from time to time, upon request of the BANK, execute all instruments and further assurances and all supplemental instruments and take all such action as the BANK from time to time may reasonably request in order to perfect, preserve and protect the interests being assigned to the BANK hereby. The BANK hereby agrees that it will not, unilaterally or by agreement, subordinate, amend, modify, extend, discharge, terminate, surrender, waive or otherwise change any term of any of the LEASES in any manner which would violate this AGREEMENT. If the LEASES shall be amended as permitted hereby, they shall continue to be subject to the provisions hereof without the necessity of any further act by any of the parties hereto.

(e) No Obligations. Nothing contained herein shall operate or be construed to: (i) obligate the BANK to perform any of the terms, covenants or conditions contained in the LEASES or otherwise to impose any obligation upon the BANK with respect to the LEASES (including, without limitation, any obligation arising out of any covenant of quiet enjoyment contained in the LEASES in the event that any lessee or other person shall have been joined as a party defendant in any action by which the estate or interest of such or other person shall be terminated), or (ii)

place upon the BANK any responsibility for the operation, control, care, management or repair of the CARS.

Section 8. INSURANCE. The BORROWER'S insurance obligations shall be governed by Section 11.01 (a) of the PURCHASE AGREEMENT. In the EVENT OF DEFAULT by BORROWER under this AGREEMENT, BORROWER shall continue to be bound by the same requirements as contained in Section 11.01 (a) of the PURCHASE AGREEMENT.

Section 9. MISCELLANEOUS.

9.1. Stamp and Other Taxes. The BORROWER shall pay any United States documentary stamp taxes, with interest and fines and penalties, and any mortgage recording taxes of any state or subdivision thereof, with interest and fines and penalties, that may hereafter be levied, imposed or assessed under or upon or by reason of this AGREEMENT, the indebtedness or any instrument or transaction affecting or relating to any thereof and in default thereof. The BANK may advance the same and the amount so advanced shall be payable by the BORROWER to the BANK upon demand therefor, together with interest thereon at the DEFAULT INTEREST RATE.

9.2. Expenses of the BANK.

(a) If any action, suit or other proceeding affecting the MORTGAGED PROPERTY or any part thereof shall be commenced, in which action, suit or proceeding the BANK is made a party or participates or in which the right to use the MORTGAGED PROPERTY or any part thereof is threatened, or in which it becomes

necessary in the reasonable judgment of the BANK to defend or uphold its security interest and the other rights of the BANK created by this AGREEMENT, then all reasonable amounts paid or incurred by the BANK for the expense of such action, suit or other proceeding or to protect its rights therein (whether or not it is made or becomes a party thereto) or otherwise to enforce or defend its security interest and such rights created by this AGREEMENT, shall be paid by the BORROWER upon demand together with interest at the DEFAULT INTEREST RATE from the date of the payment or incurring thereof, and any such amount and the interest thereon shall be a lien on the MORTGAGED PROPERTY, prior to any right, or right to, interest in, or claim upon the MORTGAGED PROPERTY attaching or accruing subsequent to or otherwise subordinate to the BANK'S SECOND LIEN, and the same shall be deemed to be secured hereby. All other amounts paid, advanced or incurred by the BANK in order to secure and protect its security interest or other security and rights provided hereunder shall be a like lien on the MORTGAGED PROPERTY and be deemed to be part of the OBLIGATIONS.

(b) If there is an EVENT OF DEFAULT by BORROWER under this AGREEMENT or the NOTE, and the NOTE is placed in the hands of counsel for collection of any amount payable hereunder or thereunder or for the enforcement of any of the provisions hereof or thereof, the BORROWER agrees to pay all reasonable costs associated therewith incurred by the BANK including reasonable attorneys fees, either with or without the institution of an

action, suit or other proceeding, in addition to all costs, disbursements and allowances provided by law, all such costs to be paid upon demand, together with interest thereon at the DEFAULT INTEREST RATE from the date of notice or incurring thereof, and the same shall be deemed to be part of the OBLIGATIONS secured hereby.

9.3. Expenses of Disposition and Collateral. The BORROWER shall reimburse the BANK, within 10 days after demand, for all reasonable expenses of retaking, holding, preparing for sale, lease or other use or disposition, selling, leasing or otherwise using or disposing of the MORTGAGED PROPERTY and which are incurred or paid by the BANK, including, without limitation, all reasonable attorneys' fees, legal expenses and costs, and all such expenses shall be added to the OBLIGATIONS and shall be secured hereby.

9.4. Termination. If all the OBLIGATIONS shall be paid, performed and discharged in full, the BANK shall forthwith cause satisfaction and discharge of this AGREEMENT to be entered upon the record at the expense of the BORROWER and shall execute and deliver or cause to be executed and delivered such instruments of satisfaction and reassignment as may be appropriate, of this AGREEMENT, the BANK'S FIRST LIEN and the JUDGMENT LIEN as the latter relates to the CARS subject to this AGREEMENT, and this AGREEMENT shall become void and all powers and appointments granted herein shall cease and determine.

Otherwise, this AGREEMENT shall remain and continue in full force and effect.

9.5. Notices. Notices given hereunder shall be in writing and shall be deemed to have been adequately given, unless otherwise specifically provided in this AGREEMENT, five days after deposited in the U.S. mails, postage prepaid or if delivered personally, by telegram, telex, facsimile or overnight courier service, upon receipt. Such notices shall be addressed to:

If to BORROWER: David A. Summers, President
U.S. Rail Services, Inc.
P.O. Box 3985
San Francisco, CA 94119
Telecopier Number: (415) 627-9412

With a Copy to: Kathleen H. Dunbar, Esq.
733 Front Street
San Francisco, CA 94111
Telecopier Number: (415) 627-9412

If to BANK: Equitable Bank, National
Association
100 South Charles Street
Baltimore, Maryland 21201
Atten: Michael J. Fina
Telecopier Number: (301) 547-5689

With a Copy to: Louis J. Ebert, Esq.
Gebhardt & Smith
World Trade Center, 9th Floor
Baltimore, Maryland 21201
Telecopier Number: (301) 659-9482

9.6. Exhibits. All Exhibits described in this AGREEMENT will be deemed to be incorporated herein and made a part of this AGREEMENT.

9.7 Captions. Captions and section endings set forth herein are for convenience of reference only and will not in any

manner be deemed to limit or restrict the context of the article or section to which they relate.

9.8. Modifications. No modification or waiver of any provision of this AGREEMENT, and no consent by any of the parties to any departure by another party therefrom shall in any event be effective unless the same shall be in writing signed by both of the parties hereto and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given.

9.9. Invalidity. If any term, provision or condition, or any part thereof, of this AGREEMENT shall for any reason be found or held invalid or unenforceable by any court, arbitration or governmental agency of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other term, provision or condition and this AGREEMENT shall survive and be construed as if such invalid or unenforceable term, provision or condition, had not been contained therein.

9.10. Applicable Law. This AGREEMENT is entered into within, and will be governed by and interpreted in accordance with the laws of the State of Maryland.

9.11. Entire Agreement. This AGREEMENT supersedes all prior understandings, representations, negotiations and correspondence between the parties hereto with respect to the transaction contemplated herein and shall not in any manner be supplemented, amended or modified except by a written instrument

executed on behalf of the parties hereto by their duly authorized representative of even date herewith or subsequent hereto.

9.12. Execution. This AGREEMENT may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this AGREEMENT is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

9.13. Successors and Assigns. The terms and provisions of this AGREEMENT shall inure to the benefit of the BANK and the holders from time to time of the NOTE. This AGREEMENT shall be binding upon the parties and the holders of the NOTE and their respective successors and assigns. The BORROWER may not, without prior written consent of the BANK, assign any of its rights or obligations hereunder.

9.14. Further Assurances. The BORROWER agrees to execute and deliver, or cause to be executed and delivered, such further instruments or documents and take such other action as may be required to effectively carry out the transactions contemplated herein.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed, this AGREEMENT under seal as of the date first written above.

EXHIBIT A

Number of Cars	Type Built	Lot Number	Lessee	Date Built	Car Numbers
100	Gondolas	1919-01	Illinois Central Gulf Railroad	1981	ICG 246850-246949
25	Bulkhead Flats	2023-12	McCloud River	1981	FRDN 6025-6049
22	Bulkhead Flats	1948-00	Willamina & Grand Ronde	1981	FRDN 6000-6005; 6007-6015; 6018-6024
24	Bulkheads Flats	1975-00,02	Columbia & Silver Creek	1982	CLSL 2800-2808; 2810-2824
50	XM Boxes	2001-04	Oklahoma Kansas & Texas	1982	OKKT 700000-700049
10	XL Boxes	1929-00	Maine Central	1980	LNAC 1003; 1032; 1043; 1048; 1053; 1057; 1061; 1064; 1065; 1069
4	XL Boxes	1929-00	Storage	1980	MRCX 1019; 1027; 1046; 1074
6	XL Boxes	2116-06	Columbus & Greenville	1980	CAGY 901-906
3	Covered Hoppers	1609-03	Storage	1980	USLX 26744; 26745; 26748
2	Covered Hoppers	2161-19	General Chemical	1980	USLX 26743; 26747
1	Covered Hoppers	2088-07	Canadian Pacific	1980	USLX 26746
25	Tanks	1942-00	Rohm & Haas	1981	USLX 21945-21969
10	Tanks	1989-02	Riceland Foods	1982	USLX 21843; 22117; 22119; 22141; 22166; 22171; 22211; 22219; 22225; 22226
1	Tanks	1775-16	Air Products	1982	ERLX 122
1	Tanks	2133-01	Bunge	1981	ERLX 123

Exhibit A
Page 2

Number of Cars	Type Built	Lot Number	Lessee	Date Built	Car Numbers
2	Tanks	2110-02	GAF	1982	ERLX 129; USLX 21841
1	Tank	1995-02	Carolina By-Products	1981	ERLX 124
3	Tanks	2162-01,02	Universal Oil	1981	ERLX 128; USLX 21834; 22223
3	Tanks	1575-19	FMC	1980	ERLX 120; 121; 126
3	Tanks	1575-20	FMC	1982	USLX 22106; 22127; 22136
8	Tanks	2100-07,10	Ciba-Geigy	1982	ERLX 125; USLX 21845; 22118; 22135; 22138; 22173; 22196; 22220
2	Tanks	2008-17	Storage	1981	ERLX 127; USLX 22029

EXHIBIT "B"

EQUIPMENT ACCEPTANCE RECEIPT NO.: _____

UNITED STATES RAIL SERVICES, INC. (the "BUYER") does hereby accept DELIVERY of those CARS listed on Schedule "A" attached hereto from EVANS RAILCAR LEASING COMPANY (the "SELLER") pursuant to the Purchase Agreement ("PURCHASE AGREEMENT") dated as of August 1, 1987, between the SELLER, BUYER, Equitable Bank, National Association (the "BANK") and Evans Transportation Company, such DELIVERY having been made at _____ at _____ (A.M./P.M.) on the ___ day of _____, 198__.

BUYER has inspected and hereby accepts the CARS.

By executing this EQUIPMENT ACCEPTANCE RECEIPT No.: _____

BUYER hereby authorizes the BANK to make an ADVANCE, as defined in the NOTE, to BUYER under the NOTE and BUYER'S SECURITY AGREEMENT in an amount equal to the "Total Price" listed in Schedule "A" attached hereto.

BUYER represents and warrants that it currently is not in default of the PURCHASE AGREEMENT and knows of no condition or event which, with the passage of time, notice, or both, will result in a violation of any covenant, representation or warranty contained in the PURCHASE AGREEMENT or BUYER'S SECURITY AGREEMENT or otherwise render the BUYER in default of the PURCHASE AGREEMENT.

All capitalized terms used herein shall have the meanings as are ascribed to them in the PURCHASE AGREEMENT.

BUYER hereby confirms its previous grant to the BANK of a security interest in the CARS listed in Schedule "A" attached hereto as security for its OBLIGATIONS to the BANK under the PURCHASE AGREEMENT, the NOTE and the BUYER'S SECURITY AGREEMENT.

UNITED STATES RAIL SERVICES, INC.

By: _____

Receipt of this EQUIPMENT ACCEPTANCE RECEIPT No.: _____ is hereby acknowledged on this ___ day of _____ 198__..

EVANS RAILCAR LEASING COMPANY

By: _____

SCHEDULE "A" TO
EQUIPMENT ACCEPTANCE RECEIPT

<u>Number of CARS</u>	<u>Type of CAR</u>	<u>CAR Number(s)</u>	<u>CAR PURCHASE PRICE</u>
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TOTAL PRICE _____

6253.aus

EXHIBIT "F"

CAR PURCHASE PRICES

<u>Number of CARS</u>	<u>CAR TYPE</u>	<u>PURCHASE PRICE</u>
100	Gondolas	\$15,650
59	Tanks	22,000
6	Covered Hoopers	11,000
50	XM Boxes	6,500
20	XL Boxes	13,100
71	Bulkhead Flats	29,000

100 x \$15,650 = \$1,565,000

59 x 22,000 = 1,298,000

6 x 11,000 = 66,000

50 x 6,500 = 325,000

20 x 13,100 = 262,000

71 x 29,000 = 2,059,000

TOTAL \$5,575,000

EXHIBIT "G"

LEASES

<u>LESSEE</u>	<u>TERM</u>	<u>EXPIRATION DATE</u>
Illinois Central Gulf Railroad	month-to-month	terminated
McCloud River	month-to-month	30 day notice
Willamina & Grande Ronde	15 years	May 17, 1997
Columbia & Silver Creek	15 years	July 7, 1997
Oklahoma Kansas & Texas	5 years	November 1, 1987
Maine Central	month-to-month	30 day notice
Columbus & Greenville	3 years	September 20, 1989
General Chemical	month-to-month	30 day notice
Canadian Pacific	month-to-month	30 day notice
Rohm & Haas	7 years	December 31, 1988
Riceland Foods	2 years	January 31, 1988
Air Products	3 years	September 30, 1988
Bunge	month-to-month	30 day notice
GAF	1 year	October 3, 1987
Carolinaa By-Products	month-to-month	30 day notice
Universal Oil	6 months	January 1, 1988
FMC (1575-19)	month-to-month	30 day notice
FMC (1575-20)	month-to-month	30 day notice
Ciba-Geigy	month-to-month	30 day notice

exhibit.mg

EXHIBIT H

\$5,575,000.00
PROMISSORY NOTE

From

UNITED STATES RAIL SERVICES, INC.,
A California Corporation

BORROWER

To The Order Of

EQUITABLE BANK, NATIONAL ASSOCIATION,
A National Banking Association

BANK

Dated As Of August 1, 1987

Baltimore, Maryland
August 1, 1987

\$5,575,000.00

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned UNITED STATES RAIL SERVICES, INC., a California corporation (hereafter, the "BORROWER"), promises to pay to the order of EQUITABLE BANK, NATIONAL ASSOCIATION, a national banking association (hereafter, the "BANK"), at the BANK'S offices at 100 South Charles Street, Baltimore, Maryland 21201, or at such other place as the holder of this Promissory Note may from time to time designate, the principal sum of Five Million Five Hundred Seventy-Five Thousand Dollars (\$5,575,000.00), or so much thereof as has been advanced to the BORROWER pursuant to the terms and conditions of a Loan and Security Agreement of even date herewith between the BORROWER and the BANK (hereafter, "SECURITY AGREEMENT"), together with interest thereon at the rate or rates hereafter specified and any and all other sums which may be owing to the BANK by the BORROWER pursuant to this Promissory Note. The following terms shall apply to this Promissory Note.

1. Interest Rate. For the period from the date hereof until all sums due hereunder, whether principal, interest, charges, fees or other sums, have been paid in full, interest shall accrue on the unpaid principal balance of this Promissory Note at a fixed annual rate of interest of six and two-tenths percent (6.2%).

2. Calculation Of Interest. Interest shall be calculated on the basis of a three hundred sixty (360) days per year factor applied to the actual days on which there exists an unpaid balance hereunder.

3. Defined Terms. All capitalized terms not defined herein shall have the meanings assigned to them in the purchase agreement dated as of August 1, 1987 among the BANK, BORROWER, Evans Railcar Leasing Company ("EVANS") and Evans Transportation Company (the "PURCHASE AGREEMENT"), a copy of which is attached hereto and incorporated by reference herein.

4. Advances. Subject to the terms and conditions of the SECURITY AGREEMENT, the BANK shall make advances, as described herein, under this Promissory Note (hereafter, individually, an "ADVANCE" or collectively, the "ADVANCES") to the BORROWER up to the aggregate principal amount of Five Million Five Hundred Seventy Five Thousand Dollars (\$5,575,000.00). An ADVANCE shall only consist of the BANK'S permitting BORROWER to incur debt with the BANK pursuant to the PURCHASE AGREEMENT in order to enable it to accept DELIVERY of the CARS from EVANS, and

the BANK shall not be obligated to actually pay any funds to BORROWER. Each ADVANCE shall be noted on the "grid" attached hereto.

5. Repayment. This Promissory Note shall be due on the date of the FINAL CLOSING, at which time all sums due hereunder including principal, interest, charges and fees, shall be paid in full.

6. Late Payment Charge. If any payment due hereunder is received by the holder more than ten (10) calendar days after its due date, the BORROWER shall pay a late payment charge equal to ten percent (10%) of the amount due.

7. SECURITY AGREEMENT. This Promissory Note is issued under and secured by the SECURITY AGREEMENT and this Promissory Note and the holder thereof are entitled to the benefits and security provided by the SECURITY AGREEMENT, which is incorporated by reference herein.

8. Application Of Payments. All payments made hereunder shall be applied first to late payment charges or other fees and expenses owed to the holder, next to accrued interest, and then to principal, or in such other order or proportion as the holder, in the holder's sole and absolute discretion, may elect from time to time.

9. Prepayment. The BORROWER may prepay this Promissory Note in whole or in part at any time or from time to time without premium or additional interest.

10. Acceleration. Upon a default in the payment of any sum due hereunder or a default in the performance of any of the covenants, conditions or terms of the SECURITY AGREEMENT or any other agreement or document executed by or on behalf of the BORROWER for the benefit of the BANK or any holder (hereafter, collectively with the AGREEMENT, the "LOAN DOCUMENTS"), and the expiration of any applicable cure period, the holder, in the holder's sole discretion and without notice or demand, may declare the entire unpaid principal balance plus accrued interest and all other sums due hereunder immediately due and payable. Reference is made to the SECURITY AGREEMENT for further and additional rights of the holder to declare the entire unpaid principal balance plus accrued interest and all other sums due hereunder immediately due and payable.

11. Default Interest Rate. Upon a default in the payment of any sum due hereunder or a default in the performance of any of the covenants, conditions or terms of any of the LOAN DOCUMENTS, and the expiration of any applicable cure period, the holder, in the holder's sole discretion and without notice or demand, may raise the rate of interest accruing on the unpaid

principal balance to the BANK'S PRIME RATE, independent of whether the holder elects to accelerate the unpaid principal balance as a result of such default. The PRIME RATE is that annual rate of interest as is announced by the BANK from time to time as its prime rate.

12. Expenses Of Collection. If this Promissory Note is referred to an attorney for collection, whether or not suit has been filed, the BORROWER shall pay all of the holder's reasonable costs, fees (including, but not limited to, reasonable attorneys' fees) and expenses resulting from such referral.

13. Subsequent Holders. In the event that any holder of this Promissory Note transfers this Promissory Note for value, the BORROWER agrees that no subsequent holder of this Promissory Note shall be subject to any claims or defenses which the BORROWER may have against a prior holder, all of which are waived as to the subsequent holder, and that all subsequent holders shall have all of the rights of a holder in due course with respect to the BORROWER even though the subsequent holder may not qualify, under applicable law, absent this paragraph, as a holder in due course.

14. Waiver Of Protest. The BORROWER, and all parties to this Promissory Note, whether maker, indorser, or guarantor, waive presentment, notice of dishonor and protest.

15. Extensions Of Maturity. All parties to this Promissory Note, whether maker, indorser, or guarantor, agree that the maturity of this Promissory Note, or any payment due hereunder, may be extended at any time or from time to time without releasing, discharging, or affecting the liability of such party.

16. Notices. Any notice or demand required or permitted by or in connection with this Promissory Note shall be given in the manner specified in the SECURITY AGREEMENT for the giving of notices under the SECURITY AGREEMENT. Notwithstanding anything to the contrary, all notices and demands for payment from the holder actually received in writing by the BORROWER shall be considered to be effective upon the receipt thereof by the BORROWER regardless of the procedure or method utilized to accomplish delivery thereof to the BORROWER.

17. Assignability. This Promissory Note may be assigned by the BANK or any holder at any time or from time to time.

18. Binding Nature. This Promissory Note shall inure to the benefit of and be enforceable by the BANK and the BANK'S successors and assigns and any other person to whom the BANK may grant an interest in the BORROWER'S obligations to the BANK, and

shall be binding and enforceable against the BORROWER and the BORROWER'S personal representatives, successors and assigns.

19. Invalidity Of Any Part. If any provision or part of any provision of this Promissory Note shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Promissory Note and this Promissory Note shall be construed as if such invalid, illegal or unenforceable provision or part thereof had never been contained herein, but only to the extent of its invalidity, illegality or unenforceability.

20. Choice Of Law; Consent To Venue And Jurisdiction. This Promissory Note shall be governed, construed and interpreted strictly in accordance with the laws of the State of Maryland. The BORROWER consents to the jurisdiction and venue of the courts of any county in the State of Maryland or the courts of Baltimore City, Maryland or to the jurisdiction and venue of the United States District Court for the District of Maryland in any action or judicial proceeding brought to enforce, construe or interpret this Promissory Note. The BORROWER agrees to stipulate in any future proceeding that this Promissory Note is to be considered for all purposes to have been executed and delivered within the geographical boundaries of the State of Maryland, even if it was, in fact, executed and delivered elsewhere.

IN WITNESS WHEREOF, the BORROWER has executed this Promissory Note specifically intending this Promissory Note to constitute an instrument under seal.

WITNESS/ATTEST:

THE BORROWER:

UNITED STATES RAIL SERVICES,
INC., A California Corporation

By: _____ (SEAL)
Name: David A. Summers
Title: President

EXHIBIT "I"

EQUIPMENT ACCEPTANCE RECEIPT NO.: _____

UNITED STATES RAIL SERVICES, INC. (the "BUYER") does hereby accept DELIVERY of those CARS listed on Schedule "A" attached hereto from EVANS RAILCAR LEASING COMPANY (the "SELLER") pursuant to the Purchase Agreement ("PURCHASE AGREEMENT") dated as of August 1, 1987, between the SELLER, BUYER, Equitable Bank, National Association (the "BANK") and Evans Transportation Company, such DELIVERY having been made at _____ at _____ (A.M./P.M.) on the ___ day of _____, 198__.

BUYER has inspected and hereby accepts the CARS.

By executing this EQUIPMENT ACCEPTANCE RECEIPT No.: _____ BUYER hereby authorizes the BANK to make an ADVANCE, as defined in the NOTE, to BUYER under the NOTE and BUYER'S SECURITY AGREEMENT in an amount equal to the "Total Price" listed in Schedule "A" attached hereto.

BUYER represents and warrants that it currently is not in default of the PURCHASE AGREEMENT and knows of no condition or event which, with the passage of time, notice, or both, will result in a violation of any covenant, representation or warranty contained in the PURCHASE AGREEMENT or BUYER'S SECURITY AGREEMENT or otherwise render the BUYER in default of the PURCHASE AGREEMENT.

All capitalized terms used herein shall have the meanings as are ascribed to them in the PURCHASE AGREEMENT.

BUYER hereby confirms its previous grant to the BANK of a security interest in the CARS listed in Schedule "A" attached hereto as security for its OBLIGATIONS to the BANK under the PURCHASE AGREEMENT, the NOTE and the BUYER'S SECURITY AGREEMENT.

UNITED STATES RAIL SERVICES, INC.

By: _____

Receipt of this EQUIPMENT ACCEPTANCE RECEIPT No.: _____ is hereby acknowledged on this ___ day of _____ 198__.

EVANS RAILCAR LEASING COMPANY

By: _____

SCHEDULE "A" TO
EQUIPMENT ACCEPTANCE RECEIPT

Number of
CARS

Type of
CAR

CAR
Number(s)

CAR PURCHASE
PRICE

TOTAL PRICE

be50135.aex

EXHIBIT "I"

EQUIPMENT ACCEPTANCE RECEIPT NO.: _____

UNITED STATES RAIL SERVICES, INC. (the "BUYER") does hereby accept DELIVERY of those CARS listed on Schedule "A" attached hereto from EVANS RAILCAR LEASING COMPANY (the "SELLER") pursuant to the Purchase Agreement ("PURCHASE AGREEMENT") dated as of August 1, 1987, between the SELLER, BUYER, Equitable Bank, National Association (the "BANK") and Evans Transportation Company, such DELIVERY having been made at _____ at _____ (A.M./P.M.) on the ___ day of _____, 198__.

BUYER has inspected and hereby accepts the CARS.

By executing this EQUIPMENT ACCEPTANCE RECEIPT No.: _____

BUYER hereby authorizes the BANK to make an ADVANCE, as defined in the NOTE, to BUYER under the NOTE and BUYER'S SECURITY AGREEMENT in an amount equal to the "Total Price" listed in Schedule "A" attached hereto.

BUYER represents and warrants that it currently is not in default of the PURCHASE AGREEMENT and knows of no condition or event which, with the passage of time, notice, or both, will result in a violation of any covenant, representation or warranty contained in the PURCHASE AGREEMENT or BUYER'S SECURITY AGREEMENT or otherwise render the BUYER in default of the PURCHASE AGREEMENT.

All capitalized terms used herein shall have the meanings as are ascribed to them in the PURCHASE AGREEMENT.

BUYER hereby confirms its previous grant to the BANK of a security interest in the CARS listed in Schedule "A" attached hereto as security for its OBLIGATIONS to the BANK under the PURCHASE AGREEMENT, the NOTE and the BUYER'S SECURITY AGREEMENT.

UNITED STATES RAIL SERVICES, INC.

By: _____

Receipt of this EQUIPMENT ACCEPTANCE RECEIPT No.: _____ is hereby acknowledged on this ___ day of _____ 198__.

EVANS RAILCAR LEASING COMPANY

By: _____

SCHEDULE "A" TO
EQUIPMENT ACCEPTANCE RECEIPT

Number of
CARS

Type of
CAR

CAR
Number(s)

CAR PURCHASE
PRICE

TOTAL PRICE

b e 5 0 1 3 5 . a e x

EXHIBIT "J"

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that Evans Railcar Leasing Company, an Illinois corporation, having an office and place of business at 450 East Devon, Suite 300, Itasca, Illinois 60154 (the "SELLER"), for and in consideration of the sum of Ten (\$10.00) Dollars and other good and valuable consideration received from United States Rail Services, Inc. ("BUYER"), the receipt and sufficiency of which is hereby acknowledged by SELLER, does hereby sell, assign and transfer unto the BUYER, its successors and assigns forever, all of the right, title and interests of the SELLER in and to the CARS listed on Schedule "A" attached together with all of SELLER'S rights as lessor under the ASSIGNED LEASES, if any, with respect to such CARS.

TO HAVE AND TO HOLD the CARS unto BUYER, its successors and assigns, to its and their own use and behalf forever.

All capitalized terms used herein shall have the meanings as are ascribed to them in the PURCHASE AGREEMENT.

SELLER represents and warrants to BUYER that SELLER is the owner of the CARS and that SELLER has and hereby conveys to BUYER good and valid title to the CARS on the terms set forth in a certain purchase agreement among SELLER, BUYER, Equitable Bank, National Association and Evans Transportation Company dated as of August 1, 1987 (the "PURCHASE AGREEMENT"), providing for the purchase of the CARS by BUYER.

EXCEPT AS SET FORTH IN SECTION 3.01 OF THE PURCHASE

AGREEMENT AND HEREIN, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE CARS, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE AND HEREBY CONVEYS THE EQUIPMENT TO BUYER "AS-IS, WHERE-IS AND WITH ALL FAULTS."

This Bill of Sale shall be governed by and interpreted under and in accordance with the laws of the State of Maryland applicable to contracts made and to be performed therein, without giving effect to the principles of conflicts of law.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be executed as of the ____ day of _____, 198__.

SELLER:

EVANS RAILCAR LEASING COMPANY

By: _____

Name: _____

Title: _____

SCHEDULE "A" TO
BILL OF SALE

Number of
CARS

Type of
CAR

CAR
Number(s)

CAR PURCHASE
PRICE

TOTAL PRICE _____

BE50135 . EXJ

EXHIBIT "K"

PARTIAL SATISFACTION OF JUDGMENT SCHEDULE

A. DELIVERED CARS

<u>Car Type</u>	<u>Amount of Partial Satisfaction</u>
Gondolas	\$29,296.80
Tanks	41,184.00
Covered Hoppers	20,592.00
XM Boxes	12,168.00
XL Boxes	24,523.20
Bulkhead Flats	54,288.00

B. Multiplier for Purposes of Giving Partial Satisfaction of Judgment for Payments Received Pursuant to Section 6.02(f), Section 7.02(f) and Article 19 of Purchase Agreement is 1.872.

C. Multiplier for Purposes of Giving Partial Satisfaction of Judgment for Payments Received Pursuant to Section 13.01 (i) and for adjustments to PURCHASE PRICE pursuant to Section 12.03 is 1.00.

EXHIBIT L
 IVANS RAILCAR LEASING COMPANY 7:44 TUESDAY, JANUARY 6, 1987 46
 TAX BENEFIT TRANSFER CARS BY FINANCE AGREEMENT AS OF DECEMBER 31, 1986
 DETAIL CAR NUMBER REPORT
 CC(P6496TBU)S6496TBU)

----- FINANCE AGREEMENT=ISSUE AX -----

LOT NUMBER	REPORT MARK	CAR NUMBER	CAR ID. NUMBER	CAR TYPE CODE	CAR AAR CODE	LESSEE NAME	ST AT US	TBT LESSOR
1975-00	CLSL	2000	41349	FLATS	F353	COLUMBIA & SILVER CREEK RR	ACTIVE	Northwest I
1975-00	CLSL	2001	41417	FLATS	F353	COLUMBIA & SILVER CREEK RR	ACTIVE	
1975-00	CLSL	2002	41410	FLATS	F353	COLUMBIA & SILVER CREEK RR	ACTIVE	
1975-00	CLSL	2003	41419	FLATS	F353	COLUMBIA & SILVER CREEK RR	ACTIVE	
1975-00	CLSL	2004	41420	FLATS	F353	COLUMBIA & SILVER CREEK RR	ACTIVE	
1975-00	CLSL	2005	41421	FLATS	F353	COLUMBIA & SILVER CREEK RR	ACTIVE	
1975-00	CLSL	2006	41422	FLATS	F353	COLUMBIA & SILVER CREEK RR	ACTIVE	
1975-00	CLSL	2007	41850	FLATS	F353	COLUMBIA & SILVER CREEK RR	ACTIVE	
1975-00	CLSL	2000	41851	FLATS	F353	COLUMBIA & SILVER CREEK RR	ACTIVE	
1975-00	CLSL	2010	41053	FLATS	F353	COLUMBIA & SILVER CREEK RR	ACTIVE	
1975-00	CLSL	2011	41854	FLATS	F353	COLUMBIA & SILVER CREEK RR	ACTIVE	
1975-00	CLSL	2012	41855	FLATS	F353	COLUMBIA & SILVER CREEK RR	ACTIVE	
1975-00	CLSL	2013	41856	FLATS	F353	COLUMBIA & SILVER CREEK RR	ACTIVE	
1975-00	CLSL	2014	41857	FLATS	F353	COLUMBIA & SILVER CREEK RR	ACTIVE	
1975-02	CLSL	2015	41858	FLATS	F353	COLUMBIA & SILVER CREEK RR	ACTIVE	
1975-02	CLSL	2016	41859	FLATS	F353	COLUMBIA & SILVER CREEK RR	ACTIVE	
1975-02	CLSL	2017	41060	FLATS	F353	COLUMBIA & SILVER CREEK RR	ACTIVE	
1975-02	CLSL	2018	41861	FLATS	F353	COLUMBIA & SILVER CREEK RR	ACTIVE	
1975-02	CLSL	2019	41862	FLATS	F353	COLUMBIA & SILVER CREEK RR	ACTIVE	
1975-02	CLSL	2020	41863	FLATS	F353	COLUMBIA & SILVER CREEK RR	ACTIVE	
1975-02	CLSL	2021	41864	FLATS	F353	COLUMBIA & SILVER CREEK RR	ACTIVE	
1975-02	CLSL	2022	41865	FLATS	F353	COLUMBIA & SILVER CREEK RR	ACTIVE	
1975-02	CLSL	2023	41866	FLATS	F353	COLUMBIA & SILVER CREEK RR	ACTIVE	
1975-02	CLSL	2024	41067	FLATS	F353	COLUMBIA & SILVER CREEK RR	ACTIVE	
1940-00	FRDN	6000	40057	FLATS	F353	FERDINAND RAILROAD	ACTIVE	Carson Pirie Scott
1940-00	FRDN	6010	40349	FLATS	F353	FERDINAND RAILROAD	ACTIVE	
1940-00	FRDN	6011	40350	FLATS	F353	FERDINAND RAILROAD	ACTIVE	
1940-00	FRDN	6012	40351	FLATS	F353	FERDINAND RAILROAD	ACTIVE	
1940-00	FRDN	6013	40352	FLATS	F353	FERDINAND RAILROAD	ACTIVE	
1940-00	FRDN	6014	40353	FLATS	F353	FERDINAND RAILROAD	ACTIVE	
1940-00	FRDN	6010	40357	FLATS	F353	FERDINAND RAILROAD	ACTIVE	
1940-00	FRDN	6019	40358	FLATS	F353	FERDINAND RAILROAD	ACTIVE	
2023-12	FRDN	6025	40364	FLATS	F353	FERDINAND RAILROAD	ACTIVE	
2023-12	FRDN	6026	40365	FLATS	F353	FERDINAND RAILROAD	ACTIVE	
2023-12	FRDN	6027	40366	FLATS	F353	FERDINAND RAILROAD	ACTIVE	
2023-12	FRDN	6028	40367	FLATS	F353	FERDINAND RAILROAD	ACTIVE	
2023-12	FRDN	6029	40368	FLATS	F353	FERDINAND RAILROAD	ACTIVE	
2023-12	FRDN	6030	40369	FLATS	F353	FERDINAND RAILROAD	ACTIVE	
2023-12	FRDN	6031	40370	FLATS	F353	FERDINAND RAILROAD	ACTIVE	
2023-12	FRDN	6032	40371	FLATS	F353	FERDINAND RAILROAD	ACTIVE	
2023-12	FRDN	6033	40372	FLATS	F353	FERDINAND RAILROAD	ACTIVE	
2023-12	FRDN	6034	40373	FLATS	F353	FERDINAND RAILROAD	ACTIVE	
2023-12	FRDN	6035	40374	FLATS	F353	FERDINAND RAILROAD	ACTIVE	
2023-12	FRDN	6036	40375	FLATS	F353	FERDINAND RAILROAD	ACTIVE	
2023-12	FRDN	6037	40376	FLATS	F353	FERDINAND RAILROAD	ACTIVE	
2023-12	FRDN	6038	40377	FLATS	F353	FERDINAND RAILROAD	ACTIVE	
2023-12	FRDN	6039	40378	FLATS	F353	FERDINAND RAILROAD	ACTIVE	
2023-12	FRDN	6040	40067	FLATS	F353	FERDINAND RAILROAD	ACTIVE	
2023-12	FRDN	6041	40068	FLATS	F353	FERDINAND RAILROAD	ACTIVE	

EVANS RAILCAR LEASING COMPANY 9:44 TUESDAY, JANUARY 6, 1987 47
 TAX BENEFIT TRANSFER CAR'S BY FINANCE AGREEMENT AS OF DECEMBER 31, 1986
 (DETAIL CAR NUMBER REPORT
 CC(P6496TBU)S6496TBU)

----- FINANCE AGREEMENT=ISSUE AX -----

LOT NUMBER	REPORT MARK	CAR NUMBER	CAR ID. NUMBER	CAR TYPE CODE	CAR AAR CODE	LESSEE NAME	ST AT US	TBT LESSOR	
2023-12	FRDN	6042	40069	FLATS	F353	FERDINAND RAILROAD	ACTIVE	Carson Pirie Scott	
2023-12	FRDN	6043	40070	FLATS	F353	FERDINAND RAILROAD	ACTIVE		
2023-12	FRDN	6044	40071	FLATS	F353	FERDINAND RAILROAD	ACTIVE		
2023-12	FRDN	6045	40072	FLATS	F353	FERDINAND RAILROAD	ACTIVE		
2023-12	FRDN	6046	40073	FLATS	F353	FERDINAND RAILROAD	ACTIVE		
2023-12	FRDN	6047	40074	FLATS	F353	FERDINAND RAILROAD	ACTIVE		
2023-12	FRDN	6048	40075	FLATS	F353	FERDINAND RAILROAD	ACTIVE		
2023-12	FRDN	6049	40076	FLATS	F353	FERDINAND RAILROAD	ACTIVE		
1919-01	ICG	246850	40118	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		AMOCO
1919-01	ICG	246851	40479	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246852	40480	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246853	40481	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246854	40482	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246855	40119	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246856	40120	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246857	40403	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246858	40121	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246859	40122	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246860	40484	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246861	40123	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246862	40485	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246863	40124	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246864	40125	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246865	40126	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246866	40127	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246867	40486	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246868	40128	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246869	40129	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246870	40130	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246871	40131	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246872	40132	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246873	40133	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246874	40134	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246875	40135	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246876	40136	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246877	40137	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246878	40138	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246879	40139	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246880	40140	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246881	40141	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246882	40142	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246883	40143	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246884	40144	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246885	40407	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246886	40145	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246887	40488	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246888	40409	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246889	40146	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		
1919-01	ICG	246890	40147	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE		

EVANS RAIL CAR LEASING COMPANY 9:44 TUESDAY, JANUARY 6, 1987 48
 TAX BENEFIT TRANSFER CARB BY FINANCE AGREEMENT AS OF DECEMBER 31, 1986
 (DETAIL CAR NUMBER REPORT
 CC(F64961M):S64961BU)

----- FINANCE AGREEMENT=ISSUE AX -----

LOT NUMBER	REPORT MARK	CAR NUMBER	CAR ID. NUMBER	CAR TYPE CODE	CAR AAR CODE	LESSEE NAME	ST AT US	TBT LESSOR
1919-01	ICG	246891	40140	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	AMOCO
1919-01	ICG	246892	40490	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246893	40491	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246894	40492	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246895	40149	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246896	40493	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246897	40150	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246898	40151	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246899	40152	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246900	40494	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246901	40495	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246902	40496	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246903	40497	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246904	40498	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246905	40153	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246906	40154	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246907	40155	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246908	40156	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246909	40157	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246910	40158	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246911	40159	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246912	40160	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246913	40499	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246914	40161	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246915	40162	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246916	40500	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246917	40501	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246918	40502	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246919	40503	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246920	40504	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246921	40505	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246922	40506	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246923	40507	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246924	40508	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246925	40509	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246926	40510	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246927	40511	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246928	40512	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246929	40513	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246930	40514	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246931	40515	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246932	40516	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246933	40517	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246934	40518	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246935	40519	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246936	40520	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246937	40521	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246938	40522	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246939	40523	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	

EVANS RAILCAR LEASING COMPANY 9:44 WEDNESDAY, JANUARY 6, 1987 49
 TAX BENEFIT TRANSFER CARS BY FINANCIAL AGREEMENT AS OF DECEMBER 31, 1986
 (DETAIL CAR NUMBER REPORT
 CP: (P6496TBU): S6496TBU)

FINANCE AGREEMENT=ISSUE AX

LOT NUMBER	REPORT MARK	CAR NUMBER	CAR ID. NUMBER	CAR TYPE CODE	CAR AAR CODE	LESSEE NAME	ST AT IS	TBT LESSOR
1919-01	ICG	246940	40524	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	AMOCO
1919-01	ICG	246941	40525	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246942	40526	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246943	40527	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246944	40528	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246945	40529	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246946	40530	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246947	40531	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246948	40532	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
1919-01	ICG	246949	40533	GONDOLAS	GS13	ILLINOIS CENTRAL GULF RR	ACTIVE	
2001-04	DKKT	700000	40741	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	GLGT, Inc.
2001-04	DKKT	700001	40740	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700002	40747	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700003	40739	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700004	40742	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700005	40748	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700006	40743	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700007	40745	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700008	40744	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700009	40746	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700010	40738	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700011	40749	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700012	40727	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700013	40720	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700014	40726	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700015	40729	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700016	40725	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700017	40721	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700018	40724	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700019	40723	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700020	40718	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700021	40720	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700022	40722	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700023	40716	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700024	40717	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700025	40719	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700026	40708	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700027	40705	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700028	40704	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700029	40703	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700030	40700	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700031	40702	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700032	40701	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700033	40710	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700034	40711	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700035	40715	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700036	40712	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700037	40714	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	
2001-04	DKKT	700038	40706	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	

EVANS RAILCAR LEASING COMPANY 7:44 TUESDAY, JANUARY 6, 1987 50
 TAX DEFERRED TRANSFER CARDS BY FINANCE AGREEMENT AS OF DECEMBER 31, 1986
 DETAIL CAR NUMBER REPORT
 CC(P6496TU:564961BU)

FINANCE AGREEMENT=ISSUE AX

LOT NUMBER	REPORT MARK	CAR NUMBER	CAR ID. NUMBER	CAR TYPE CODE	CAR AAR CODE	LESSEE NAME	ST AT US	TBT LESSOR	
2001-04	OKKT	700039	40707	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE	GLGT, Inc.	
2001-04	OKKT	700040	40709	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE		
2001-04	OKKT	700041	40713	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE		
2001-04	OKKT	700042	40732	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE		
2001-04	OKKT	700043	40731	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE		
2001-04	OKKT	700044	40737	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE		
2001-04	OKKT	700045	40730	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE		
2001-04	OKKT	700046	40736	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE		
2001-04	OKKT	700047	40733	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE		
2001-04	OKKT	700048	40735	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE		
2001-04	OKKT	700049	40734	BOX CARS	B304	OKLAHOMA KANSAS AND TEXAS RAILROAD	ACTIVE		
1989-02	USLX	21834	39530	TANKS	T105	CAR IS IN LEASE POOL	LEASE POOL		AMOCO
2110-02	USLX	21841	39537	TANKS	T105	GAF CORPORATION	ACTIVE		
1989-02	USLX	21843	39539	TANKS	T105	RICELAND FOODS, INC	ACTIVE		
2100-07	USLX	21845	39541	TANKS	T105	CIBA-GEIGY CORPORATION	ACTIVE		
1942-00	USLX	21945	39923	TANKS	T105	ROHM & HAAS CO	ACTIVE		
1942-00	USLX	21946	39924	TANKS	T105	ROHM & HAAS CO	ACTIVE		
1942-00	USLX	21947	39925	TANKS	T105	ROHM & HAAS CO	ACTIVE		
1942-00	USLX	21948	39926	TANKS	T105	ROHM & HAAS CO	ACTIVE		
1942-00	USLX	21949	39927	TANKS	T105	ROHM & HAAS CO	ACTIVE		
1942-00	USLX	21950	39928	TANKS	T105	ROHM & HAAS CO	ACTIVE		
1942-00	USLX	21951	39929	TANKS	T105	ROHM & HAAS CO	ACTIVE		
1942-00	USLX	21952	39930	TANKS	T105	ROHM & HAAS CO	ACTIVE		
1942-00	USLX	21953	39931	TANKS	T105	ROHM & HAAS CO	ACTIVE		
1942-00	USLX	21954	39932	TANKS	T105	ROHM & HAAS CO	ACTIVE		
1942-00	USLX	21955	39933	TANKS	T105	ROHM & HAAS CO	ACTIVE		
1942-00	USLX	21956	39934	TANKS	T105	ROHM & HAAS CO	ACTIVE		
1942-00	USLX	21957	39935	TANKS	T105	ROHM & HAAS CO	ACTIVE		
1942-00	USLX	21958	39936	TANKS	T105	ROHM & HAAS CO	ACTIVE		
1942-00	USLX	21959	39937	TANKS	T105	ROHM & HAAS CO	ACTIVE		
1942-00	USLX	21960	39938	TANKS	T105	ROHM & HAAS CO	ACTIVE		
1942-00	USLX	21961	39939	TANKS	T105	ROHM & HAAS CO	ACTIVE		
1942-00	USLX	21962	39940	TANKS	T105	ROHM & HAAS CO	ACTIVE		
1942-00	USLX	21963	39941	TANKS	T105	ROHM & HAAS CO	ACTIVE		
1942-00	USLX	21964	39942	TANKS	T105	ROHM & HAAS CO	ACTIVE		
1942-00	USLX	21965	39943	TANKS	T105	ROHM & HAAS CO	ACTIVE		
1942-00	USLX	21966	39944	TANKS	T105	ROHM & HAAS CO	ACTIVE		
1942-00	USLX	21967	39945	TANKS	T105	ROHM & HAAS CO	ACTIVE		
1942-00	USLX	21968	39946	TANKS	T105	ROHM & HAAS CO	ACTIVE		
1942-00	USLX	21969	39947	TANKS	T105	ROHM & HAAS CO	ACTIVE		
2008-17	USLX	22029	41095	TANKS	T105	CONTINENTAL GRAIN COMPANY	ACTIVE	Northwest I	
1575-20	USLX	22106	41115	TANKS	T105	FMC CORPORATION	ACTIVE		
1989-02	USLX	22117	41126	TANKS	T105	RICELAND FOODS, INC	ACTIVE		
2100-07	USLX	22118	41127	TANKS	T105	CIBA-GEIGY CORPORATION	ACTIVE		
1989-02	USLX	22119	41128	TANKS	T105	RICELAND FOODS, INC	ACTIVE		
1575-20	USLX	22127	41136	TANKS	T105	FMC CORPORATION	ACTIVE		
2100-10	USLX	22135	41144	TANKS	T105	CIBA-GEIGY CORPORATION	ACTIVE		
1575-20	USLX	22136	41145	TANKS	T105	FMC CORPORATION	ACTIVE		
2100-10	USLX	22138	41147	TANKS	T105	CIBA-GEIGY CORPORATION	ACTIVE		

EVANS RAILCAR LEASING COMPANY 9:44 TUESDAY, JANUARY 6, 1987 51
 TAX BENEFIT TRANSFER CARs BY FINANCE AGREEMENT AS OF DECEMBER 31, 1986
 DETAIL CAR NUMBER REPORT
 CC(P6496TRU;S6496TRU)

----- FINANCE AGREEMENT=ISSUE AX -----

LOT NUMBER	REPORT MARK	CAR NUMBER	CAR ID. NUMBER	CAR TYPE CODE	CAR AAR CODE	LESSOR NAME	ST AT US	TBT LESSOR
1989-02	USLX	22141	41150	TANKS	T105	RICELAND FOODS, INC	ACTIVE	Northwest I
1989-02	USLX	22166	41175	TANKS	T105	RICELAND FOODS, INC	ACTIVE	
1989-02	USLX	22171	41180	TANKS	T105	RICELAND FOODS, INC	ACTIVE	
2100-10	USLX	22173	41102	TANKS	T105	CIBA-GEIGY CORPORATION	ACTIVE	Northwest II
2100-10	USLX	22196	41205	TANKS	T105	CIBA-GEIGY CORPORATION	ACTIVE	

N=250

EXHIBIT "M"

List of TBT AGREEMENTS

1. Northwest Industries Leasing Company 1 (April 22, 1982)
2. GLGT, Inc. (March 26, 1982)
3. Northwest Industries Leasing Company 2 (April 22, 1982)
4. Carson Pirie & Scott & Company (January 29, 1982)
5. Amoco Tax Leasing XV Corporation (November 12, 1981)

exh.mg

6-1-83

Temporary Rules

(Regs.) 10,211

T.D. 7791, 7795, and 7800

Temporary regulations relating to special rules for leases under the Economic Recovery Tax Act of 1981. (T.D. 7791, filed 10-20-81, amended by T.D. 7795, filed 11-10-81 and T.D. 7800, filed 12-28-81.)

Summary: This document contains temporary regulations relating to the special rules for leases under the Economic Recovery Tax Act of 1981. These regulations provide guidance to persons executing lease agreements under section 168(f)(8) of the Internal Revenue Code of 1954.

Date: Except as otherwise provided, the regulations apply with respect to certain property placed in service after December 31, 1980.

For Further Information Contact: John A. Tolleris, of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224 (202) 506-1234.

Supplementary Information: Background

This document contains temporary regulations relating to the special rules for leases under section 168(f)(8) of the Internal Revenue Code of 1954, as enacted by section 201(a) of the Economic Recovery Tax Act of 1981 (96 Stat. 214). These regulations are included in Part 5c, Temporary Income Tax Regulations Under the Economic Recovery Tax Act of 1981. The temporary regulations provided by this document will remain in effect until superseded by later final regulations with respect to section 168 concerning the accelerated cost recovery system (ACRS). These temporary regulations are expected to be revised and proposed in the forthcoming notice of proposed rulemaking with respect to section 168 concerning ACRS.

Explanation

In addition to normal regulating authority granted to the Secretary by section 7805 of the Code, section 168(f)(8)(G) of the Code provides that the Secretary shall prescribe such regulations as may be necessary to carry out the purposes of section 168(f)(8), including (but not limited to) regulations which limit the lessor to the aggregate amount of (and timing of) deductions and credits in respect of the qualified leased property that would have been allowable to the lessee without regard to section 168(f)(8). These regulations contain certain rules promulgated under the authority of section 168(f)(8)(G). For example, these rules include a requirement that the lease term cannot be shorter than the ACRS life of the property in the hands of the lessee and requirements regarding the reporting of interest under purchased money obligations and rent under the lease agreement.

Section 5c.168(f)(8)-9 reserves the issue of whether section 168(f)(8) leases may be used to transfer only the investment tax credit. The Treasury Department does not imply by such reservation that section 168(f)(8) applies in the case of transactions that transfer only the investment tax credit to a party other than the ultimate user of the property.

Inapplicability of Executive Order 12291

These regulations are not major legislative regulations for purposes of Execu-

tive Order 12291 because the economic effect of these regulations flows principally from the statutory provisions upon which these regulations are based.

(Text taken from T.D. 7795)—Amendment of temporary regulations.

Summary: This document contains amendments which clarify the temporary regulations relating to the special rules for leases under the Economic Recovery Tax Act of 1981.

Supplementary Information: Background
This document contains amendments to the temporary regulations promulgated by Treasury Decision 7791 regarding special rules for leases under section 168(f)(8) of the Internal Revenue Code of 1954, which were published in the Federal Register for October 23, 1981 (46 FR 51907). These regulations are included in Part 5c, Temporary Income Tax Regulations under the Economic Recovery Tax Act of 1981, and will remain in effect until superseded by later final regulations with respect to section 168 concerning the accelerated cost recovery system (ACRS).

Explanation

These amendments provide a number of clarifications with respect to Treasury Decision 7791 which promulgated temporary regulations under section 168(f)(8) of the Internal Revenue Code of 1954 regarding special rules for leases. One clarification regards the disposition of a partnership interest in a section 168(f)(8) lease. These amendments also provide new rules regarding a lessee's disposition of leased property in bankruptcy or other similar proceeding. Other rules clarify the application of the installment sale method with respect to leases under section 168(f)(8). Although the amendments regarding bankruptcy and similar proceedings are prospective, taxpayers may elect to have them apply to leasing transactions closed before June 1, 1982.

Inapplicability of Executive Order 12291

These regulations are not major legislative regulations for purposes of Executive Order 12291 because the economic effect of these regulations flows principally from the statutory provisions upon which these regulations are based.

(Text taken from T.D. 7800)—Amendment of temporary regulations.

Summary: This document contains temporary regulations relating to the special rules for leases concerning qualified mass commuting vehicles under the Economic Recovery Tax Act of 1981. The regulations provide guidance to persons executing lease agreements concerning qualified mass commuting vehicles under section 168(f)(8) of the Internal Revenue Code of 1954. These regulations also contain a new reporting requirement applicable to all leases qualifying under section 168(f)(8).

Date: The regulations apply with respect

Reg. § 5c.44F-1

to safe harbor leases executed and certain mass commuting vehicles placed in service after December 31, 1980.

For Further Information Contact: John A. Tolleria of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224 (202-566-3294).
Supplementary Information:

Background

This document contains amendments to the Temporary Income Tax Regulations under the Economic Recovery Tax Act of 1981 (26 CFR Part 5c) promulgated by Treasury Decision 7791 regarding special rules for leases under section 168(f)(5) of the Internal Revenue Code of 1954, which were published in the Federal Register for October 23, 1981 (46 FR 51907). This amendment expands upon those temporary regulations providing rules relating to certain mass commuting vehicles treated as qualified leased property and to a new filing requirement applicable to all safe harbor leases. This amendment will remain in effect until superseded by later final regulations with respect to section 168 concerning the accelerated cost recovery system.

Explanation

This amendment clarifies the special rules for leases with respect to certain mass commuting vehicles under section 168(f)(5)(D)(iii). It establishes certain requirements that must be met by the lessee (usually a State or local governmental unit which operates the local mass transit system) and the lessor in order that the lessor may, for Federal income tax purposes, lease mass commuting vehicles, such as buses and rapid rail cars, and take cost recovery deductions with respect to them.

The lessor is allowed no investment tax credit with respect to mass commuting vehicles. There is no requirement that such vehicles be leased under section 168(f)(5) within 3 months after being placed in service. In general, those portions of vehicles whose financing is allocable to grants from Federal agencies such as the Urban Mass Transportation Administration may not be leased under section 168(f)(5).

A notice of proposed rulemaking proposing a definition of "qualified mass commuting vehicles" under section 168(b)(9) is published in the Proposed Rules section of this issue of the Federal Register.

This amendment also contains a new reporting requirement applicable to all leases qualifying under section 168(f)(5) and executed after December 31, 1981. Basically, the new rule provides that the lessor and lessee are required to file jointly an information return setting forth certain specified information concerning the leasing transaction within a 30-day period after the lease is executed or the election under section 168(f)(5) will be void. A copy of this information return is also required to be attached to the Federal income tax return of the lessor and lessee. For leases executed before January 1, 1982, only the lessor is required to file the information return postmarked by January 31, 1982. Unless the lessor's failure to file is shown to be due to reasonable cause, or unless the lessee files the return postmarked by January 31, 1982, the lessor's failure to timely file is a disqualifying event which may result in a recapture of the tax benefits to the lessor.

Adoption of amendments to the regulations

Accordingly, the following temporary regulations are adopted and amended:

Paragraph 1. Part 5c is amended as follows:

PART 5c—TEMPORARY INCOME TAX REGULATIONS UNDER THE ECONOMIC RECOVERY TAX ACT OF 1981

§ 5c.44F-1 Leases and qualified research expenses.

§ 5c.168-1 Leases and capital expenditures.

§ 5c.168-2 Leases and industrial development bonds.

§ 5c.168-3 Leases and arbitrage.

§ 5c.168(f)(5)-1 Special rules for leases.

§ 5c.168(f)(5)-2 Election to characterize transaction as a section 168(f)(5) lease.

§ 5c.168(f)(5)-3 Requirements for lessor.

§ 5c.168(f)(5)-4 Minimum investment of lessor.

§ 5c.168(f)(5)-5 Term of lease.

§ 5c.168(f)(5)-6 Qualified leased property.

§ 5c.168(f)(5)-7 Reporting of income and deductions; at risk rules.

§ 5c.168(f)(5)-8 Loss of section 168(f)(5) protection; recapture.

§ 5c.168(f)(5)-9 Pass-through lease—transfer of investment tax credit only.

§ 5c.168(f)(5)-10 Leases between related parties.

§ 5c.168(f)(5)-11 Consolidated returns.

Par. 2. New §§ 5c.44F-1, 5c.168-1—3, and 5c.168(f)(5)-1 through 5c.168(f)(5)-11 are added. The new sections read as follows:

○ [Sec. 44F] § 5c.44F-1 (T.D. 7791, filed 10-23-81.) Leases and qualified research expenses.

For purposes of section 44F(b)(2)(A)(iii), the determination of whether any amount is paid or incurred to another person for the right to use personal property in the conduct of qualified research shall be made without regard to the characterization of the transaction as a lease under section 168(f)(5). See § 5c.168(f)(5)-1(b).

○ [Sec. 168] § 5c.168-1 (T.D. 7791, filed 10-23-81.) Leases and capital expenditures.

For purposes of section 168(b)(5)(D) and § 1.168-10(b)(2)(iv)(b), the determination of whether property is leased and whether property is of a type that is ordinarily subject to a lease shall be made without regard to the characterization of the transaction as a lease under section 168(f)(5).

○ [Sec. 168] § 5c.168-2 (T.D. 7800, filed 12-23-81.) Leases and industrial development bonds.

For purposes of section 168(b)(2), the determination of whether an obligation constitutes an industrial development bond shall be made without regard to the characterization of the transaction as a lease under section 168(f)(5).

○ [Sec. 168] § 5c.168-3 (T.D. 7800, filed 12-23-81.) Leases and arbitrage.

In the case of a sale and leaseback transaction qualifying under section 168(f)(5), where the lessee's rental payments are

substantially to the lessor of section 1.168-10 is the lessor without a transfer.

○ [Sec. 168] filed 12-23-81-10-81.)

(a) A Internal special agreement: the party lessor is rules apply leased per section 168(f)(5) shall be character as the or the lease into the a trade accelerat deductio investment respect t

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of amendments to the regulations accordingly, the following temporary provisions are adopted and amended:

Paragraph 1. Part 5c is amended as follows:

Part 5c—TEMPORARY INCOME TAX REGULATIONS UNDER THE ECONOMIC RECOVERY TAX ACT OF 1981

5c.44F-1 Leases and qualified research expenditures.

5c.102-1 Leases and capital expenditures.

5c.102-2 Leases and industrial development.

5c.102-3 Leases and arbitrage.

5c.102(f)(8)-1 Special rules for leases.

5c.102(f)(8)-2 Election to characterize a section 102(f)(8) lease.

5c.102(f)(8)-3 Requirements for lessor.

5c.102(f)(8)-4 Minimum investment.

5c.102(f)(8)-5 Term of lease.

5c.102(f)(8)-6 Qualified leased property.

5c.102(f)(8)-7 Reporting of income.

5c.102(f)(8)-8 Loss of section 102(f)(8) election; recapture.

5c.102(f)(8)-9 Pass-through leases—loss of investment tax credit only.

5c.102(f)(8)-10 Leases between related parties.

5c.102(f)(8)-11 Consolidated returns.

2. New §§ 5c.44F-1, 5c.102-1—3, and 5c.102(f)(8)-1 through 5c.102(f)(8)-11 are added to the new sections read as follows:

(Sec. 44F) § 5c.44F-1 (T.D. 7791, filed 11-19-81.) Leases and qualified research expenditures.

(Sec. 102) § 5c.102-1 (T.D. 7791, filed 11-19-81.) Leases and capital expenditures.

(Sec. 102) § 5c.102-2 (T.D. 7791, filed 11-19-81.) Leases and industrial development.

(Sec. 102) § 5c.102-3 (T.D. 7791, filed 11-19-81.) Leases and arbitrage.

(Sec. 102) § 5c.102(f)(8)-1 (T.D. 7791, filed 11-19-81.) Special rules for leases.

(Sec. 102) § 5c.102(f)(8)-2 (T.D. 7791, filed 11-19-81.) Election to characterize a section 102(f)(8) lease.

(Sec. 102) § 5c.102(f)(8)-3 (T.D. 7791, filed 11-19-81.) Requirements for lessor.

(Sec. 102) § 5c.102(f)(8)-4 (T.D. 7791, filed 11-19-81.) Minimum investment.

(Sec. 102) § 5c.102(f)(8)-5 (T.D. 7791, filed 11-19-81.) Term of lease.

(Sec. 102) § 5c.102(f)(8)-6 (T.D. 7791, filed 11-19-81.) Qualified leased property.

(Sec. 102) § 5c.102(f)(8)-7 (T.D. 7791, filed 11-19-81.) Reporting of income.

(Sec. 102) § 5c.102(f)(8)-8 (T.D. 7791, filed 11-19-81.) Loss of section 102(f)(8) election; recapture.

(Sec. 102) § 5c.102(f)(8)-9 (T.D. 7791, filed 11-19-81.) Pass-through leases—loss of investment tax credit only.

(Sec. 102) § 5c.102(f)(8)-10 (T.D. 7791, filed 11-19-81.) Leases between related parties.

(Sec. 102) § 5c.102(f)(8)-11 (T.D. 7791, filed 11-19-81.) Consolidated returns.

(Sec. 102) § 5c.102(f)(8)-12 (T.D. 7791, filed 11-19-81.) Special rules for leases.

(Sec. 102) § 5c.102(f)(8)-13 (T.D. 7791, filed 11-19-81.) Election to characterize a section 102(f)(8) lease.

(Sec. 102) § 5c.102(f)(8)-14 (T.D. 7791, filed 11-19-81.) Requirements for lessor.

(Sec. 102) § 5c.102(f)(8)-15 (T.D. 7791, filed 11-19-81.) Minimum investment.

(Sec. 102) § 5c.102(f)(8)-16 (T.D. 7791, filed 11-19-81.) Term of lease.

(Sec. 102) § 5c.102(f)(8)-17 (T.D. 7791, filed 11-19-81.) Qualified leased property.

(Sec. 102) § 5c.102(f)(8)-18 (T.D. 7791, filed 11-19-81.) Reporting of income.

(Sec. 102) § 5c.102(f)(8)-19 (T.D. 7791, filed 11-19-81.) Loss of section 102(f)(8) election; recapture.

(Sec. 102) § 5c.102(f)(8)-20 (T.D. 7791, filed 11-19-81.) Pass-through leases—loss of investment tax credit only.

(Sec. 102) § 5c.102(f)(8)-21 (T.D. 7791, filed 11-19-81.) Leases between related parties.

(Sec. 102) § 5c.102(f)(8)-22 (T.D. 7791, filed 11-19-81.) Consolidated returns.

(Sec. 102) § 5c.102(f)(8)-23 (T.D. 7791, filed 11-19-81.) Special rules for leases.

(Sec. 102) § 5c.102(f)(8)-24 (T.D. 7791, filed 11-19-81.) Election to characterize a section 102(f)(8) lease.

(Sec. 102) § 5c.102(f)(8)-25 (T.D. 7791, filed 11-19-81.) Requirements for lessor.

(Sec. 102) § 5c.102(f)(8)-26 (T.D. 7791, filed 11-19-81.) Minimum investment.

(Sec. 102) § 5c.102(f)(8)-27 (T.D. 7791, filed 11-19-81.) Term of lease.

(Sec. 102) § 5c.102(f)(8)-28 (T.D. 7791, filed 11-19-81.) Qualified leased property.

(Sec. 102) § 5c.102(f)(8)-29 (T.D. 7791, filed 11-19-81.) Reporting of income.

(Sec. 102) § 5c.102(f)(8)-30 (T.D. 7791, filed 11-19-81.) Loss of section 102(f)(8) election; recapture.

(Sec. 102) § 5c.102(f)(8)-31 (T.D. 7791, filed 11-19-81.) Pass-through leases—loss of investment tax credit only.

(Sec. 102) § 5c.102(f)(8)-32 (T.D. 7791, filed 11-19-81.) Leases between related parties.

(Sec. 102) § 5c.102(f)(8)-33 (T.D. 7791, filed 11-19-81.) Consolidated returns.

(Sec. 102) § 5c.102(f)(8)-34 (T.D. 7791, filed 11-19-81.) Special rules for leases.

(Sec. 102) § 5c.102(f)(8)-35 (T.D. 7791, filed 11-19-81.) Election to characterize a section 102(f)(8) lease.

(Sec. 102) § 5c.102(f)(8)-36 (T.D. 7791, filed 11-19-81.) Requirements for lessor.

(Sec. 102) § 5c.102(f)(8)-37 (T.D. 7791, filed 11-19-81.) Minimum investment.

(Sec. 102) § 5c.102(f)(8)-38 (T.D. 7791, filed 11-19-81.) Term of lease.

(Sec. 102) § 5c.102(f)(8)-39 (T.D. 7791, filed 11-19-81.) Qualified leased property.

(Sec. 102) § 5c.102(f)(8)-40 (T.D. 7791, filed 11-19-81.) Reporting of income.

(Sec. 102) § 5c.102(f)(8)-41 (T.D. 7791, filed 11-19-81.) Loss of section 102(f)(8) election; recapture.

(Sec. 102) § 5c.102(f)(8)-42 (T.D. 7791, filed 11-19-81.) Pass-through leases—loss of investment tax credit only.

(Sec. 102) § 5c.102(f)(8)-43 (T.D. 7791, filed 11-19-81.) Leases between related parties.

(Sec. 102) § 5c.102(f)(8)-44 (T.D. 7791, filed 11-19-81.) Consolidated returns.

(Sec. 102) § 5c.102(f)(8)-45 (T.D. 7791, filed 11-19-81.) Special rules for leases.

substantially equal in timing and amount to the principal and interest payments on the lessor's note, the arbitrage provisions of section 102(c) and §§ 1.102-12, 1.102-14, and 1.102-25 shall apply to any obligations of the lessee (or party related to the lessee) without regard to the section 102(f)(8) lease transaction.

(Sec. 102) § 5c.102(f)(8)-1 (T.D. 7791, filed 11-19-81; amended by T.D. 7798, filed 11-19-81.) Special rules for leases.

(a) In general, Section 102(f)(8) of the Internal Revenue Code of 1954 provides special rules for characterizing certain agreements as leases and characterizing the parties to the agreement as lessors and lessees for Federal tax law purposes. These rules apply only with respect to qualified leased property. If all the requirements of section 102(f)(8) and §§ 5c.102(f)(8)-2 through 5c.102(f)(8)-11 are met, then the agreement shall be treated as a lease, and the party characterized as the lessor shall be treated as the owner of the property. In such case, the lessor shall be deemed to have entered into the lease in the course of carrying on a trade or business and shall be allowed accelerated cost recovery system (ACRS) deductions under section 168 and the investment tax credit under section 38 with respect to the leased property.

(b) *Exception for qualified research expenditures.* For purposes of section 44F(b)(2)(A)(iii), the determination of whether any amount is paid or incurred to another person for the right to use personal property in the conduct of qualified research shall be made without regard to the characterization of the transaction as a lease under section 102(f)(8). Thus, if a lessee would be considered the owner of the property without regard to section 102(f)(8), any amounts paid by the lessee under the lease shall not be considered amounts paid or incurred for the right to use the property.

(c) *Other factors disregarded.* If an agreement meets the requirements of section 102(f)(8) and §§ 5c.102(f)(8)-2 through 5c.102(f)(8)-11, the following factors will not be taken into account in determining whether the transaction is a lease:

(1) Whether the lessor or lessee must take the tax benefits into account in order to determine that a profit is made from the transaction;

(2) The fact that the lessee is the nominal owner of the property for State or local law purposes (e.g., has legal title to the property) and retains the burdens, benefits, and incidents of ownership (such as payment of taxes and maintenance charges with respect to the property);

(3) Whether or not a person other than the lessee may be able to use the property after the lease term;

(4) The fact that the property may (or must) be bought or sold at the end of the lease term at a fixed or determinable price that is more or less than its fair market value at that time;

(5) The fact that the lessee or related party has provided financing or has guaranteed financing for the transaction (other than for the lessor's minimum 10 percent investment); and

(6) The fact that the obligation of any person is subject to any contingency or

offset agreement. See, for example, the rent and debt service offset in Example (2) of paragraph (e).

An agreement that meets the requirements of section 102(f)(8) and §§ 5c.102(f)(8)-2 through §§ 5c.102(f)(8)-11 may be treated by the parties as a lease for Federal tax law purposes only. Similarly, a sale by the lessee of the leased property to the lessor in a transaction where the property is leased back under an agreement that meets the requirements of section 102(f)(8) may be treated by the parties as a sale for Federal tax law purposes only. The agreements need not comply with State law requirements concerning transfer of title, recording, etc.

(d) *Ownership by one of the parties.* Notwithstanding any other section, if neither the lessor nor the lessee would be the owner of the property without regard to section 102(f)(8), or, if any party with an economic interest in the property (other than the lessor or lessee or any subsequent transferee of their interests) claims ACRS deductions or any investment tax credit with respect to the leased property, an election under section 102(f)(8) with respect to such property shall be void as of the date of the execution of the lease agreement.

(e) *Examples.* The application of section 102(f)(8) and §§ 5c.102(f)(8)-2 through 5c.102(f)(8)-11 may be illustrated by the following examples:

Example (1). X Corp. wishes to acquire a \$1 million piece of equipment which is "qualified leased property" as defined in section 102(f)(8)(D). The equipment has a 10-year economic life and falls within the 5-year ACRS class. Y Corp. is a person meeting the qualifications set forth in section 102(f)(8)(B)(i) and § 5c.102(f)(8)-3 and wishes to be the owner of the property for Federal tax law purposes. Y therefore purchases the equipment from the manufacturer for \$1 million, paying \$300,000 in cash and borrowing \$800,000 from a bank (payable over 9 years and requiring nine equal annual payments of principal and interest of \$105,000). Y then leases the equipment to X under an agreement providing for nine annual rental payments of \$105,000, and the parties elect in accordance with the provisions of § 5c.102(f)(8)-2 to have the provisions of section 102(f)(8) apply. The timing and amount of the rental payments required to be made by X (the "lessee-user") under the lease will be exactly equal to the timing and amount of the principal and interest payments that Y (the "lessor") will be required to make to the bank under its purchase money note. Under these circumstances, Y is treated as the owner and lessor of the property for Federal tax law purposes; it therefore is entitled to the investment tax credit and the ACRS deductions with respect to the property. Y's basis in the property is \$1 million. Y must report the rent as income and will be entitled to deduct the interest on the purchase money note. The aggregate payments required to be made by X under the lease are treated as rent in accordance with § 5c.102(f)(8)-7 and are deductible as such.

Reg. § 5c.102(f)(8)-1(e)

Example (8). The facts are the same as in example (1) except that X purchases the equipment for \$1 million and wishes to transfer ownership of the property for Federal tax law purposes to Y under a sale and leaseback arrangement. Accordingly, X sells the property to Y for \$200,000 in cash (which represents the agreed upon compensation for the tax benefits to be enjoyed by Y as lessor) plus a 9-year, \$900,000 note calling for nine \$100,000 annual payments of principal and interest. Y then leases the property back to X under an agreement providing for nine annual rental payments of \$100,000. The parties elect in accordance with the provisions of § 5c.163(f)(8)-3 to have the provisions of section 168(f)(8) apply. The timing and amount of the rental payments required to be made by X (as the lessee-user) under the lease will be exactly equal to the timing and amount of the principal and interest payments that Y will be required to make to X under Y's purchase money note, so that the only cash transferred between X and Y is the \$200,000 down payment. Y's obligation to make debt service payments on the note is contingent on X's obligation to make rental payments under the lease. Under these circumstances, Y is treated as the owner and lessor of the property for Federal tax law purposes; it therefore is entitled to the investment tax credit and ACRS deductions with respect to the property. Y's basis in the property is \$1 million. Y must report the rent as income and will be entitled to deduct the interest on the purchase money note. No gain or loss will be recognized by X on the sale of the property since the sale price equals X's basis in the property. X must report as income the interest paid by Y on the note and will be entitled to a deduction for the rental payments it makes under the lease in accordance with § 5c.163(f)(8)-7.

Example (9). Assume that in both examples (1) and (2) X has an option to purchase the equipment at the end of the lease term for \$1.00. The fact that the property may (or must) be bought or sold at the end of the lease term at a fixed or determinable price that is more or less than its fair market value is not taken into account in determining the status of the transactions as leases under section 168(f)(8).

Comp [Sec. 168] § 5c.163(f)(8)-3 (T.D. 7791, filed 10-20-61; amended by T.D. 7790, filed 11-10-61 and T.D. 7800, filed 12-28-61.) Election to characterize transaction as a section 168(f)(8) lease.

(a) **Election—(1) In general.** The election to characterize a transaction as a lease qualifying under section 168(f)(8) shall be made within the time and manner as set forth in this section without regard to section 168(f)(4).

(2) **Lease agreement.** For an agreement to be treated as a lease under section 168(f)(8) and this section, the lease agreement must be executed not later than 3 months after the property was first placed in service, as defined in § 5c.163(f)(8)-6(b)(3)(i) (or prior to November 14, 1961, if the property was first placed in service by the lessee after December 31, 1960, and before August 14, 1961). The agreement must be in writing and must state that all of the parties to the agreement agree to characterize it as a lease for purposes of Fed-

eral tax law and elect to have the provisions of section 168(f)(8) apply to the transaction. The agreement must also name the party who will be treated as the lessor and the party who will be treated as the lessee.

(3) **Information return concerning the election.** (i) Except as provided in subdivision (ii), for each lease agreement, the lessor and lessee must jointly file Form 9793, Safe Harbor Lease Information Return, concerning their election under section 168(f)(8). The information return must be signed by both the lessor and the lessee and filed not later than the 30th day after the agreement is executed with the Commissioner of Internal Revenue, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attn: Form 9793). Unless the failure to file timely is shown to be due to reasonable cause, the failure to file the information return timely shall void the section 168(f)(8) election as of the date of the execution of the lease agreement. The information return shall include the following items:

(A) The name, address, and taxpayer identifying number of the lessor and the lessee (and the common parent company if a consolidated return is filed);

(B) The service center with which the income tax returns of the lessor and lessee are filed;

(C) A description of each property with respect to which the election is made;

(D) The date on which the lessee places the property in service (determined as defined in § 5c.163(f)(8)-6(b)(2)(i)), the date on which the lease begins, and the term of the lease;

(E) The recovery property class of the leased property under section 168(c)(3) (for example, 5 years) and the ADR midpoint life of the leased property;

(F) The terms of the payments between the parties to the lease transaction;

(G) Whether the ACRS deductions and the investment tax credit are allowable to the same taxpayer;

(H) The aggregate amount paid to outside parties to arrange or carry out the transaction, such as, for example, legal and investment banking fees;

(I) For the lessor only: the unadjusted basis of the property as defined in section 168(d)(1);

(J) For the lessor only: if the lessor is a partnership or a grantor trust, the name, address, and taxpayer identifying number of the partners or the beneficiaries, and the Service Center with which the income tax return of each partner or beneficiary is filed; and

(K) Such other information as may be required by the return or its instructions.

The aggregate amount paid to outside parties which is described in subdivision (H) need not be disclosed unless it is reasonable to estimate that either the lessor or the lessee will lease property under section 168(f)(8) for the calendar year which has an aggregate adjusted basis to such person of more than \$1,000,000. If either the lessor or the lessee reasonably expects to lease property with an aggregate basis of more than \$1,000,000, then both parties must disclose their transaction costs.

(ii) In the case of an agreement ex-

tax law and elect to have the provisions of section 168(f)(8) apply to the transaction. The agreement must also name the party who will be treated as the lessor and the party who will be treated as the lessee.

(B) Information return concerning the election. (i) Except as provided in subdivision (ii), for each lease agreement, the lessor and lessee must jointly file Form 990-T, Safe Harbor Lease Information Return, concerning their election under section 168(f)(8). The information return must be filed not later than the 30th day after the agreement is executed with the Commissioner of Internal Revenue, 1111 Constitution Avenue, N.W., Washington, D.C. (Attn: Form 990-T). Unless the failure to file timely is shown to be due to reasonable cause, the failure to file the information return timely shall void the section 168(f)(8) election as of the date of the execution of the lease agreement. The information return shall include the following information:

- (A) The name, address, and taxpayer identifying number of the lessor and the lessee (and the common parent company, if consolidated return is filed);
 - (B) The service center with which the lessor's tax returns of the lessor and lessee are filed;
 - (C) A description of each property with respect to which the election is made;
 - (D) The date on which the lessee places property in service (determined as provided in § 5c.168(f)(8)-4(b)(2)(i)), the date which the lease begins, and the term of the lease;
 - (E) The recovery property class of the leased property under section 168(c)(3) (for example, 5 years) and the ADR midpoint of the leased property;
 - (F) The terms of the payments between parties to the lease transaction;
 - (G) Whether the ACRS deductions and investment tax credit are allowable to the taxpayer;
 - (H) The aggregate amount paid to outside parties to arrange or carry out the transaction, such as, for example, legal and agent banking fees;
 - (I) For the lessor only: the unadjusted value of the property as defined in section 168(f)(8)(B);
 - (J) For the lessor only: if the lessor is a partnership or a grantor trust, the name, address, and taxpayer identifying number of each partner or beneficiary, and the service center with which the income tax returns of each partner or beneficiary is filed;
 - (K) Any other information as may be required by the return or its instructions.
- Aggregate amount paid to outside parties which is described in subdivision (H) shall not be disclosed unless it is necessary to estimate that either the lessor or lessee will lease property under section 168(f)(8) for the calendar year in which the agreement is executed. If the lessor or the lessee reasonably expects to lease property with an aggregate value of more than \$1,000,000, then both parties must disclose their transaction costs. In the case of an agreement executed

before January 1, 1982, only the lessor is required to file the information return described in subdivision (i) of this paragraph (a)(3) and the return must be filed not later than January 31, 1982. Unless the failure to file timely is shown to be due to reasonable cause, or unless the lessee files the information return postmarked by January 31, 1982, the lessor's failure to file the information return timely shall be a disqualifying event as of February 1, 1982, which shall cause an agreement to cease to be treated as a lease under section 168(f)(8). For the Federal income tax consequences of a disqualifying event, see § 5c.168(f)(8)-8.

(ii) A copy of the information return described in subdivisions (i) and (ii) shall be filed by each party with its timely filed Federal income tax return for its taxable year during which the lease term begins. However, for taxable years ending in 1981 with respect to lease agreements executed during calendar year 1981, such statement shall be filed by the later of (A) the due date (taking extensions into account) of the party's 1981 Federal income tax return, or (B) where the filing of an amended return is required, with the amended return within 3 months following the execution of the lease agreement. For the requirement to file an amended return within 3 months and the consequences of the failure to so file, see § 5c.168(f)(8)-4(b)(2)(ii). A taxpayer that is required to file the information return with its Federal income tax return before an information return form is available shall file, in lieu of the required information return, a statement which contains the information set forth in subdivisions (A) through (J) of paragraph (b)(3)(i). The failure by the lessor to file the information return (or, if applicable, the statement referred to in the preceding sentence) with its timely filed Federal income tax return shall be a disqualifying event which shall cause an agreement to cease to be treated as a lease under section 168(f)(8). For the Federal income tax consequences of a disqualifying event, see § 5c.168(f)(8)-8.

(4) Election is irrevocable. An agreement made pursuant to paragraph (a)(2) of this section shall be irrevocable as of the later of the date such agreement was executed on November 23, 1981.

(5) Disposition by lessee. Except in the case of transactions described in subparagraph (6), if the lessee (or any transferee of the lessor's interest) sells or assigns its interest in the lease or in the property, the agreement will cease to be characterized as a lease under section 168(f)(8) as of the time of the sale or assignment unless the transferee furnishes to the lessor within 60 days following the transfer the transferee's written consent to take the property subject to the lease, and the transferee and lessor file a statement with their timely filed Federal income tax returns for the taxable year in which the transfer occurs containing the following information:

- (i) The name, address, and taxpayer identifying number of the lessor and the transferee;
- (ii) The district director's office with which the income tax returns of the lessor and transferee are filed;
- (iii) A description of the property; and
- (iv) Confirmation of the transferee's consent.

See § 5c.168(f)(8)-8 for the Federal income tax consequences where an agreement ceases to be characterized as a lease under section 168(f)(8).

(6) Disposition of lessee's interest in bankruptcy, etc., or similar proceeding. In the case of an agreement executed after May 21, 1982, where the lessee's interest in the lease or in the property is sold or assigned in a bankruptcy, liquidation, receivership, a court-supervised foreclosure, or in any similar proceeding for the relief or protection of insolvent debtors in Federal or State court, the agreement will continue to be characterized as a lease under section 168(f)(8) and the purchaser or assignee shall take the property subject to the lease if—

(i) Prior to the consummation of the sale or assignment, the lessor gives written notice of its Federal income tax ownership to the judicial or administrative body having jurisdiction over the proceeding and to the debtor in possession of the interest or, if at any such time a trustee, receiver or similar person has been appointed by the court, to the person appointed. The notice must contain a request that the court and the debtor or the person appointed provide a copy of the notice to the purchaser or assignee prior to the consummation of the sale or assignment. Within 60 days following the sale or assignment, the lessor must provide notice of its Federal income tax ownership and copies of the lease agreement, and, in the case of a sale and lease-back transaction, the lessor's purchase money obligation, to the purchaser or assignee;

(ii) The lessor files a statement with its timely filed Federal income tax return for the taxable year in which the sale or assignment occurs containing the following information:

- (A) The name, address, and taxpayer identifying number of the lessor and the purchaser or assignee;
- (B) The district director's office with which the Federal income tax returns of the lessor and purchaser or assignee are filed;
- (C) A description of the property; and

(iii) Prior to the consummation of the sale or assignment, all secured lenders of the lessee with interests in the property, which interests arose not later than the time the lessee first used the property under the lease (and which were perfected in accordance with applicable local law), specifically either exclude or release in writing the Federal income tax ownership of the property from their interests.

The purchaser or assignee of the interest with respect to which this paragraph applies shall file a statement with its timely filed Federal income tax return for the taxable year in which the sale or assignment occurs containing the information described in subdivision (ii). If the interest is subsequently transferred (other than in a bankruptcy, liquidation, receivership, court-supervised foreclosure, or similar proceeding) during the term of the lease, the agreement will continue to be characterized as a lease under section 168(f)(8) and the transferee will take the property subject to the lease if either (A) the lessor

gives the transferee, prior to the transfer, a copy of the lease, written notice of its Federal income tax ownership, and, in the case of a sale and leaseback transaction, a copy of the lessor's purchase money obligation, and the lessor files a statement with its timely filed Federal income tax return as described in subdivision (1), or (E) within 60 days following the transfer, the transferee agrees in writing to take the property subject to the lease and the lessor and transferee file a statement with their timely filed Federal income tax returns within the time and in the manner described in paragraph (a)(5). However, an agreement will not continue to be characterized as a lease under this subparagraph if, under another applicable provision, it would cease to be characterized as a lease. See § 5c.168(f)(8)-8 for the Federal income tax consequences where an agreement ceases to be characterized as a lease under section 168(f)(8).

(7) *Consequences of taking the property subject to the lease agreement.* For purposes of § 5c.168(f)(8)-1 through § 5c.168(f)(8)-11, in a situation where a transferee of a lessee's interest acquires the property subject to the lease, the transferee shall be deemed to have acquired a leasehold interest in the property equal to the remaining lease term, any unpaid obligation of the lessor arising in connection with the sale of the property by the original lessee in a sale and leaseback transaction, and any option of the lessee to purchase the property. Any consideration paid by the transferee for the property shall be allocated to the lessor's obligation to the extent of the unpaid balance of the obligation. Any excess over the unpaid balance shall be allocated between the leasehold interest and the purchase option in proportion to their relative fair market values. As the new lessee, the transferee shall not be entitled to claim any ACRS deductions with respect to the property while the lease remains in effect and shall not be entitled to any investment tax credit with respect to the property. The transferee shall report interest income on the lessor's obligation, and shall be entitled to deduct the rent paid under the lease, in accordance with § 5c.168(f)(8)-7. In addition, the transferee shall be entitled to amortize the portion of its cost allocable to the leasehold interest. Conversely, as long as the lease remains in effect, the lessor will continue to be recognized as the owner of the property for Federal income tax purposes, shall be required to report rents due under the lease, and shall be entitled to deduct interest on its obligation.

(8) *Election to treat certain leases under subparagraph (6) rules.* The lessor under a section 168(f)(8) lease executed on or before May 21, 1982, may elect to have the provisions of paragraph (a)(6) apply in the case of a sale or assignment of the lessee's interest in the lease or in the property in a bankruptcy, receivership, liquidation, court-supervised foreclosure, or similar proceeding. The election of the lessor with respect to any leased property may be made at any time prior to the consummation of any sale or assignment of such property in a bankruptcy, etc., or similar proceeding, by complying with the provisions of subparagraph (6).

(b) *Examples.* The application of the provisions of this section may be illustrated by the following examples:

Example (1). X Corp. maintains its books and records for Federal tax law purposes on a calendar year basis. On February 1, 1981, X acquires certain equipment for use in its business, and the equipment is deemed to be placed in service on that date within the meaning of § 5c.168(f)(8)-6(b)(2)(i). On November 1, 1981, X sells the equipment to Y and leases it back under a lease in which the parties elect to have the provisions of section 168(f)(8) apply. The election is considered timely for purposes of making Y the owner of the property under section 168(f)(8) since the lease agreement was executed before November 14, 1981.

Example 2. The facts are the same as in example (1) except that X Corp.'s taxable year ends on February 28, 1981. X claimed the investment tax credit and depreciation deductions with respect to the property in its return filed April 1, 1981. The lease will qualify for safe harbor treatment under section 168(f)(8) provided X, within 3 months after the lease agreement was executed, files an amended return pursuant to § 5c.168(f)(8)-6(b)(2)(ii) for its taxable year ending February 28, 1981, in which X foregoes its right to claim any investment tax credit or ACRS deductions with respect to the property subject to the lease.

Example (3). X Corp. (as lessee) sells certain new equipment to Y Corp. (as lessor) and leases it back under a section 168(f)(8) lease. During the term of the lease X sells its interest in the property to T Corp. (other than in a bankruptcy or similar proceeding), and T does not give Y a written consent to take the property subject to the lease. The agreement ceases to be treated as a lease under section 168(f)(8) as of the date of the sale.

Example (4). The facts are the same as in example (3) except that the sale of the property takes place while X is under the jurisdiction of a court in a bankruptcy proceeding. All lenders of X having perfected interests in the property that arose by the time the property was first used under the lease have specifically either excluded or released the ownership of the property for Federal income tax purposes from their interests. Within the required time periods, Y gives appropriate notification to the court, the bankruptcy trustee, and T that the property is subject to the lease and files the required statement with its Federal income tax return for the taxable year in which the sale occurs. The agreement continues to be treated as a lease under section 168(f)(8). T will take the property subject to the lease. T must allocate the purchase price among the lessor's note, the leasehold interest, and the option (if any) to purchase the property.

Example (5). The facts are the same as in example (4), except that one lender of X having a perfected and timely interest in the property does not specifically exclude or release the Federal income tax ownership of the property from its interest. The agreement will cease to be treated as a lease under section 168(f)(8) as of the date of the transfer to T. The result would be the same if Y failed to furnish any of the notices required by subdivision (1) of paragraph (a)(6) or failed to file a statement as required by subdivision (2) of paragraph (a)(6).

Example (6). The facts are the same as in example (4). In addition, during the

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Example (1). X Corp. maintains its books and records for Federal tax law purposes on a calendar year basis. On February 1, 1981, X acquires certain equipment for use in its business, and the equipment is deemed to be placed in service on that date within the meaning of § 5c.168(f)(8)-4(b)(2)(i). On November 1, 1981, X sells the equipment to Y and leases it back under a lease in which the parties elect to have the provisions of section 168(f)(8) apply. The election is considered timely for purposes of making Y the owner of the property under section 168(f)(8) since the lease agreement was executed before November 14, 1981.

Example 2. The facts are the same as in example (1) except that X Corp.'s taxable year ends on February 28, 1981. X claimed the investment tax credit and depreciation deductions with respect to the property in its return filed April 1, 1981. The lease will qualify for safe harbor treatment under section 168(f)(8) provided X, within 3 months after the lease agreement was executed, files an amended return pursuant to § 5c.168(f)(8)-4(b)(2)(ii) for its taxable year ending February 28, 1981, in which X pregoes its right to claim any investment tax credit or ACRS deductions with respect to the property subject to the lease.

Example (3). X Corp. (as lessee) sells certain new equipment to Y Corp. (as lessor) and leases it back under a section 168(f)(8) lease. During the term of the lease X sells its interest in the property to Z Corp. (other than in a bankruptcy or similar proceeding), and Z does not give Y written consent to take the property subject to the lease. The agreement ceases to be treated as a lease under section 168(f)(8) as of the date of the sale.

Example (4). The facts are the same as in example (3) except that the sale of the property takes place while X is under the jurisdiction of a court in a bankruptcy proceeding. All lenders of X having perfected interests in the property that arose at the time the property was first used under the lease have specifically either extended or released the ownership of the property for Federal income tax purposes in their interests. Within the required periods, Y gives appropriate notification to the court, the bankruptcy trustee, and T that the property is subject to the lease and files the required statement with Federal income tax return for the taxable year in which the sale occurs. The agreement continues to be treated as a lease under section 168(f)(8). T will take the property subject to the lease. T must pay the purchase price among the lender's notes, the leasehold interest, and the proceeds (if any) to purchase the property.

Example (5). The facts are the same as in example (4), except that one lender having a perfected and timely interest in the property does not specifically exclude release the Federal income tax ownership of the property from its interest. The agreement will cease to be treated as a lease under section 168(f)(8) as of the date of transfer to T. The result would be the same if Y failed to furnish any of the information required by subdivision (i) of paragraph (a)(8) or failed to file a statement required by subdivision (ii) of paragraph (a)(8).

Example (6). The facts are the same as in example (4). In addition, during the

term of the lease T transfers the property to U Corp. and Y fails to furnish U with written notice that the property is subject to the lease prior to the sale and U refuses to agree to consent to the lease agreement. The agreement will cease to be treated as a lease under section 168(f)(8) as of the date of the transfer to U. The result would be the same if Y furnished U with timely written notice of its tax ownership but failed to file the required statement with its income tax return for its taxable year in which the sale occurred.

Q-1 [Sec. 168] § 5c.168(f)(8)-3 (T.D. 7781, filed 10-20-81; amended by T.D. 7795, filed 11-10-81.) Requirements for lessor.

(a) **Qualified lessor.** In order for an agreement to be treated as a lease under section 168(f)(8), the party characterized in the agreement as the lessor must be a qualified lessor. The term "qualified lessor" means—

(1) A corporation which is neither an electing small business corporation under section 1371(b) nor a personal holding company under section 542(a), or

(2) A partnership, all of whose partners are corporations described in subparagraph (1), or

(3) A grantor trust whose grantor and beneficiaries are all corporations described in subparagraph (1) or partnerships described in subparagraph (2).

(b) **Effect of disqualification of lessor.** If at any time during the term of the agreement the lessor ceases to be a qualified lessor, the agreement will lose its characterization as a lease under section 168(f)(8) as of the date of the event causing such disqualification. If any partner of a partnership described in paragraph (a)(2) ceases to be a corporation described in paragraph (a)(1), the partnership entity shall cease to be a qualified lessor. Similarly, if any beneficiary of a trust described in paragraph (a)(3) ceases to be a corporation described in paragraph (a)(1), the trust shall cease to be a qualified lessor. See § 5c.168(f)(8)-8 for the Federal income tax consequences of such a disqualification.

(c) **One tax owner per property.** Only one person may be a qualified lessor under section 168(f)(8) with respect to leased property. Thus, property that is subject to a lease under section 168(f)(8) may not be subleased under a lease for which a section 168(f)(8) election is made. In addition, if a lessor sells or assigns in a taxable transaction its interest in a section 168(f)(8) lease or in the underlying property, the lease shall cease to qualify under section 168(f)(8) and no other lease may be executed under section 168(f)(8) with respect to the property. The preceding sentence applies to a sale or assignment of its interest by a partner of a lessor that is a partnership described in paragraph (a)(2) of this section or by a beneficiary of a lessor that is a trust described in paragraph (a)(3) of this section. See § 5c.168(f)(8)-4 for the Federal income tax consequences where a lease ceases to qualify under section 168(f)(8). However, lease brokers, agents, etc., may, for example, prepare executory contracts with the lessee whereby the broker's assignee may execute a lease as lessor, and, if the requirements of section 168(f)(8) and § 5c.168(f)(8)-1 through § 5c.168(f)(8)-11 are met, the lease will qualify under section 168(f)(8).

(d) **Examples.** The application of paragraph (c) may be illustrated by the following examples:

Example (1). X Corp. (as lessee) sells certain new equipment to Y Corp. (as lessor) and leases it back under a section 168(f)(8) lease. Within 3 months after the property was placed in service, Y assigns its interest in the lease to Z. Upon the transfer to Z, the lease will no longer qualify for treatment under section 168(f)(8). The property may not thereafter be the subject of a section 168(f)(8) lease.

Example (2). X Corp., which wishes to acquire certain equipment for use in its business and to transfer ownership of the property for Federal income tax law purposes, purchases the equipment and enters into an executory contract with LB, a lease broker, under which X agrees to execute a section 168(f)(8) lease as lessor with a third party lessor. At a later date (but within the prescribed 3-month period), LB arranges for X and T Corp. (which wishes to secure Federal income tax law ownership) to execute a lease agreement in accordance with § 5c.168(f)(8)-2. The lease will qualify for treatment under section 168(f)(8).

Q-2 [Sec. 168] § 5c.168(f)(8)-4 (T.D. 7781, filed 10-20-81.) Minimum investment of lessor.

(a) **Minimum investment.** Under section 168(f)(8)(B)(ii), an agreement will not be characterized as a lease for purposes of section 168(f)(8) unless the qualified lessor has a minimum at risk investment which, at the time the property is placed in service under the lease and at all times during the term of the lease, is not less than 10 percent of the adjusted basis of the leased property. As the adjusted basis of the leased property is reduced by capital cost recovery deductions, the minimum investment required will also be reduced to 10 percent of the revised adjusted basis, until the adjusted basis has been completely recovered, at which time no minimum investment will be required. Financing provided by the lessee or a party related to the lessee, such as a recourse note given by the lessor to the lessee, will not be taken into account in determining the lessor's minimum investment.

(b) **At risk amount.** The minimum investment which the lessor has at risk with respect to the leased property for purposes of paragraph (a) of this section includes only consideration paid and recourse indebtedness incurred by the lessor to purchase the property. The lessor must have sufficient net worth (without regard to the value of any leases which qualify under section 168(f)(8)) to satisfy any personal liability incurred. Any tax benefits which the lessor derives from the leased property shall not be taken into account to reduce the amount the lessor has at risk. An agreement between the lessor and the lessee requiring either or both parties to purchase or sell the qualified leased property at some price (whether or not fixed in the agreement) at the end of the lease term shall not affect the amount the lessor has at risk with respect to the property. However, an option held by the lessor to sell the property that is exercisable before

the end of the period prescribed under section 168(c)(2) for the recovery property class of the leased property (taking into account any election by the lessor or lessee under section 168(b)(3)) shall reduce the amount the lessor is considered to have at risk by the amount of the option price at the time the option becomes exercisable.

Q— [Sec. 168] § 5c.168(f)(8)-5 (T.D. 7791, filed 10-20-81.) Term of lease.

(a) *Term of lease*—(1) *Basic rules*. To qualify as a lease under section 168(f)(8) and § 5c.168(f)(8)-1(a), the lease agreement must provide for a term that does not exceed the maximum term described in paragraph (b) of this section; such term must also at least equal the minimum term described in paragraph (c).

(b) *Maximum term*. For purposes of section 168(f)(8)(B)(iii) and this section, the term of the lease may not exceed the greater of—

(i) 90 percent of the useful life of the property under section 167, or

(ii) 150 percent of the asset depreciation range (ADR) present class life ("midpoint") of such property, applicable as of January 1, 1981 (without regard to section 167(m)(4)), published in Rev. Proc. 77-10, 1977-1 C.B. 548, and revisions thereto.

Solely for purposes of this paragraph (b), "useful life" means the period when the leased asset can reasonably be expected to be economically useful in anyone's trade or business; such term does not mean the period during which the lessor expects to lease the property. Any option to extend the term of the lease, whether or not at fair market value rent, must be included in the term of the lease for purposes of this paragraph. If several different pieces of property are the subject of a single lease, the maximum allowable term for such lease will be measured with respect to the property with the shortest life. In no case, however, will the lease term qualify under this section if such term with respect to any piece of property is less than the minimum term described in paragraph (c).

(c) *Minimum term*. For purposes of this section, the term of the lease must at least equal the period prescribed under section 168(c)(2) for the recovery property class of the leased property. For example, if a piece of leased equipment is in the 5-year recovery property class, the lease agreement must have a minimum term of 5 years. In general, the determination of whether property is 3-year recovery property, 5-year recovery property, etc., in the hands of the lessor will be based on the characterization of the property in the hands of the owner as determined without regard to the section 168(f)(8) lease. Thus, for example, property which is public utility property or RRB replacement property absent the section 168(f)(8) lease will be characterized as such in the hands of the lessor for purposes of section 168(f)(8). However, with respect to RRB replacement property, the transitional rule of section 168(f)(8) shall be inapplicable to the lessor. In addition, any election under section 168(b)(3) by the lessor with respect to the class of recovery property to which the qualified leased property is assigned shall apply to the leased property in determining the term of the lease. A lease term that

does not exceed the term required to satisfy the minimum lease term of this paragraph will be deemed to comply with the maximum lease term described in paragraph (b) if such minimum lease term exceeds such maximum lease term.

(d) *Examples*. The application of this section may be illustrated by the following examples:

Example (1). X Corp. (as lessee) and Y Corp. (as lessor) enter into a lease which they elect to be treated under section 168(f)(8) with respect to a chemical manufacturing facility that will also generate steam for use in the production of electricity. The assets comprising the chemical plant are described in ADR guideline class 28.0 (midpoint life of 9.5 years), and the assets comprising the steam plant are described in ADR class 00.4 (midpoint life of 22 years). To satisfy the maximum lease term requirement of section 168(f)(8)(B)(iii)(II) and § 5c.168(f)(8)-3(b), the lease term may not exceed 14.25 years (150 percent of the 9.5 year midpoint life of the chemical plant).

Example (2). The facts are the same as in example (1) except that the chemical plant and the steam plant are the subject of separate leases. For purposes of section 168(f)(8)(B)(iii)(II) and § 5c.168(f)(8)-3(b), the maximum term of the lease with respect to the chemical plant is 14.25 years (150 percent of 9.5 years) and the maximum term of the lease with respect to the steam plant is 33 years (150 percent of 22 years).

Q— [Sec. 168] § 5c.168(f)(8)-6 (T.D. 7791, filed 10-20-81; amended by T.D. 7796, filed 11-10-81 and T.D. 7800, filed 12-28-81.) Qualified leased property.

(a) *Basic rules*—(1) *In general*. An agreement shall be treated as a section 168(f)(8) lease only if the property which is leased is qualified leased property. Qualified leased property is recovery property as defined in section 168(c) and is either—

(i) Except as provided in subparagraph (2), new section 38 property of the lessor which is leased no later than 3 months after the date the property was placed in service (or prior to November 14, 1981, if the property was placed in service after December 31, 1980, and before August 14, 1981) and which, if acquired by the lessee, would have been new section 38 property of the lessee, or

(ii) Property which is a qualified mass commuting vehicle (as defined in section 168(b)(9)) and which is financed in whole or in part by proceeds from an issue of obligations the interest on which is excludable from income under section 108(a).

(2) *Sale and leaseback arrangement*.

(i) Where the leased property is purchased, directly or indirectly, by the lessor from the lessee (or a party related to the lessee), the property will not be qualified leased property unless the property was (or would have been) new section 38 property of the lessee and was purchased and leased no later than 3 months after the date the property was placed in service by the lessee (or prior to November 14, 1981, if the property was placed in service by the lessee after December 31, 1980 and before August 14, 1981) and with respect to which the lessor's adjusted basis does not exceed the adjusted basis of the lessee (or a party related to the lessee) at the

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X Corp. (as lessee) and enter into a lease which treated under section 168 to a chemical manu- that will also generate the production of elec- comprising the chemical in ADR guideline class of 9.5 years), and the the steam plant are class 00.4 (midpoint life of section 168(f)(8)(B) of section 168(f)(8)-5 (b), the lease term 14.25 years (150 per- cent midpoint life of the

facts are the same as except that the chemical plant are the subject For purposes of section (II) and § 5c.168(f)(8)-5 term of the lease with (14.25 years) and the maximum with respect to the steam (150 percent of 21 years).

§ 5c.168(f)(8)-6 (T.D. amended by T.D. 1788, T.D. 1790, filed 12-25-81.)

(1) In general. An treated as a section 168 the property which is leased property. Qual- ity is recovery property of 168(c) and is other- provided in subparagraph property of the lease later than 3 months property was placed in a November 14, 1981. If placed in service after and before August 21, acquired by the lessee, new section 38 property

which is a qualified lease (as defined in section ch. 168, financed in whole from an issue of re- which is stated under section 168(c).

leaseback arrangement used property is par- indirectly by the lessee a party related to the will not be qualified lease the property was a) new section 38 prop- and was purchased and in 3 months after the was placed in service prior to November 14, was placed in service December 31, 1980 and 1981) and with respect to adjusted basis does (to the lessee) at the

time of the lease. If the lessor's adjusted basis in the property exceeds the seller's adjusted basis with respect to the property at the beginning of the lease, the property will not be qualified leased property.

(ii) For purposes of this subparagraph (3) and paragraphs (b)(3)(ii) of this section, transactional costs with respect to a sale and leaseback arrangement that are not currently deductible shall be allocated to the lease agreement (and not included in the lessor's adjusted basis with respect to the property) and amortized over the term of the lease. These costs include legal and investment banking fees and printing costs.

(iii) [Examples.] The application of this subparagraph (3) may be illustrated by the following examples:

Example (1). X, an airline, contracts to have an airplane constructed for a fixed price of \$10 million. Prior to completion of construction of the airplane, the value of the airplane increases to \$11 million. X buys the airplane at the contract price of \$10 million and, before it is placed in service, sells the airplane at its fair market value of \$11 million to Y and then leases it back. The lease will not qualify for safe harbor protection under section 168(f)(8) because the lessor's adjusted basis in the airplane exceeds the lessee's adjusted basis. This result obtains even though the airplane qualifies as new section 38 property of X airline.

Example (2). Assume the same facts as in example (1) except that, prior to completion of the construction of the airplane, X assigns its contract to Y for \$1 million, and Y thereafter buys the airplane at the contract price of \$10 million. The acquisition by Y is treated as an indirect purchase from the lessee. Because Y's adjusted basis in the airplane would exceed the lessee's adjusted basis, the lease will not qualify under section 168(f)(8).

(b) Special rules—(1) New section 38 property. (i) New section 38 property is section 38 property described in subsection (b) of section 48 and the regulations there- under other than a qualified rehabilitated building (within the meaning of section 48 (g)(1)). Qualified leased property must be new section 38 property at the beginning of the lease and must continue to be section 38 property in the hands of the lessor and the lessee throughout the lease term. The fact that the lessee used the property within the 3-month period prior to the lease will not disqualify the property as new section 38 property of the lessee.

(ii) [Examples.] The application of this subparagraph (1) may be illustrated by the following examples:

Example (1). N is a hospital exempt from Federal income tax and wishes to purchase certain equipment for use in further- ance of its exempt functions (i.e., other than for use in an unrelated trade or busi- ness). O, a qualified lessor as defined in § 5c.168(f)(8)-3(a), acquires the property and leases it to N. Since the equipment would not be new section 38 property of N if N had acquired it by virtue of section 48(a) (4) (relating to exception from definition of section 38 property for certain property used by certain tax-exempt organizations), the equipment is not qualified leased prop- erty and the lease does not qualify under section 168(f)(8). Whether O is considered

the owner of the property for Federal tax law purposes will be determined without regard to the provisions of section 168 (f)(8).

Example (2). P Corp. is constructing progress expenditure property as defined in section 48(d)(2) for R Corp. Progress ex- penditure property is property which it is reasonable to believe will be section 38 prop- erty in the hands of the taxpayer when it is placed in service. Before the date that the property is placed in service (as defined in § 5c.168(f)(8)-6(b)(2)(i)), the property is not new section 38 property. Accordingly, progress expenditure property cannot be quali- fied leased property.

Example (3). R Corp., a foreign rail- road, acquires new rolling stock and enters into a sale and leaseback transaction with B Corp., a domestic corporation. R uses the rolling stock within and without the United States, but predominantly outside the United States within the meaning of section 48(a)(2)(A). Section 48(a)(2)(B)(ii) is in- applicable to R because R is neither a domestic railroad corporation nor a United States person; therefore, the rolling stock cannot be section 38 property to R. The property is not qualified leased property.

(2) Placed in service. (i) Property shall be considered as placed in service at the time the property is placed in a con- dition or state of readiness and availability for a specifically assigned function. If an entire facility is leased under one lease, property which is part of the facility will not be considered placed in service under this rule until the entire facility is placed in service. If the lessee claims any in- vestment tax credit or ACRS deductions with respect to any component which is part of an entire facility that is subse- quently leased, the lessee must file an amended return within the time prescribed in paragraph (b)(2)(ii) of this section in which it foregoes its claim to the invest- ment tax credit and ACRS deductions. If such amended return may not be filed be- cause the time for filing a claim for refund with respect to any component under section 6611 has expired, each component of the facility will be considered as placed in service at the time the individual com- ponent is placed in a condition or state of readiness and availability for a specifically assigned function and not when the entire facility is placed in service.

(ii) For purposes other than determin- ing whether property is qualified leased property, property subject to a lease under section 168(f)(8) will be deemed to have been placed in service not earlier than the date such property is used under the lease. If the lessee claims any investment tax credit or ACRS deductions with respect to property placed in service under a lease, the lessee must file an amended return within 3 months following the execution of the lease agreement in which the lessee foregoes its claim to the investment tax credit and ACRS deductions with respect to the leased property or the election under section 168(f)(8) will be void.

(iii) The application of this subpara- graph (2) may be illustrated by the follow- ing examples:

Example (1). X Corp. acquires equip-

Reg. § 5c.168(f)(8)-6(b)(2)

ment on December 31, 1982, and places the equipment in service. X's taxable year ends December 31. On March 20, 1983, X sells the equipment to Y Corp. and leases it back in a transaction that qualifies under section 168(f)(8). The property is considered to be new section 38 property to X under paragraph (b)(1). X is not allowed any investment tax credit or ACRS deductions with respect to the property in 1982 because the property is not considered to have been placed in service for purposes other than determining whether it is qualified leased property until it is used under the lease under subdivision (ii) of this subparagraph (2). If X has claimed credits or deductions on its 1982 return, it must file an amended return for 1982 within 3 months following the execution of the lease agreement or the election will be void.

Example (8). In March 1983, K Corp. completes reconditioning of a machine, which it constructed and placed in service in 1983 and which has an adjusted basis in 1983 of \$10,000. The cost of reconditioning amounts to an additional \$20,000. K would be entitled to a basis of \$30,000 in computing its qualified investment in new section 38 property for 1983. In May 1983, K enters into a sale and leaseback transaction with L Corp. with respect to the reconditioned parts of the machine that are new section 38 property to K. K and L elect to have section 168(f)(8) apply. Assuming that the adjusted basis of the leased property is the same to L as it is to K, the property qualifies as qualified leased property under section 168(f)(8)(D)(ii) and L is considered the tax owner of the property. Since, for purposes other than determining whether property is qualified leased property, the property is deemed originally placed in service not earlier than the date the property is used under the lease, the property is new section 38 property to L and L may claim the investment tax credit (and ACRS deductions) with respect to the leased property.

(3) **Qualified mass commuting vehicle.** (i) A qualified mass commuting vehicle as defined in section 168(b)(9) will constitute qualified leased property for purposes of section 168(f)(8)(D)(iii) and this section provided all of the following requirements are met:

(A) At least part (as, for example, 5 percent) of the financing for the purchase of such vehicle must be derived from proceeds of obligations the interest on which is excludable from income under section 168(a)(1) (whether or not such obligations are described in section 168(b)(4)(I));

(B) The vehicle must be recovery property (i.e., it must have been first placed in service by the lessee after December 31, 1980); and

(C) The vehicle must not have been previously leased under a section 168(f)(8) lease by the lessee.

A qualified mass commuting vehicle that is qualified leased property may be leased under section 168(f)(8) at any time after December 31, 1980. The requirement of subdivision (A) may be satisfied where the vehicle leased under a section 168(f)(8) lease are refinanced with proceeds of an obligation the interest on which is excludable from income under section 168(a)(1).

(ii) Where the leased property is pur-

chased, directly or indirectly, by the lessee from the lessee (or a party related to the lessee), the property will not qualify under this subsection unless the lessor's adjusted basis in the property does not exceed the adjusted basis of the lessee (or related party) at the time of the execution of the lease. The adjusted basis of property to a lessee (or related party) shall be determined under part II of subchapter O of chapter 1 of the Code for purposes of determining gain, except that the adjustment described in section 1014(a)(3) and § 1.1014-4 need not be made for property acquired during calendar year 1981 and leased no later than March 1, 1982.

(iii) In a transaction characterized as a lease under section 168(f)(8), the lessor's adjusted basis may not include that portion, if any, of the cost of the vehicle to the lessee (or related party) that is financed, directly or indirectly, with an Urban Mass Transportation Administration (UMTA) grant (excluding a grant under the interstate transfer provision of the Federal-Aid Highway Act (FAHA)), a FAHA grant, or any other Federal grant. Where a vehicle is included as part of an UMTA-funded project, 80 percent of the vehicle's cost will be deemed to be financed with an UMTA grant and 20 percent will be deemed to be financed from non-Federal sources without regard to whether the UMTA funds or the non-Federal funds are traceable to any particular vehicle included within the project. For purposes of this subdivision and subdivision (ii), amounts originating from non-Federal sources which are paid or incurred with respect to leased property by a State or political subdivision of the State (or political subdivision created by the joint authorization of two or more States) shall be taken into account in computing the lessee's adjusted basis in the leased property as if the lessee had paid or incurred such amounts.

(iv) If a vehicle is purchased pending approval of an UMTA grant, the lessor's unadjusted basis in the vehicle may equal the lessee's unadjusted basis unreduced by any subsequently approved UMTA grant; however, if an UMTA grant is later approved and the vehicle is included as part of an UMTA-funded project, except as provided hereinafter in this subdivision (iv), the lease shall terminate with respect to an undivided 80 percent interest in the vehicle. For the Federal income tax consequences of the termination of a lease, see § 5c.168(f)(8)-8. If such a subsequently approved UMTA grant is used to purchase additional qualified mass commuting vehicles, the portion of each vehicle deemed to be allocable to non-UMTA financing (i.e., 20 percent) may be leased under section 168(f)(8). If a vehicle is purchased pending approval of an UMTA grant and leased under section 168(f)(8), the lease will not be deemed to have terminated with respect to 80 percent of the vehicle when the UMTA grant is later approved if the total interest leased before the grant is approved did not exceed 80 percent of the lessor's adjusted basis in the vehicle (unadjusted basis prior to March 1, 1982) unreduced by any subsequently approved UMTA grant. For purposes of this subdivision and subdivision (iii), the allocation principles applicable to UMTA grants shall apply in the case of FAHA grants except that 80 percent and 20 percent shall be substituted for 80 percent and 20 percent, respectively. Sub-

for allocation of Federal grants tion of qualified

(v) (A) N tions of § 5c.168 in a transacti- (b)(3) applies information r concerning its ele-

(B) Notwit § 5c.168(f)(8)-2(qualified mass otherwise a di- feree is not r mentioned ther

(C) The fa muting vehicle because it is u not disqualify (b)-8(b)(4); bo will occur, anc he characteris 168(f)(8), with (i) ceases to b vehicle or (8) 38 property if, for example, outside the Ur income tax coi event, see § 5c

(vi) The i will not be allc with respect t

(vii) The : (b)(3) may be examples:

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Example (ii) in example (i yet approved Pending the chases and p July 1981. Th tax-exempt ob 168(b)(4)(I). C sells a 100 perce to Corporation der a lease in have the pro apply. M is a claims an ACR the buses on 1981. On Jul XTA's grant XTA to purc Because 80 pe are deemed to beginning on lease termina- vided 80 perc If XTA wouk the buses wit (8), the termi sale of an un

ly or indirectly, by the lessor or (or a party related to the property will not qualify under 168(f)(8) unless the lessor's adjusted property does not exceed the value of the lessee (or related party) at the time of the execution of the lease. The adjusted basis of property to the lessor (or related party) shall be determined under part II of subchapter O of the Code for purposes of section 168(f)(8) and shall not be made for property acquired after March 1, 1982.

A transaction characterized as a lease under section 168(f)(8), the lessor's basis may not include that portion of the cost of the vehicle to the lessor (or related party) that is attributable to the lessor (or related party) with an amount that is not a transportation Administration grant (excluding a grant under the transfer provision of the Highway Act (FAHA)), or any other Federal grant. If the vehicle is included as part of a project, 80 percent of the cost will be deemed to be financed by a grant and 20 percent will be deemed to be financed from non-Federal sources. In regard to whether the grant is from non-Federal funds or from a particular vehicle included in the project. For purposes of this subdivision (ii), amounts from non-Federal sources are incurred with respect to the vehicle by a State or political subdivision of the State (or political subdivision by the joint authorization of two or more States) shall be taken into account in computing the lessor's adjusted basis of the leased property as if the lessor incurred such amounts.

If a vehicle is purchased pending the approval of a UMTA grant, the lessor's basis in the vehicle may equal the adjusted basis, unreduced by the amount of any UMTA grant approved. If a UMTA grant is later approved for the vehicle, the vehicle is included as part of the funded project, except as provided in this subdivision (iv). If the grant terminates with respect to 80 percent interest in the vehicle, the Federal income tax consequences of the termination of a lease, shall be determined as if such a subsequently approved grant is used to purchase the leased mass commuting vehicle of each vehicle deemed to be non-UMTA financing (i.e., the vehicle may be leased under section 168(f)(8) if the vehicle is purchased pending the approval of a UMTA grant and leased under section 168(f)(8), the lease will not be terminated with respect to the vehicle when the grant is later approved if the total amount of the grant is approved for 80 percent of the lessor's basis in the vehicle (unadjusted as of March 1, 1982) unreduced by the amount of any UMTA grant. The allocation principles applicable to grants shall apply in the event that 80 percent shall be substituted for 80 percent, respectively. Simi-

lar allocation rules shall also apply to other Federal grants used to finance the acquisition of qualified mass commuting vehicles.

(v) (A) Notwithstanding the provisions of § 5c.168(f)(8)-2(a)(3)(iii), the lessee in a transaction to which this paragraph (b)(3) applies is not required to file an information return or a statement concerning its election under section 168(f)(8).

(B) Notwithstanding the provisions of § 5c.168(f)(8)-2(a)(3), if the transfer of a qualified mass commuting vehicle is not otherwise a disqualifying event, the transferee is not required to file the statement mentioned therein.

(C) The fact that a qualified mass commuting vehicle is not section 38 property because it is used by an exempt entity will not disqualify the lease under § 5c.168(f)(8)-6(b)(4); however, a disqualifying event will occur, and the agreement will cease to be characterized as a lease under section 168(f)(8), with respect to a vehicle which (i) ceases to be a qualified mass commuting vehicle or (ii) would cease to be section 38 property if used by a taxable entity as, for example, a vehicle used predominantly outside the United States. For the Federal income tax consequences of a disqualifying event, see § 5c.168(f)(8)-9.

(vi) The lessor of a qualified vehicle will not be allowed an investment tax credit with respect to it under section 38.

(vii) The application of this paragraph (b)(3) may be illustrated by the following examples:

Example (1). On July 1, 1981, a unit of city X Transit Authority (XTA), purchases 100 buses after receiving a UMTA grant for 80 percent of their purchase price. Fifteen percent of the purchase price is financed with a combination of State and local governmental grants and 5 percent is financed with proceeds from an issue of tax-exempt obligations described in section 103(b)(4)(I). Because UMTA financed an 80 percent interest in the 100 buses, XTA may lease under section 168(f)(8) only a 20 percent interest in each bus. If XTA were to lease 100 percent of 20 buses, only 20 percent of such buses would be deemed to be leased under a safe harbor lease.

Example (2). The facts are the same as in example (1) except that UMTA has not yet approved XTA's application in 1981. Pending the UMTA approval, XTA purchases and places in service 20 buses in July 1981. The 20 buses are financed with tax-exempt obligations described in section 103(b)(4)(I). On December 15, 1981, XTA sells a 100 percent interest in these 20 buses to Corporation M and leases them back under a lease in which the parties elect to have the provisions of section 168(f)(8) apply. M is a calendar-year taxpayer and claims an ACRS deduction with respect to the buses on its return for taxable year 1981. On July 1, 1982, UMTA approves XTA's grant application, thus enabling XTA to purchase an additional 80 buses. Because 80 percent of the original 20 buses are deemed to have been financed by UMTA beginning on July 1, 1982, the safe harbor lease terminates with respect to an undivided 80 percent interest in the 20 buses. If XTA would be considered the owner of the buses without regard to section 168(f)(8), the termination will result in a deemed sale of an undivided 80 percent interest in

the 20 buses by M to XTA. The amount realized by M on the sale will include a proportionate part of the outstanding amount of M's debt plus the sum of any other consideration received by M. M will realize gain or loss, depending upon its basis, with applicable section 1245 recapture. However, XTA may lease the 20 percent interest in the 80 new buses it purchased in 1982 which is deemed to have been financed with non-Federal funds.

Example (3). The facts are the same as in example (2) except that the grant approved by UMTA is used to purchase and renovate a bus garage facility. Eighty percent of the original 20 buses are deemed to have been financed by UMTA beginning on July 1, 1982. The lease would still terminate with respect to an undivided 80 percent interest in the vehicles. XTA cannot lease the garage facility under 168(f)(8) because it does not constitute a qualified mass commuting vehicle.

Example (4). The facts are the same as in example (2) except that on December 15, 1981, XTA sells and leases back only a 20 percent interest in the 20 buses acquired in July 1981. When the UMTA grant is later approved, the lease will not terminate with respect to any portion of the 20 buses. In addition, XTA may lease the 20 percent interest in the 80 new buses purchased in 1982 and deemed to have been financed with non-Federal funds.

Example (5). On August 1, 1982, UMTA approves a grant for a major 5-year capital expenditure program to improve city Y's rapid rail transit system. None of the funds relating to this UMTA-funded project, provided either by UMTA or by city Y, will be used to purchase qualified mass commuting vehicles. Instead, a number of rapid rail cars and buses will be purchased entirely with funds provided with a combination of grants by the State and city governments and of proceeds from an issue of tax-exempt obligations described in section 103(a). Because none of the rapid rail cars and buses are included as part of the UMTA-funded project, no part of them is deemed to be financed by UMTA. If at least 5 percent of the cost of the qualified mass commuting vehicles is provided by tax exempt obligations under section 103(a), the vehicles will be qualified leased property in their entirety.

Example (6). City Z has a mass transit agency (ZTA) which purchases on July 1, 1982, 10 buses for which it pays \$1,000,000, 95 percent of which is derived from grants from city Z and 5 percent from tax exempt obligations described in section 103(a). The buses have a useful life within the meaning of § 1.167(a)-1(b) of 10 years and their salvage value is zero. On July 1, 1983, ZTA sells these buses to corporation P and leases them back in a transaction which the parties elect to have treated as a lease under section 168(f)(8). At the time of the sale and leaseback, ZTA's adjusted basis in the 10 buses under section 1016(a)(3) and § 1.1016-4 is \$900,000 (\$1,000,000 cost less \$100,000 of depreciation sustained, computed on a straight-line basis). Before the transaction will qualify under section 168(f)(8) and § 5c.168(f)(8)-6(b)(3)(ii), P's adjusted basis in the vehicles may not exceed ZTA's basis, or \$900,000.

Reg. § 5c.168(f)(8)-6(b)(3)

graph (5) may be illustrated by the following examples:

Example (1). On July 1, 1981, X Corp. contracts to have a manufacturing facility constructed for use in its business. Construction of the facility is completed on July 1, 1982, and the facility is deemed to be placed in service as of that date under § 5c.168(f)(8)-6(b)(3)(i). The facility is comprised of a mixture of new section 38 property and buildings that do not qualify as section 38 property. On August 1, 1982, X sells the new section 38 property in the facility to Y and leases it back under an agreement in which the parties elect to be treated as a lease described in section 168(f)(8). Assuming that the other requirements of this paragraph are met, the new section 38 property contained in the facility will be qualified leased property. If it is later determined that property subject to the section 168(f)(8) lease is not new section 38 property (and thus not qualified leased property) the safe harbor protection will be lost only as to that property.

Example (2). X Corp. acquires a certain piece of equipment (which is new section 38 property) for use in its business. Within 3 months, X sells a 70 percent undivided interest in the property to lessor A and a 10 percent undivided interest in the property to lessor B and leases both portions back under separate section 168(f)(8) leases. The investment tax credit and ACRS deductions associated with the property will be divided among X, lessor A, and lessor B, on a basis of 20 percent, 70 percent, and 10 percent, respectively.

[Sec. 168] § 5c.168(f)(8)-7 (T.D. 770, filed 10-20-81; amended by T.D. 778, filed 11-10-81.) Reporting of income, deductions and investment tax credit; at risk rules.

(a) **In general.** The fact that the lessor's payments of interest and principal and the lessee's rental payments under the lease are not equal in amount will not prevent the lease from qualifying under section 168(f)(8). However, see paragraph (b) for special requirements in sale and leaseback transactions. In determining the parties' income, deductions, and investment tax credit under the lease, the rules in paragraphs (c) through (g) of this section shall apply regardless of the overall method of accounting otherwise used by the parties.

(b) **Requirements for sale and leaseback transaction.** If the property leased is financed by the lessee (or a related party of the lessee) in a sale and leaseback transaction, the lease will not qualify under section 168(f)(8) unless—

(1) The term of the lessor's purchase money obligation is coterminous with the term of the lease, and

(2) The lessor's obligation bears a reasonable rate of interest. For this purpose, a rate of interest shall be presumed to be reasonable if, on the date the agreement is executed, it is within 3 percentage points of (i) the rate in effect under section 661, the prime rate in effect at any local commercial bank, or the most recent applicable rate determined by the Secretary under § 1.229-6 (e) (3) (i), or (ii) an arm's-length rate as defined in § 1.482-3, or (iii) any rate between any two of the rates described by subdivisions (i) and (ii) of this paragraph (b) (2).

7-1-82 Interest deductions and income—

(1) **Deductibility from income.** In determining the amount of interest that a lessor may deduct in a taxable year with respect to its purchase money obligation given to the lessee or to a third party creditor, the lessor may not claim a deduction that would be—

(i) Greater than a deduction that would be allowed to an accrual basis taxpayer under a level-payment mortgage, amortized over a period equal to the term of the lessor's obligation, or

(ii) Less than a deduction that would be allowed to an accrual basis taxpayer under a straight line amortization of the principal over the term of the lessor's obligation.

In cases in which the property is not financed by the lessee or a party related to the lessee, the computation of the interest deduction may take into account fluctuations in the interest rate which are dependent on adjustments in the prime rate or events outside the control of the lessor and the third party creditor.

(2) **Includibility in income.** The lessee shall include interest on the lessor's purchase money obligation in income at the same time and in the same amount as the lessor's interest deductions, as determined under paragraph (c)(1).

(d) **Rental income and deductions—(1) Deductibility from income.** The amount of the lessee's rent deduction under a section 168(f)(8) lease with respect to any taxable year shall be a pro rata portion of the aggregate amount required to be paid by the lessee to the lessor under the terms of the lease agreement. If the lessee is required to purchase the leased property at the end of the lease term, or if the lessor has an option to sell the property to the lessee, rent shall not include the lesser of—

(A) The amount of the lessee's purchase obligation, whether fixed by the terms of the lease agreement or conditioned on the exercise of the lessor's option to sell the property to the lessee, or

(B) The fair market value of the property at the end of the lease term determined at the beginning of the lease term.

For this purpose, fair market value shall be determined without taking into account any increase or decrease for inflation or deflation during the lease term. Rent deductions may be adjusted pursuant to the terms of the lease agreement to account for fluctuations which are dependent on events outside the control of the lessor and lessee, such as a change in the interest rate charged by a third party creditor of the lessor on the debt incurred to finance the purchase of the leased property.

(2) **Includibility in income.** The lessor shall include rent in income as follows:

(A) In the case of prepayments of rent, the earlier of when such rent is paid by the lessee or accrued under the lease, and

(B) In the case of other rent, at the same time and in the same amount as the lessee's rent deductions, as determined under paragraph (d)(1).

(e) **ACRS deductions.** The deductions that the lessor is allowed under section 168(a) with respect to property subject to a section 168(f)(8) lease shall be determined without regard to the limitation in section 168(f)(10)(B)(iii). The recovery class of

qualified leased property in the hands of the lessor shall be determined by the character of the property in the hands of the owner of the property without regard to section 168(f)(8). Any elections under section 168(b)(3) by the lessor with respect to the class of recovery property to which the qualified leased property is assigned shall apply to the leased property. However, with respect to RRB replacement property, the transitional rule of section 168(f)(3) shall be inapplicable to the lessor.

(f) **At risk requirements.** The amount of the investment credit and ACRS deductions that a lessor shall be allowed with respect to the leased property shall be limited to the extent the at risk rules under the investment tax credit provisions and section 465 apply to the lessee or to the lessor. In determining the amount the lessee would be at risk, the at risk rules will be applied as if the lessee had not elected to have section 168(f)(8) apply. Thus, for example, if, without regard to section 168(f)(8), an individual lessee would be treated as the owner of the leased property for Federal tax law purposes, the lessor under a section 168(f)(8) lease would be allowed ACRS deductions or investment tax credits with respect to the property only to the extent that the lessee may have claimed them had the parties not elected treatment under section 168(f)(8). In addition, the ACRS deductions and investment tax credits that a lessor is allowed with respect to the property are further limited to the extent that the at risk rules apply to the lessor as owner of the property under the section 168(f)(8) lease. If the lessor and the lessee are subject to the at risk rules, the lessor is allowed only the lesser of the ACRS deductions and investment tax credits allowable to the lessor and the lessee.

(g) **Limitation on section 46(d) amount.** If in a sale and leaseback transaction the lessor elects pursuant to section 46(d) to treat the lessee (which is the user of the property) as having acquired the property for purposes of claiming the investment tax credit, the lessee shall be treated as acquiring the property for an amount equal to the basis of the property to the lessor (and not for an amount equal to its fair market value). The investment tax credit allowable to the lessee is further limited to the extent the at risk rules apply to either the lessor or to the lessee. See paragraph (f) of this section.

(h) **Examples.** The application of the provisions of this section may be illustrated by the following examples.

Example (1). Y, a qualified lessor, acquires a piece of equipment which is qualified leased property for \$1 million and leases it to X under a lease which the parties properly elect to have characterized as a lease described in section 168(f)(8). The equipment has a 10-year economic life and falls within the 5-year ACRS class. Under the terms of the lease, X, the lessee, is obligated to pay Y nine annual payments of \$10,000 and, at the end of the lease term, Y has the option to sell the property to X for \$2,100,000. Under § 5c.168(f)(8)-7 (d), the aggregate payments required to be made by X under the lease are \$2,200,000 (\$90,000 rent plus \$2,100,000 option price)

Reg. § 5c.168(f)(8)-7(h)

and are treated as rent to Y (less a reasonable estimate for the residual value of the property) and taxable as such. Assuming a reasonable estimate of the residual value is zero, the full \$2,250,000 will be treated as rent, and under § 5c.168(f)(8)-7(d), such amount is deductible by X and includible in Y's income ratably over the term of the lease, i.e., at a rate of \$250,000 per year (\$2,250,000 divided by 9).

Example (2). The facts are the same as in example (1) except that under the terms of the lease X is obligated to make rental payments of \$100,000 for each of the first 5 years of the lease and \$300,000 for each of the 4 remaining years under the lease. Further, X has an option to purchase the equipment for \$1.00 at the end of the lease term. Pursuant to § 5c.168(f)(8)-7(d), X's aggregate rental payments are deductible by X and are includible in Y's income ratably over the term of the lease. Thus, the annual rental payments are deemed to be \$185,000 per year (\$1,700,000 divided by 9).

Comp [Sec. 168] § 5c.168(f)(8)-8 (T.D. 7791, filed 10-20-81; amended by T.D. 7795, filed 11-16-81 and T.D. 7800, filed 12-28-81.) Loss of section 168(f)(8) protection; recapture.

(a) *In general.* Upon the occurrence of an event that causes an agreement to cease to be characterized as a lease under section 168(f)(8), the characterization of the lessor and lessee shall be determined without regard to section 168(f)(8).

(b) *Events which cause an agreement to cease to be characterized as a lease.* A disqualifying event shall cause an agreement to cease to be treated as a lease under section 168(f)(8) as of the date of the disqualifying event. A disqualifying event shall include the following:

(1) The lessor sells or assigns its interest in the lease or in the qualified leased property in a taxable transaction.

(2) The failure by the lessor to file a copy of the information return (or applicable statement) with its income tax return as required in § 5c.168(f)(8)-2(a)(3)(iii).

(3) The lessee (or any transferee of the lessee's interest) sells or assigns its interest in the lease or in the qualified leased property in a transaction not described in § 5c.168(f)(8)-2(a)(6) and the transferee fails to execute, within the prescribed time, the consent described in § 5c.168(f)(8)-2(a)(5), or either the lessor or the transferee fail to file statements with their income tax returns as required by that paragraph.

(4) The property ceases to be section 28 property as defined in § 1.45-1 in the hands of the lessor or lessee, for example, due to its conversion to personal use or to use predominantly outside the United States, or to use by a lessee exempt from Federal income taxation.

(5) The lessor ceases to be a qualified lessor by becoming an electing small business corporation or a personal holding company (within the meaning of section 542(a)).

(6) The minimum investment of the lessor becomes less than 10 percent of the adjusted basis of the qualified leased property as described in section 168(f)(8)(B)(ii) and § 5c.168(f)(8)-4.

(7) The lease terminates.

(8) The property becomes subject to more than one lease for which an election is made under section 168(f)(8).

(9) Retirements and casualties. [Reserved]

(10) The property is transferred in a bankruptcy or similar proceeding and the lessor fails either to furnish the appropriate notification or to file a statement with its income tax return as required by § 5c.168(f)(8)-2(a)(6).

(11) The property is transferred in a bankruptcy or similar proceeding and not all lenders with perfected and timely interests in the property specifically exclude or release the Federal income tax ownership of the property as required under § 5c.168(f)(8)-2(a)(6)(iii).

(12) The property is transferred subsequent to a bankruptcy or similar proceeding and the lessor fails to furnish notice to the transferee prior to the transfer or fails to file a statement with its income tax return, and either the lessor fails to secure the transferee's consent or the lessor or the transferee fail to file statements with their returns.

(13) The property is leased under the provisions of section 168(f)(8)(D)(iii) and § 5c.168(f)(8)-6(b)(3) and ceases to be a qualified mass commuting vehicle.

(14) The failure by the lessor to file the required information return described in § 5c.168(f)(8)-2(a)(3)(ii) by January 31, 1982, unless the lessee files such return by January 31, 1982.

(c) *Recapture.* The required amount of recapture of the investment tax credit and of accelerated cost recovery deductions after a disqualifying event shall be determined under sections 47 and 1245, respectively.

(d) *Consequences of loss of safe harbor protection.* The tax consequences of a disqualifying event depend upon the characterization of the parties without regard to section 168(f)(8). If the lessee would be the owner of the property without regard to section 168(f)(8), the disqualifying event will be deemed to be a sale of the qualified leased property by the lessor to the lessee. The amount realized by the lessor on the sale will include the outstanding amount (if any) of the lessor's debt on the property plus the sum of any other consideration received by the lessor. A disposition that results from a disqualifying event shall not be treated as an installment sale under section 453.

(e) *Examples.* The application of the provisions of this section may be illustrated by the following examples:

Example (1). M Corp. and N Corp. enter into a sale and leaseback transaction in which the leaseback agreement is characterized as a lease under section 168(f)(8) and M is treated as the lessor. In the second year of the lease, M becomes an electing small business corporation under subchapter S. The agreement ceases to be treated as a lease under section 168(f)(8) as of the date of the subchapter S election. Without respect to section 168(f)(8), N would be considered the owner of the property. The disqualification of M will be treated as a sale of the qualified leased property from M to N for the amount of the purchase money debt on the property then outstanding. M will realize gain or loss, depending

upon its tax credit will acquire to the same. The property property t

Example
P Corp. (characterized 168(f)(8). has no op chase the if P would property upon the erty will the amou outstandi

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6-1-82

(8) The property becomes subject to more than one lease for which an election is made under section 168(f)(8).

(9) Retirements and casualties. [Reserved]

(10) The property is transferred in a bankruptcy or similar proceeding and the lessor fails either to furnish the appropriate notification or to file a statement with its income tax return as required by § 5c.168(f)(8)-2(a)(6).

(11) The property is transferred in a bankruptcy or similar proceeding and the lessor fails to furnish the appropriate notification or to file a statement with its income tax return as required by § 5c.168(f)(8)-2(a)(6)(iii).

(12) The property is transferred subsequent to a bankruptcy or similar proceeding and the lessor fails to furnish notice to transferee prior to the transfer or fails to file a statement with its income tax return, and either the lessor fails to secure transferee's consent or the lessor or transferee fail to file statements with their returns.

(13) The property is leased under the provisions of section 168(f)(8)(D)(iii) and 168(f)(8)-6(b)(3) and ceases to be a qualified mass commuting vehicle.

(14) The failure by the lessor to file the required information return described in § 5c.168(f)(8)-2(a)(8)(i) after January 31, unless the lessee files such return by January 31, 1982.

c) **Recapture.** The required amount of recapture of the investment tax credit of accelerated cost recovery deductions in a disqualifying event shall be determined under sections 47 and 1245, respectively.

1) **Consequences of loss of safe harbor election.** The tax consequences of a disqualifying event depend upon the characterization of the parties without regard to section 168(f)(8). If the lessee would be treated as the owner of the property without regard to section 168(f)(8), the disqualifying event shall be deemed to be a sale of the qualified leased property by the lessor to the lessee. The amount realized by the lessor on the sale shall include the outstanding amount (including any debt on the property) of the lessor's debt on the property plus the sum of any other consideration received by the lessor. A disposition that results from a disqualifying event shall be treated as an installment sale under section 453.

Examples. The application of the provisions of this section may be illustrated by the following examples:

Example (1). M Corp. and N Corp. enter into a sale and leaseback transaction in which the leaseback agreement is characterized as a lease under section 168(f)(8). M is treated as the lessor. In the second year of the lease, M becomes an electing small business corporation under subchapter S. The agreement cannot be treated as a lease under section 168(f)(8) as of the date of the subchapter S election. Without regard to section 168(f)(8), N would be deemed the owner of the property. The disposition of M will be treated as a sale of the qualified leased property from M to N for the amount of the purchase price plus the amount of the purchase money debt on the property then outstanding. M will realize gain or loss depending

Temporary Rules

(Regs.) 10,225

6-1-82

upon its basis, with applicable investment tax credit and section 1245 recapture. N will acquire the property with a basis equal to the amount of the outstanding obligation. The property will not be used section 28 property to N under § 1.45-3(a)(2).

Example (2). Q Corp. (as lessor) and P Corp. (as lessee) enter into a lease that is characterized as a lease under section 168(f)(8). The lease has a 6-year term. P has no option to renew the lease or to purchase the property. At the end of 6 years, if P would be considered the owner of the property without regard to section 168(f)(8), upon the termination of the lease the property will be deemed to be sold by Q to P for the amount of the purchase money debt outstanding with respect to the property.

Q-1 [Sec. 168] § 5c.168(f)(8)-9 (T.D. 7791, filed 10-20-81.) Pass-through leases—transfer of only the investment tax credit to a party other than the ultimate user of the property. [Reserved]

Q-2 [Sec. 168] § 5c.168(f)(8)-10 (T.D. 7791, filed 10-20-81.) Lease between related parties. [Reserved]

Q-3 [Sec. 168] § 5c.168(f)(8)-11 (T.D. 7791, filed 10-20-81.) Consolidated returns. [Reserved]

EXHIBIT "O"

TBT REDUCTION PRICES

Gondolas	\$ 785
Tank	1103
XM Box	324
Bulk head	1454