

11-10  
NETC RECORDED  
Rec. No 15434

LAW OFFICES  
**ALVORD AND ALVORD**

200 WORLD CENTER BUILDING  
918 SIXTEENTH STREET, N.W.  
WASHINGTON, D.C.  
20006-2973

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

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

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

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

CABLE ADDRESS  
"ALVORD"

TELEPHONE  
AREA CODE 202  
393-2266

TELEX  
440367 A AND A

1 5434

REGISTRATION NO. FILE 1987

DEC 28 1987  
December 28, 1987  
INTERSTATE COMMERCE COMMISSION

Record 3rd  
7-383 AUG 2  
3rd

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

No.  
Date DEC 29 1987  
10.00  
Washington, D.C.

Dear Ms. McGee:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. §11303(a) are two fully executed copies of an Equipment Lease dated as of December 1, 1987, a primary document as defined in the Commission's Rules for the Recordation of Documents.

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

- Lessor: Wilmington Trust Company, as Owner Trustee  
Rodney Square North  
Wilmington, Delaware 19890
- Lessee: CSX Transportation, Inc.  
100 North Charles Street  
Baltimore, Maryland 21201

Dec 21 12 44 PM '87  
MOTOR CARRIER UNIT  
100 OF 150

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

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

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

Counterpart - CT. Kappler

Ms Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
December 28, 1987  
Page Two

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

Equipment Lease dated as of December 1, 1987 between Wilmington Trust Company, as Owner Trustee, Lessor, and CSX Transportation, Inc., as Lessee, covering 785 100-ton, 52-foot gondolas marked and numbered in the series B&O 371000 - 371799, also marked or to be marked CSXT 705383 - 706167.

Very truly yours,

  
Charles T. Kappler

Enclosures

SCHEDULE A  
to Equipment Lease

DESCRIPTION OF ITEMS OF EQUIPMENT

Description and Mark and Number of Items of Equipment:	785 100-ton, 52-foot Gondolas, marked and numbered B&O 371000 to 371799, both inclusive (excepting B&O 371080, 371140, 371143, 371182, 371359, 371360, 371425, 371,469, 371486, 371552, 371623, 371641, 371653, 371707 and 371793), and also marked or to be marked CSXT 705383 to 706167, both inclusive.
Purchase Price to Lessor of Equipment:	\$ 7,720 per Item (\$ 6,060,200 for 785 Items)
Estimated Reconstruction Cost to Lessor of Equipment:	\$10,000 per Item (\$ 7,850,000 for 785 Items)
Estimated Total Cost to Lessor of Equipment:	\$17,720 per Item (\$13,910,200 for 785 Items)
Outside Delivery Date:	December 28, 1987

(CSX Transportation, Inc.)

Interstate Commerce Commission  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

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

Dear Sir

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/29/87 at 12:50PM, and assigned recordation number(s). 6563-G, 15433 & 15434

Sincerely yours,

*Narita L. McGee*  
Secretary

Enclosure(s)

REGISTRATION NO. 1 5434 FILED 1425

DEC 29 1987

INTERSTATE COMMERCE COMMISSION

---

---

EQUIPMENT LEASE

Dated as of December 1, 1987

Between

WILMINGTON TRUST COMPANY,

Not in its Individual Capacity  
but Solely as Owner Trustee,

LESSOR

And

CSX TRANSPORTATION, INC.,

LESSEE

---

---

To the extent, if any, that this Lease Agreement constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Lease Agreement may be created through the transfer or possession of any counterpart other than the original executed counterpart. This is not the original counterpart.

(CSX Transportation, Inc.)  
(785 100-Ton, 52' Gondolas)

TABLE OF CONTENTS

<u>Section</u>	<u>Heading</u>	<u>Page</u>
Parties . . . . .		1
1.	Lease and Delivery of Equipment . . . . .	2
1.1.	Intent to Lease and Hire . . . . .	2
1.2.	Inspection and Acceptance . . . . .	2
1.3.	Initial Certificate of Acceptance . . . . .	2
1.4.	Subsequent Certificate of Acceptance . . . . .	3
1.5.	Substitute Equipment . . . . .	3
2.	Rentals and Payment Dates . . . . .	3
2.1.	Rent for Equipment . . . . .	3
2.2.	Rent Payment Dates . . . . .	4
2.3.	Adjustment of Rentals . . . . .	4
2.4.	Place and Manner of Rent Payment . . . . .	6
2.5.	Net Lease . . . . .	7
3.	Term of the Lease . . . . .	8
4.	Ownership and Marking of Equipment . . . . .	8
4.1.	Retention of Title . . . . .	8
4.2.	Duty to Number and Mark Equipment . . . . .	8
4.3.	Prohibition Against Certain Designations . . . . .	9
5.	Disclaimer of Warranties . . . . .	9
6.	Lessee's General Indemnity . . . . .	10
6.1.	Scope of Indemnification . . . . .	10
6.2.	Payments . . . . .	14
6.3.	Interest on Overdue Amounts . . . . .	14
6.4.	Survival . . . . .	14
7.	Rules, Laws and Regulations . . . . .	15
8.	Use and Maintenance of Equipment . . . . .	15
9.	Liens on the Equipment . . . . .	16
10.	Filing . . . . .	17

<u>Section</u>	<u>Heading</u>	<u>Page</u>
11.	Insurance; Payment for Casualty Occurrence . . . . .	18
	11.1. Insurance . . . . .	18
	11.2. Duty of Lessee to Notify Lessor . . . . .	18
	11.3. Sum Payable for Casualty Loss . . . . .	19
	11.4. Rent Termination . . . . .	19
	11.5. Disposition of Equipment . . . . .	19
	11.6. Casualty Value . . . . .	19
	11.7. Risk of Loss . . . . .	20
	11.8. Eminent Domain . . . . .	20
12.	Annual Reports . . . . .	20
	12.1. Duty of Lessee to Furnish . . . . .	20
	12.2. Inspection Rights . . . . .	20
13.	Return of Equipment Upon Expiration of Term . . . . .	21
14.	Default . . . . .	22
	14.1. Lease Events of Default . . . . .	22
	14.2. Remedies . . . . .	24
	14.3. Cumulative Remedies . . . . .	26
	14.4. Lessor's Failure to Exercise Rights . . . . .	26
	14.5. Notice of Lease Event of Default . . . . .	26
15.	Return of Equipment Upon Default . . . . .	26
	15.1. Lessee's Duty to Return . . . . .	26
	15.2. Specific Performance . . . . .	27
	15.3. Lessor Appointed Lessee's Agent . . . . .	28
16.	Assignments by Lessor . . . . .	28
17.	Assignments by Lessee; Use and Possession . . . . .	29
	17.1. Lessee's Rights to the Equipment . . . . .	29
	17.2. Use and Possession on Lines Other Than Lessee's Own . . . . .	30
	17.3. Merger, Consolidation or Acquisition of Lessee . . . . .	30
18.	Purchase Option; Renewal Option . . . . .	31
	18.1. Right of First Refusal . . . . .	31
	18.2. Renewal Option . . . . .	31
	18.3. Delivery of Equipment . . . . .	32
	18.4. Determination of Fair Rental Value or Fair Market Value . . . . .	33

<u>Section</u>	<u>Heading</u>	<u>Page</u>
19.	Interest on Overdue Rentals and Amount Paid by Lessor . . . . .	34
20.	Miscellaneous . . . . .	34
	20.1. Limitations of Liability . . . . .	34
	20.2. Notices . . . . .	36
	20.3. Right of Lessor to Perform . . . . .	36
	20.4. Execution in Counterparts . . . . .	37
	20.5. Law Governing . . . . .	37
	20.6. Headings and Table of Contents . . . . .	37
	20.7. Severability . . . . .	37

Attachments to Equipment Lease:

- Schedule A -- Description of Items of Equipment
- Schedule B-1 -- Initial Certificate of Acceptance
- Schedule B-2 -- Subsequent Certificate of Acceptance
- Schedule C -- Schedule of Casualty Value

## EQUIPMENT LEASE

DEC 29 1987

INTERSTATE COMMERCE COMMISSION

THIS EQUIPMENT LEASE dated as of December 1, 1987 is between WILMINGTON TRUST COMPANY, a Delaware banking corporation, not in its individual capacity but solely as Owner Trustee under a Trust Agreement dated as of December 1, 1987 (as the same may be amended or modified and in effect from time to time, the "Trust Agreement") with the Owner Participant named below as trustor (the "Lessor") and CSX TRANSPORTATION, INC., a Virginia corporation (the "Lessee").

## R E C I T A L S:

A. The Lessor and GATX Leasing Corporation (the "Seller") have entered into a Hulk Purchase Agreement dated as of December 1, 1987 (as the same may be amended or modified and in effect from time to time, the "Hulk Purchase Agreement") providing for the sale of 785 used 100-ton, 52-foot gondolas described in Schedule A attached hereto and made a part hereof (the "Equipment" and individually an "Item" or "Item of Equipment") by the Seller to the Lessor for the Hulk Purchase Price specified therein. Upon delivery of each Item of Equipment and the acceptance of such Item of Equipment as provided in Section 1.2 hereof, the Lessor shall lease and let each such Item of Equipment to the Lessee and the Lessee shall hire such Item of Equipment from the Lessor for the rental and on and subject to the terms and conditions herein set forth. The Lessor and the Lessee have further entered into a Reconstruction Agreement dated as of December 1, 1987 (as the same may be amended or modified and in effect from time to time, the "Reconstruction Agreement") providing for the reconstruction by the Lessee as rebuilder (in such capacity the "Rebuilder") of the Equipment in accordance with the specifications contained in the Reconstruction Agreement and for the Reconstruction Price stated therein.

B. The Lessee and the Lessor have further entered into a Participation Agreement dated as of December 1, 1987 (as the same may be amended or modified and in effect from time to time, the "Participation Agreement") with State Farm Mutual Automobile Insurance Company (the "Owner Participant"), Mercantile-Safe Deposit and Trust Company (the "Indenture Trustee"), Aetna Life Insurance Company (the "Note Purchaser") and the Seller providing for the commitment of the Lessor to acquire the Equipment and reconstruct the same. Under the Participation Agreement,

the Note Purchaser commits to purchase secured notes of the Lessor (the "Notes") to be issued in two series in an aggregate principal amount equal to 80% of the Total Cost (as defined therein) of each Item of Equipment. The Participation Agreement provides that the Notes will be secured by an assignment of the Lessor's right, title and interest in and to the Hulk Purchase Agreement, the Reconstruction Agreement and this Lease and the rentals and certain other sums due and to become due hereunder and thereunder and in and to the Equipment pursuant to a Trust Indenture and Security Agreement dated as of December 1, 1987 (as the same may be amended or modified and in effect from time to time, the "Indenture") from the Lessor to the Indenture Trustee.

#### SECTION 1. LEASE AND DELIVERY OF EQUIPMENT.

1.1. Intent to Lease and Hire. Upon delivery of each Item of Equipment and acceptance of such Item of Equipment as provided in Section 1.2 hereof, the Lessee shall lease and let such Item of Equipment from the Lessor for the rental and on and subject to the terms and conditions herein set forth.

1.2. Inspection and Acceptance. (a) The Lessor will cause each Item of Equipment to be tendered to the Lessee. Upon such tender, the Lessee will cause an authorized representative designated by the Lessee, to accept delivery of such Item of Equipment and to execute and deliver to the Lessor an initial certificate of acceptance (the "Initial Certificate of Acceptance") in the form attached hereto as Schedule B-1 with respect to such Item of Equipment, (which may be a master Certificate covering all Items of Equipment leased hereunder); (b) the Lessor will cause the Rebuilder to tender each rebuilt Item of Equipment to the Lessee. Upon such tender, the Lessee will cause an inspector designated and authorized by the Lessee to inspect the same, and, if such rebuilt Item of Equipment is found to be in good order, to accept delivery of such Item of Equipment and to execute and deliver to the Lessor a subsequent certificate of acceptance (the "Subsequent Certificate of Acceptance") in the form attached hereto as Schedule B-2 with respect to such Rebuilt Item of Equipment (which may be a master Certificate covering all rebuilt Items of Equipment leased hereunder);

1.3. Initial Certificate of Acceptance. The Lessee's execution and delivery of an Initial Certificate of Acceptance with respect to an Item of Equipment pursuant to

Section 1.2(a) hereof shall conclusively establish that, as between the Lessor and the Lessee, such Item of Equipment is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect with respect to design or manufacture, and that such Item of Equipment conforms to the requisites for inclusion under the terms and conditions of the Reconstruction Agreement.

1.4. Subsequent Certificate of Acceptance. The Lessee's execution and delivery of a Subsequent Certificate of Acceptance with respect to a rebuilt Item of Equipment pursuant to Section 1.2(b) hereof shall conclusively establish that, as between the Lessor and the Lessee, such rebuilt Item of Equipment is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and that such rebuilt Item of Equipment is in good order and condition and conforms to the specifications applicable thereto and to all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and to all standards recommended by the Association of American Railroads applicable to railroad equipment of the character of the Equipment. By execution and delivery of such Subsequent Certificate of Acceptance, the Lessee represents that it has no knowledge of any such defect.

1.5. Substitute Equipment. In the event that in the reasonable opinion of the Rebuilder any Item of Equipment shall be deemed inappropriate for reconstruction because of its condition or otherwise ("Inappropriate Equipment") the Rebuilder shall purchase from the Lessor each unit of designated Inappropriate Equipment and the Owner, in turn, shall purchase from the Rebuilder a gondola similar in type and character to the Inappropriate Equipment ("Substitute Equipment"), all as more fully provided for and described in the Reconstruction Agreement. Each unit of Substitute Equipment will be considered an Item of Equipment for the purposes of this Lease.

## SECTION 2. RENTALS AND PAYMENT DATES.

2.1. Rent for Equipment. The Lessee agrees to pay the Lessor the following rent for each Item of Equipment:

(a) Interim Rental. For each Item of Equipment for which settlement has been made on the First Closing Date (as such term is defined in the Participation

Agreement), an amount (the "Interim Rental") equal to 3.78480% of the Hulk Purchase Price thereof for the period, if any, from the date of delivery and acceptance of such Item to June 15, 1988 (the "Term Lease Commencement Date"); and

(b) Fixed Rental. Subject to the provisions of Section 2.3 hereof, the Lessee agrees to pay for each Item of Equipment twenty consecutive semiannual installments of fixed rental (the "Fixed Rental"), payable in arrears, each in an amount equal to 7.97670% of the Total Cost thereof.

(c) Supplemental Rental. The Lessee further agrees to pay to the Lessor, as supplemental rental (the "Supplemental Rental"), (x) any and all amounts which the Lessee assumes or agrees to pay to the Lessor or any other Person hereunder or under the Participation Agreement or any other Operative Agreement (as defined in the Participation Agreement) and (y) on or before the dates on which the same shall fall due under the Participation Agreement or the Indenture, amounts equal to each other payment required to be made by the Lessor, in its capacity as Owner Trustee, pursuant to the Participation Agreement or the Indenture, as the case may be. Supplemental Rental shall include, without limitation, any amounts of Make Whole Premium Amount (as defined in Section 2.9 of the Indenture) payable by Lessor under the Indenture.

2.2. Rent Payment Dates. The installment of Interim Rental for each Item of Equipment shall be due and payable on the Term Lease Commencement Date. The first installment of Fixed Rental for each Item of Equipment shall be due and payable on December 15, 1988 and the balance of said installments shall be payable on June 15 and December 15 of each year thereafter to and including June 15, 1998. If any of the rent payment dates is not a business day, the rent payment otherwise payable on such date shall be payable on the next succeeding business day. For purposes of this Lease, the term "business day" means calendar days, excluding Saturdays, Sundays and holidays on which banks in the States of Illinois, Delaware, Connecticut, Maryland or New York are authorized or required to close.

2.3. Adjustment of Rentals. In the event that (i) the First Closing Date shall occur on any date other than December 15, 1987, or the Second Closing Date shall occur on any date other than June 15, 1988, (ii) the number

of reconstructed Items of Equipment redelivered to the Lessor as Owner under the Reconstruction Agreement is fewer than 785, (iii) the transaction costs referred to in Section 7 of the Participation Agreement exceed 1.0% of the Total Cost of the Equipment (as defined in Section 1 of the Participation Agreement), (iv) the ratio of the Hulk Purchase Price (as defined in Section 4 of the Hulk Purchase Agreement) to the Total Cost is other than 43.57%, (v) the interest rate on either series of the Notes (notwithstanding the rates therefor as stated in Section 2.2. of the Participation Agreement) is other than 10.5%, or (vi) the debt component of the Total Cost of the Equipment is other than 80%; then the Lessee and the Lessor agree that the Fixed Rentals shall be adjusted, subject to the last paragraph of this Section 2.3, as to all Items to such amount as shall, in the reasonable opinion of the Owner Participant, cause the Owner Participant's anticipated constant nominal pre-tax yield and aggregate after-tax cash flow utilizing the multiple investment sinking fund method of analysis (expressed as a percentage of total costs) (the "Net Economic Return") (computed on the same assumptions, including tax rates, as were utilized by the Owner Participant in originally evaluating this transaction, with appropriate adjustments to such assumptions resulting from the occurrence of an event specified above) to equal the Net Economic Return that would have been realized by the Owner Participant if none of the conditions specified in clauses (i) through (vi) had not occurred, and the Casualty Values (as defined in Section 11.6 hereof) shall similarly be adjusted, subject to the last paragraph of this Section 2.3, in amounts reasonably determined by the Owner Participant.

In determining the amount of each installment of Fixed Rental payable pursuant to Section 2.1(b) hereof, the Lessor and the Lessee have assumed that on each Closing Date, the Note Purchaser will purchase the maximum principal amount of the Notes contemplated to be purchased thereby in the Participation Agreement so that, pursuant to Section 2.4 of the Participation Agreement, the Lessor will not be required to issue Notes of either series at a rate higher than the respective rate per annum specified therein with respect to such series. In the event that pursuant to Section 2.4 of the Participation Agreement, the Note Purchaser shall fail to purchase the Notes to be issued to it on the respective Closing Dates and the Lessor shall be required to issue Notes of either series at a rate in excess of the applicable specified rates as aforesaid in the manner provided in said Section 2.4, then the Lessee and the Lessor agree that the Fixed Rental shall be increased to an amount

as shall, in the reasonable opinion of the Owner Participant, cause the Owner Participant's Net Economic Return (computed on the same assumptions, including tax rates, as were utilized by the Owner Participant in originally evaluating this transaction, with appropriate adjustments to such assumptions resulting from the occurrence of an event specified in this or the preceding paragraph) to equal the Net Economic Return that would have been realized by the Owner Participant if the Note Purchaser had purchased the Notes of each series on the applicable Closing Date as so contemplated, and the Casualty Values shall similarly be adjusted in amounts reasonably determined by the Lessor.

In addition to whatever adjustments may be made pursuant to the preceding two paragraphs, if on the Second Closing Date the average rate on three, seven and ten year Treasury Notes or such date (the "Second Closing Date Rate") is different from the average rate on the three, seven and ten year Treasury Notes as was the case on November 9, 1987, then the Fixed Rentals shall be adjusted, subject to the last paragraph of this Section 2.3, as to all Items to such amount as shall, in the reasonable opinion of the Owner Participant, cause the Owner Participant's constant nominal pre-tax yield to be the greater of (i) the Second Closing Date Rate plus 5.89%, or (ii) the Second Closing Date Rate multiplied by 1.69704, but no such adjustment shall operate to decrease Owner Participant's aggregate after-tax cash flow (as a percentage of Total Cost).

Anything in this Lease to the contrary notwithstanding, (i) the amounts payable as installments of Fixed Rental hereunder with respect to the Equipment shall in no event be reduced below amounts necessary to discharge the Lessor's obligation to make the respective payments of the principal of and/or interest on the Notes due and payable on the respective dates on which such payments of Fixed Rental are payable, all as provided in the Notes and the Indenture, and (ii) the Casualty Value (as defined in Section 11.6 hereof) with respect to the Equipment shall in no event be reduced below the amount necessary to pay in full the entire outstanding principal amount of and interest and premium, if any, on the Notes and all other sums which would be payable prior thereto or on a parity therewith as if Section 5.7 of the Indenture were applicable at the time of such payment. Nothing in this paragraph guarantees the payment of the Notes or any interest accrued thereon.

2.4. Place and Manner of Rent Payment. The payments to be made by the Lessee under this Lease shall, so

long as the Indenture shall be in effect, be made as therein provided, and otherwise shall be paid to the Lessor by wire or electronic funds transfer to the principal office of the Lessor at the address thereof provided for payments in Section 20.2 hereof. The Lessee agrees that it will make payments due hereunder by wire or electronic funds transfer at the opening of business on the due date of such payment of Federal or otherwise immediately available funds to the party to whom such payment is to be made.

2.5. Net Lease. This Lease is a net lease and the Lessee's obligation to pay all Interim Rental and Fixed Rental and other amounts payable hereunder shall be absolute and unconditional under any and all circumstances and, without limiting the generality of the foregoing, the Lessee shall not be entitled to any abatement of rent or reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise or against the Indenture Trustee as assignee of the Lessor pursuant to Section 16 hereof; nor except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessee to the Lessor be otherwise affected, by reason of any defect in or damage to or loss or destruction of all or any of the Equipment from whatsoever cause, the taking or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of Lessee's use of the Equipment, the interference with such use by any Person (as defined in the Participation Agreement), the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until, pursuant to Section 13 hereof, the Equipment has been returned to the possession of the Lessor (for all purposes of this Lease any Item of Equipment shall not be deemed to have been returned to the Lessor's possession until all of the Lessee's obligations with respect to the return, transportation and storage thereof have been performed). To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Items of Equipment

except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor or the Indenture Trustee as its assignee pursuant to Section 16 hereof for any reason whatsoever.

### SECTION 3. TERM OF THE LEASE.

The term of this Lease as to each Item of Equipment shall begin on the date of the delivery to and acceptance by the Lessee of such Item of Equipment and, subject to the provisions of Sections 11, 14 and 18 hereof, shall terminate on June 15, 1998.

### SECTION 4. OWNERSHIP AND MARKING OF EQUIPMENT.

4.1. Retention of Title. The Lessor, as between the Lessor and the Lessee, shall and hereby does retain full legal title to the Equipment notwithstanding the delivery thereof to and possession and use thereof by the Lessee or the Rebuilder as herein contemplated.

4.2. Duty to Number and Mark Equipment. The Lessee will cause each Item of Equipment to be kept numbered with its road number as set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height as follows:

"Owned by a Bank or Trust Company and  
Subject to a Security Agreement Filed with  
the Interstate Commerce Commission."

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease and the rights of the Indenture Trustee, as assignee under Section 16 hereof, under the Indenture. The Lessee will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced, obliterated or destroyed. The Lessee will not change the road number of any Item of Equipment except with the consent of the Lessor and in accordance with a statement of new road

numbers to be substituted therefor, which consent and statement previously shall have been delivered to the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited. The covenants in this Section shall continue in full force and effect notwithstanding that possession of the Items of Equipment is transferred to the Rebuilder as contemplated by Section 17.2 hereof and by the Reconstruction Agreement.

4.3. Prohibition Against Certain Designations.

Except as above provided, the Lessee will not allow the name of any Person to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its Affiliates (as defined in Section 6.1 hereof) on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee to use the Equipment under this Lease.

SECTION 5. DISCLAIMER OF WARRANTIES.

THE LESSOR LEASES THE EQUIPMENT "AS-IS", IN WHATEVER CONDITION IT MAY BE IN, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, BY THE LESSOR, AND THE LESSOR AND THE INDENTURE TRUSTEE AS ITS ASSIGNEE PURSUANT TO SECTION 16 HEREOF EXPRESSLY DISCLAIM ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT, (B) THE LESSOR'S TITLE THERETO, (C) THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, (D) THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT, OR (E) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE INDENTURE TRUSTEE, ON THE ONE HAND, AND THE LESSEE, ON THE OTHER HAND, ARE TO BE BORNE BY THE LESSEE. The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against any manufacturers or contractors; provided, however, that if at any time a Lease Event of Default (as such term is defined in Section 14 hereof) shall have occurred and be continuing, the Lessor may assert and

enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other Person claiming through the Lessee with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Item of Equipment or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Item of Equipment or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Item of Equipment.

#### SECTION 6. LESSEE'S GENERAL INDEMNITY.

6.1. Scope of Indemnification. The Lessee hereby agrees, whether or not any of the transactions contemplated hereby shall be consummated, to indemnify and hold harmless each of Wilmington Trust Company, in its individual capacity and as Owner Trustee, the Owner Participant, the Indenture Trustee, the Note Purchaser, each holder from time to time of a Note, the Trust Estate (as defined in the Participation Agreement), the estate created under the Indenture and the respective successors and permitted assigns of the foregoing (the "Indemnified Parties") from and against, on a net after-tax basis as provided mutatis mutandis in Section 8(c) of the Participation Agreement, any and all liabilities, obligations, losses, damages, settlements, claims, actions, suits, penalties, costs and expenses (including, without limitation, reasonable legal and investigative fees and expenses) of whatsoever kind and nature, including but not limited to negligence, strict or absolute liability and liability in tort (any of the foregoing being called a "Loss") which may from time to time be imposed on, incurred by or asserted against any Indemnified Party in any way relating to or arising out of (a) any Operative Agreement (as such term is defined in the Participation Agreement) and/or the enforcement thereof, or (b) the purchase, sale, acceptance, rejection, ownership, delivery, financing (including the offer, issue, sale and delivery of the Notes), refinancing (if consented to by the Lessee), nondelivery, lease, sublease, assignment, registration, reregistration, rental, possession, use, presence, operation, condition, storage, preparation, installation, testing, manufacture, design, modification, alteration, maintenance, repair, overhaul, release, sale, return, transportation, transfer, abandonment or other

disposition of the Equipment or any part thereof (including, without limitation, latent and other defects, whether or not discoverable, and any claim for patent, trademark or copyright infringement). This Section 6 does not constitute a guarantee of the useful life or residual value of the Equipment or a guarantee that the Notes will be paid.

The indemnity set forth above shall not extend to any Loss with respect to such Indemnified Party (a) so long as no Lease Event of Default (as defined in Section 14 hereof) has occurred and is continuing to the extent such Loss is caused (i) by acts or events which occur after the Equipment is no longer part of the Trust Estate or subject to the Indenture or this Lease or (ii) if such Equipment remains a part of the Trust Estate or subject to the Indenture or this Lease, by acts or events which occur after possession of such Equipment has been delivered (other than pursuant to Section 15 hereof) to the Lessor, or such Equipment has been placed in storage beyond the initial 180-day storage period provided in Section 13 hereof, (b) which is a tax, whether or not Lessee is required to indemnify therefor pursuant to Section 8 of the Participation Agreement, (c) resulting from the willful misconduct or gross negligence of such Indemnified Party (or any successor, assign, employee, servant or agent thereof acting on behalf of such Indemnified Party unless on the part of the Lessee acting on behalf of such Indemnified Party) or resulting solely from any misrepresentation or violation or breach of or failure to comply with or perform any obligations of such Indemnified Party contained in the Operative Agreements, including the failure of the Lessor or the Owner Participant to discharge any liens attributable to it, (d) which is a cost or expense to the extent required to be paid by Owner Participant pursuant to the terms of Section 7 of the Participation Agreement, (e) resulting from any negligent or willful misappropriation or mishandling of funds by the Lessor or, with respect to any Indemnified Party other than the Owner Participant, the Indenture Trustee, (f) resulting from any disposition by such Indemnified Party of any of its interest in Equipment, the Trust Estate, the estate subject to the Indenture, the Operative Agreements or the Notes other than a disposition arising out of a Lease Event of Default or in connection with Section 11 of the Lease, or (g) resulting from an Indenture Event of Default (as defined in the Indenture) or an event which, with the passage of time or giving of notice or both, would constitute an Indenture Event of Default that does not also constitute a Lease Event of Default or an event which, with the passage of time or giving of notice or both, would constitute a Lease Event of Default. If any

Indemnified Party entitled to indemnity hereunder has knowledge of any liability hereby indemnified against, it shall give prompt written notice thereof to the Lessee but the failure of such Indemnified Party so to notify the Lessee shall not relieve the Lessee from any liability it may have to such Indemnified Party, except to the extent such failure to give notice shall prejudice the Lessee's ability to defend such action.

If written claim is made against any Indemnified Party for any Loss or upon the formal commencement against an Indemnified Party of any judicial, administrative or other proceeding involving one or more Losses, such Indemnified Party shall promptly, upon receiving written notice thereof, give notice of such commencement to the Lessee. The failure by such Indemnified Party so to notify the Lessee shall not discharge, diminish or relieve the Lessee of any liability for indemnification that it may have to such Indemnified Party hereunder, but any payment by the Lessee to an Indemnified Party pursuant to this Section 6 shall not be deemed to constitute a waiver or release of any right or remedy (including any remedy of damages) which the Lessee may have against such Indemnified Party, if, solely as a result of the failure by such Indemnified Party to give the Lessee notice in accordance with the first sentence of this paragraph, the Lessee is unable to contest the Loss indemnified against. The Lessee shall be entitled, at its sole cost and expense, (a) in any judicial, administrative or other proceeding that involves solely a claim for one or more Losses to assume responsibility for and control thereof, (b) in any judicial, administrative or other proceeding involving a claim for one or more Losses and other claims related or unrelated to the transactions contemplated by the Operative Agreements (as defined in the Participation Agreement), to assume responsibility for and control of such claim for Losses to the extent that the same may be and is severed from such other claims (and such Indemnified Party shall use reasonable efforts to obtain such severance unless, in the opinion of counsel for such Indemnified Party (the receipt of which opinion by such Indemnified Party shall be confirmed in writing to the Lessee), such severance and assumption of responsibility and control by the Lessee has a reasonable possibility of adversely affecting the resolution of such other claims), and (c) in any other case, to be consulted by such Indemnified Party with respect to proceedings subject to the control of such Indemnified Party. Notwithstanding any of the foregoing to the contrary, the Lessee shall not be entitled to assume responsibility for and control of any such proceedings if (1) a Lease Event of Default shall have

occurred and be continuing, (2) such proceedings will involve any significant risk or danger of the sale, forfeiture or loss of, or the creation of any lien (other than as permitted by Section 9 hereof) on, the Equipment or any part thereof, or (3) the Losses involved, in the good faith opinion of such Indemnified Party, could have a material adverse effect on the business of the Indemnified Party other than the ownership, leasing and/or financing of the Equipment. The Indemnified Party may participate at its own expense in any judicial proceeding controlled by the Lessee pursuant to the preceding provisions. Nothing in this Section 6 shall be deemed to require an Indemnified Party to contest any claim with respect to a Loss or to assume responsibility for or control of any judicial proceeding with respect thereto.

The Indemnified Party shall supply the Lessee with such information reasonably requested by the Lessee as is necessary or advisable for the Lessee to control or participate in any proceeding to the extent permitted hereby. Such Indemnified Party shall not enter into a settlement or other compromise with respect to any matter that is the subject of a claim for payment or indemnity under this Section 6 without the prior written consent of the Lessee which consent shall not be unreasonably withheld or delayed unless such Indemnified Party waives its right to be indemnified with respect thereto under this Section 6.

Upon payment of indemnification of any amount pursuant to this Section 6, the Lessee shall be subrogated to any claims the Indemnified Party may have relating thereto other than with respect to insurance maintained by the Indemnified Party. The Indemnified Party agrees to give such further assurances or agreements and to cooperate with the Lessee to permit the Lessee to pursue such claims.

In the event that the Lessee shall have paid an amount to an Indemnified Party pursuant to this Section 6, and such Indemnified Party subsequently shall be reimbursed in respect of such amount from any other Person other than by an Affiliate of such Indemnified Party and other than with respect to insurance maintained by the Indemnified Party, such Indemnified Party shall, so long as no event which, with the giving of notice or lapse of time or both, would constitute a Lease Event of Default exists and is continuing or if such event has occurred and is continuing, upon the cure of all continuing events which, with the giving of notice or lapse of time or both, would constitute Lease Events of Default, promptly pay to the Lessee an amount equal to (i) the amount of such reimbursement net of

all expenses (including Taxes (as such term is defined in the Participation Agreement)) incurred in obtaining the same plus (ii) the amount of the net reduction in Taxes required to be paid by such Indemnified Party resulting from the payment of such reimbursed amount to the Lessee (but in no event shall this amount paid by an Indemnified Party be in excess of the payment by Lessee pursuant to this Section 6). The term "Affiliate" shall mean, with respect to any Person, and other Person directly or indirectly controlling, controlled by, or under common control with, such Person. For this purpose, "control" means the power, direct or indirect, of one person to direct or cause direction of the management and policies of another, whether by contract, through voting securities or otherwise.

6.2. Payments. Any payments made pursuant to this Section 6 shall be made in dollars directly to the Person entitled thereto or to the Lessee, as the case may be, upon the written demand of such Person, in immediately available funds at such bank or to such account as specified by the payee in written directives to the payor, or, if no such direction shall have been given, by check of the payor payable to the order of the payee and mailed to the payee by certified mail, postage prepaid at its address as set forth in this Agreement.

6.3. Interest on Overdue Amounts. If any amount payable by the Lessee or any Indemnified Party, as the case may be, under this Section 6 is not paid when due, the Lessee or such Indemnified Party, as the case may be, shall pay an additional amount equal to interest at the Overdue Rate as specified in Section 19(3) hereof on the overdue amount for the period from and including the due date for the overdue payment to but excluding the date of payment of the overdue amount.

6.4. Survival. All indemnities, obligations, adjustments and payments provided for in this Section 6 shall survive, and remain in full force and effect, notwithstanding the expiration or other termination of this Agreement or any other Operative Agreement. The obligations of the Lessee in respect of all such indemnities, obligations, adjustments and payments are expressly made for the benefit of, and shall be enforceable by, the Indemnified Party entitled thereto, without declaring the Lease to be in default or taking other action thereunder.

## SECTION 7. RULES, LAWS AND REGULATIONS.

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including, without limitation, the rules of the United States Department of Transportation, the Interstate Commerce Commission and the current Interchange Rules or supplements thereto of the Mechanical Division, Association of American Railroads as the same may be in effect from time to time (the "Interchange Rules")) with respect to the use and maintenance of each Item of Equipment subject to this Lease. In case any equipment or appliance is required to be altered, added, replaced or modified on any Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, additions, replacements and/or modifications at its own expense and title thereto shall be immediately vested in the Lessor.

## SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.

The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, usable in the manner for which it was designed and intended and in compliance with the Interchange Rules, and in any event at the same level of maintenance at which the Lessee keeps equipment which it owns or leases similar in nature to the Equipment. Except as required by the provisions of Section 7 hereof or as contemplated by the Reconstruction Agreement, the Lessee shall not modify any Item of Equipment without the prior written authority and approval of the Lessor and the Indenture Trustee as its assignee pursuant to Section 16 hereof, which consent shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon any Item of Equipment pursuant to Section 7 hereof or pursuant to its obligation to maintain and keep the Equipment in good order, condition and repair under this Section 8 shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor without cost or expense to the Lessor. The Lessee shall make no other additions or improvements to any Item of Equipment unless the same are readily removable without causing damage to such Item of Equipment. Title to any such readily removable additions or improvements shall remain with the Lessee. If the Lessee shall at its cost cause such readily removable additions or

improvements to be made to any Item of Equipment, the Lessee agrees that it will, prior to the return of such Item of Equipment to the Lessor hereunder, remove the same at its own expense without causing damage to such Item of Equipment and repair all damages, if any, resulting from such removal.

#### SECTION 9. LIENS ON THE EQUIPMENT.

The Lessee shall pay or satisfy and discharge (i) any and all claims against, through or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien or a charge upon any Item of Equipment, (ii) any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease or (iii) any other liens or charges which arise by virtue of claims against, through or under any other party and other than any liens or charges which the Lessor is obligated to discharge pursuant to Section 2.2 of the Indenture, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which will not, in the reasonable opinion of the Lessor, affect or endanger the title and interest of the Lessor or the security interest or other rights of the Indenture Trustee as its assignee under Section 16 hereof in and to the Equipment or diminish the value thereof. The Lessee's obligations under this Section 9 shall survive the termination of this Lease.

To the fullest extent permitted by applicable law, the Lessee does hereby waive and relinquish any lien or encumbrance on any Item of Equipment in respect of any sums owing to it as Rebuilder pursuant to the Reconstruction Agreement by reason of its reconstruction or other action in respect of such Item of Equipment as therein provided and further agrees that it will take no action (whether by filing of any instrument or otherwise) to perfect any such lien or encumbrance. To the extent that, notwithstanding the foregoing sentence, any lien or encumbrance shall at any time exist on any Item of Equipment by reason of the reconstruction thereof or other action by the Rebuilder in respect thereof as provided in said Agreement, the Lessee does hereby agree that such lien or encumbrance shall rank subordinate and junior to the first mortgage lien on such Item of Equipment created by the Indenture referred to in the Participation Agreement, and that it will take no action to foreclose or otherwise enforce such lien or encumbrance,

or to assert any claim in respect of any obligation secured thereby, except with the prior written consent of the Indenture Trustee, which consent may be granted or withheld in the sole discretion of the Indenture Trustee, acting upon the instruction of the Note Purchaser or other holders of Notes provided for in the Participation Agreement. The Lessee represents that upon completion of the reconstruction of each Item of Equipment under the Reconstruction Agreement, at the time of delivery and acceptance of such Item as so rebuilt under this Lease, such Item will be free and clear of all liens and encumbrances of Persons (as defined in the Participation Agreement) claiming by, through or under the Lessee as Rebuilder other than the right of the Lessee as Rebuilder to be paid the Reconstruction Price for such Item. The Lessee further warrants that it will pay and discharge any and all claims arising by, through or under the Lessee as Rebuilder which might constitute or become a lien or charge upon such Item unless the Lessee as Rebuilder shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner which will not in the Lessor's reasonable opinion affect or endanger the title and interest of the Lessor to such item. The Lessee's obligations under this paragraph shall survive the completion of reconstruction and payment for the Equipment as provided in the Reconstruction Agreement.

#### SECTION 10. FILING.

Prior to the delivery and acceptance of any Item of Equipment, the Lessee will, at its sole expense, cause this Lease and the Indenture (or a financing statement or similar notice thereof if and to the extent permitted or required by applicable law) to be duly filed, recorded or deposited with the Interstate Commerce Commission in accordance with 49 USC 11303 and in such public offices within or without the United States as the Lessor or the Indenture Trustee as its assignee under Section 16 hereof may reasonably request for the protection of Lessor's title or such security interest to the satisfaction of the Lessor's or such assignee's counsel and will furnish the Lessor and such assignee proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or such assignee for the purpose of protecting the Lessor's title to, or such assignee's security interest in, any Item of Equipment to the satisfaction of the Lessor's or such assignee's counsel or for the purpose of carrying out the intention of this

Lease, and in connection with any such action, will deliver to the Lessor and such assignee proof of such filings and an opinion of the Lessee's counsel that such action has been properly taken. The Lessee will pay all costs, charges and expenses incident to any such filing, refiling, recording and rerecording or depositing and redepositing of any such instruments or incident to the taking of such action and shall provide an opinion of counsel as to the proper recordation and filing of such instruments pursuant to Section 2.5 of the Indenture.

SECTION 11. INSURANCE; PAYMENT FOR CASUALTY OCCURRENCE.

11.1. Insurance. The Lessee covenants and agrees that it will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained in respect to each Item of Equipment, property damage insurance and public liability insurance in amounts and against risks and with insurers required by prudent industry practice in respect of equipment similar in nature to the Equipment and in any event comparable to insurance maintained by the Lessee in respect of equipment similar in nature to the Equipment which it owns or leases.

Nothing in this Lease shall prohibit or be construed to prohibit Lessee, Lessor or Owner Participant from insuring the Equipment or its interest therein at its own expense and for its own benefit and in an amount in excess of that required to be maintained by the Lessee hereunder, so long as such insurance does not prevent the Lessee from carrying the insurance required by this Section 11.

11.2. Duty of Lessee to Notify Lessor. In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or, in the reasonable opinion of the Lessee held in good faith, irreparably damaged during the term of this Lease or thereafter while such Item of Equipment is in the possession of the Lessee pursuant to Section 13 or 15 hereof, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise during the term of this Lease for a stated period which exceeds the then remaining term of this Lease (any such occurrence being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence) inform the Lessor and the Indenture Trustee in regard thereto and shall pay the Casualty Value (as defined in Section 11.6 hereof) of such Item in accordance with the terms of

Section 11.3 hereof. No Item of Equipment shall be considered "irreparably damaged" after June 15, 1995 unless the estimated cost of repair of such Item shall exceed the greater of Casualty Value or \$4,000.

11.3. Sum Payable for Casualty Loss. The Lessee, on the next succeeding rent payment date following notice of a Casualty Occurrence with respect to any Item or Items of Equipment, shall pay to the Lessor or, so long as the Indenture shall be in effect, to the Indenture Trustee, the Interim or Fixed Rental installment due on such payment date for such Item of Equipment plus any rentals or other sums due on or prior to such date then remaining unpaid plus a sum equal to the Casualty Value of such Item of Equipment as of the date of such payment.

11.4. Rent Termination. Upon (and not until) payment of all sums required to be paid pursuant to Section 11.3 hereof in respect of any Item or Items of Equipment, the obligation to pay rent for such Item or Items of Equipment accruing subsequent to the Casualty Value payment date shall terminate, but the Lessee shall continue to pay rent for all other Items of Equipment.

11.5. Disposition of Equipment. The Lessee shall as agent for the Lessor, dispose of such Item or Items of Equipment having suffered a Casualty Occurrence as soon as it is able to do so for the fair market value thereof. Any such disposition shall be on an "as-is", "where-is" basis without representation or warranty, express or implied. As to each separate Item of Equipment so disposed of, the Lessee may, to the extent the Casualty Value with respect thereto has been paid, retain all amounts arising from such disposition plus any insurance proceeds and damages received by the Lessee by reason of such Casualty Occurrence up to the Casualty Value attributable thereto and shall remit the excess, if any, to the Lessor.

11.6. Casualty Value. The Casualty Value of each Item of Equipment shall be an amount determined as of the date the Casualty Value is paid as provided in Section 11.3 hereof (and not the date of the Casualty Occurrence) equal to that percentage of the Hulk Purchase Price (if paid prior to or on the consummation of the closing on the Second Closing Date) or the Total Cost (if paid after such Second Closing Date) of such Item of Equipment set forth in the Schedule of Casualty Value attached hereto as Schedule C opposite such date of payment.

11.7. Risk of Loss. The Lessee shall bear the risk of loss and, except as hereinabove in this Section 11 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Item of Equipment from and after the date hereof and continuing until payment has been made of the Casualty Value and all rental installments and other sums due on and prior to the date of payment of such Casualty Value in respect of such Item of Equipment, such Item or the salvage thereof has been disposed of by the Lessee and the title to such Item or the salvage thereof and all risk of loss and liabilities incident to ownership have been transferred to the purchaser of such Item or the salvage thereof.

11.8. Eminent Domain. In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period which does not exceed the term of this Lease, the Lessee's obligation to pay all installments of rental and other sums shall continue for the duration of such requisitioning or taking. The Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession to an amount equal to the rent paid or payable hereunder for such period, and the balance, if any, shall be payable to and retained by the Lessor as its sole property.

## SECTION 12. ANNUAL REPORTS.

12.1. Duty of Lessee to Furnish. On or before May 1, 1989 and on or before each May 1 thereafter, the Lessee will furnish to the Lessor, the Owner Participant, the Indenture Trustee, the Note Purchaser and each holder of any Note an accurate statement, as of the preceding December 31 (a) showing the amount, description and road numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of the Items of Equipment that have suffered a Casualty Occurrence during the 12 months ending on such December 31 (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Lessor or the Indenture Trustee may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced.

12.2. Inspection Rights. Each of the Lessor, the Owner Participant, the Indenture Trustee, the Note Purchaser and each holder of any Note shall have the right, acting separately at their respective sole cost and expense, by their respective authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such time as shall be reasonably necessary to confirm thereto the existence and proper maintenance of the Equipment during the continuance of this Lease. Any inspection permitted by this Section 12.2 shall be limited to a visual, walk-around inspection and shall be conducted in a manner which does not interfere with the Lessee's operation or maintenance of the Equipment.

### SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.

Upon the expiration or earlier termination of the term of this Lease with respect to any Item of Equipment, or upon any other occasion on which the Lessor (or the Indenture Trustee, as assignee of the Lessor) shall be entitled to possession of any such Item, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Item of Equipment to the Lessor upon such storage tracks of the Lessee as the Lessor and Lessee may reasonably agree, and permit the Lessor to store such Item of Equipment on such tracks for a period not exceeding 180 days and transport the same at any time within such 180-day period to any reasonable place on any railroad lines operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor upon not less than 30 days' written notice to the Lessee. All movement and storage of each such Item is to be at the risk and expense of the Lessee. During any such storage period the Lessee will permit the Lessor or any Person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Item, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any Person exercising, either on behalf of the Lessor or any prospective purchaser or lessee, the rights of inspection granted under this sentence. During any such storage period the Lessee shall maintain the insurance required by Section 11.1 hereof and maintain the Items of Equipment in such manner as the Lessee normally maintains similar equipment owned or leased by it in similar storage circumstances. The Equipment when delivered to the Lessor shall have installed all components, accessories, and parts installed thereon at the time of

delivery thereof following rebuilding under the Reconstruction Agreement, or replacements therefor and alterations thereon made in accordance with the provisions of this Lease, none of which shall be broken or missing, shall be in as good condition and state of repair as at the time of delivery thereof following rebuilding under the Reconstruction Agreement, ordinary wear and tear and changes and alterations properly made by the Lessee as permitted under this Lease excepted, suitable for normal commercial service, conforming to all applicable FRA safety rules and regulations, and meeting interchange standards as prescribed in the then current edition of the Field Manual of the Association of American Railroads Interchange Rules; and shall be otherwise in good operating condition and in the condition as required by Sections 7 and 8 hereof; and the Lessee shall pay for or perform any repairs necessary to restore the Equipment to such condition. All rental, per diem or similar charges earned in respect of the use, lease or rental of the Equipment after the date of expiration of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Item of Equipment is not assembled, delivered and stored, as hereinabove provided, within 30 days after the expiration of this Lease, or other date on which the same is required hereby, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the Fair Rental Value (determined in the manner provided in Section 18 hereof) for such Item of Equipment for each such day exceeds the amount, if any, received by the Lessor (either directly or from the Lessee) for such day for such Item pursuant to the preceding sentence. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, store and transport the Equipment. In any event the Lessor shall have no rights hereunder to abandon any Item of Equipment to the Lessee.

#### SECTION 14. DEFAULT.

14.1. Lease Events of Default. Any of the following shall constitute a Lease Event of Default hereunder:

- (a) default shall be made in the payment of any part of the rental or Casualty Value provided in Sec-

tion 2 or 11 hereof and such default shall continue for five days;

(b) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or of possession of the Equipment, or any portion thereof, or fail to maintain insurance as required by Section 11.1 hereof;

(c) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in any other Operative Agreement and such default shall continue for 30 days after the Lessee has become aware of such default;

(d) any representation or warranty made by the Lessee herein or in the Participation Agreement, the Reconstruction Agreement or the Hulk Purchase Agreement or in any statement or certificate furnished to the Lessor, the Owner Participant, the Indenture Trustee, the Note Purchaser or any other holder of a Note pursuant to or in connection with this Lease or the Participation Agreement, the Reconstruction Agreement or the Hulk Purchase Agreement is untrue in any material respect as of the date of issuance or making thereof;

(e) any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustments of indebtedness, reorganization, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceeding in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such

proceedings shall have been commenced, whichever shall be earlier; or

(f) a petition for reorganization under the Bankruptcy Code, as now in effect or hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by such trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier.

14.2. Remedies. If any Lease Event of Default has occurred and is continuing, the Lessor or, so long as the Indenture shall be in effect, the Indenture Trustee (all references to the "Lessor" in the remainder of this Section 14 and in Section 15 being deemed to be references to the Indenture Trustee, in place and stead of the Lessor, during such time, but without limiting the right of any Indemnified Party to bring suit and obtain a judgment against the Lessee as provided in Section 6 hereof), at its option, may:

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

(b) by notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Equipment may be located and take possession of all or any of the Items of Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use such Items for any purpose whatever, but the Lessor shall nevertheless have a right to recover from the Lessee any and all amounts which may have accrued to the date

of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum with respect to each Item of Equipment which represents the excess of the present worth, at the time of such termination, of all rentals for such Item which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over the then present worth of the then Fair Rental Value of such Item for such period computed by discounting from the end of such term to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the use of such Item during such period, such present worth to be computed in each case on a basis of a 5% per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, or (y) an amount equal to the excess, if any, of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the amount the Lessor reasonably estimates to be the Fair Market Value thereof at such time; provided, however, that in the event the Lessor shall have sold any Item of Equipment, the Lessor, in lieu of collection any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (i) with respect thereto may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the net proceeds of such sale, and (ii) any damages and expenses, other than for a failure to pay rental, in addition thereto, including attorneys' fees, which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental.

For purposes of Section 14.2 above, the Fair Rental Value and/or the Fair Market Value for any Item of Equipment shall be determined without prior negotiation but otherwise by

appraisal as specified in Section 18.4 hereof, with any appraisal expenses to be borne by the Lessee; provided that any sale in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Market Value of such Item and any rental in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Rental Value of such Item.

14.3. Cumulative Remedies. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims of any right to assert any offset against the rent payments due hereunder, and agrees to make the rent payments regardless of any offset or claim which may be asserted by the Lessee on its behalf in connection with the lease of the Equipment.

14.4. Lessor's Failure to Exercise Rights. The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

14.5. Notice of Lease Event of Default. The Lessee also agrees to furnish to the Lessor, the Owner Participant, the Indenture Trustee, the Note Purchaser and each other holder from time to time of any Note, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes a Lease Event of Default or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section 14.5 a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

## SECTION 15. RETURN OF EQUIPMENT UPON DEFAULT.

15.1. Lessee's Duty to Return. If the Lessor or the Indenture Trustee shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor or the Indenture Trustee, as the case may be, in the condition required by Section 13 hereof. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

(a) forthwith place such Equipment in such reasonable storage place on the Lessee's lines of railroad as the Lessor may reasonably designate;

(b) permit the Lessor to store such Equipment in such reasonable storage place on the Lessee's lines of railroad without charge for insurance, rent or storage until such Equipment has been sold, leased or otherwise disposed of by the Lessor and during such period of storage the Lessee shall continue to maintain the insurance required by Section 11.1 hereof; and

(c) transport the Equipment to any place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as the Lessor may direct in writing.

All rental, per diem or similar charges earned in respect of the use, lease or rental of the Equipment after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Item of Equipment is not assembled, delivered and stored as hereinabove provided within 30 days after the termination of this Lease, the Lessee shall, in addition, pay to the Lessor or to the Indenture Trustee as its assignee for each day thereafter an amount equal to the amount, if any, by which the Fair Rental Value (determined in the manner provided in Section 18 hereof) for such Item of Equipment for each such day exceeds the amount, if any, received by the Lessor or such assignee (either directly or from the Lessee) for such day for such Item pursuant to the preceding sentence.

15.2. Specific Performance. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor or the Indenture Trustee shall

be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Equipment.

15.3. Lessor Appointed Lessee's Agent. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Items of Equipment to the Lessor, to demand and take possession of such Item in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Item.

#### SECTION 16. ASSIGNMENTS BY LESSOR.

This Lease and all rent and all other sums due or to become due hereunder are being assigned to the Indenture Trustee pursuant to the Indenture, and, if such Indenture shall no longer be in effect, may be assigned in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor (except the Indenture Trustee) except upon written notice of such assignment from the Lessor. So long as the Indenture shall be in effect, or thereafter upon notice to the Lessee of any such assignment, the rent and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to or upon the written order of the Indenture Trustee or such assignee, as the case may be. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of the Indenture Trustee or such assignee, as the case may be, in and to the sums payable by the Lessee under any provision of this Lease shall not be subject to any abatement whatsoever and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever whether by reason of failure of or defect in the Lessor's title, or any interruption from whatsoever cause in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of the Indenture Trustee or such assignee, as the case may be, the Lessee shall be unconditionally and absolutely obligated to pay the Indenture Trustee or such assignee, as the case may be, all

of the rents and other sums which are the subject matter of the assignment, (ii) the Indenture Trustee or such assignee, as the case may be, shall, if a Lease Event of Default or an event which, with the giving of notice or lapse of time, or both, would constitute a Lease Event of Default shall have occurred and be continuing have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of the Indenture Trustee or such assignee, as the case may be) which by the terms of this Lease are permitted or provided to be exercised by the Lessor (except those rights, privileges and remedies relating to amounts payable to the Lessor pursuant to Sections 6, 11.1 (with respect to public liability insurance) and 20.3 hereof and Section 8 of the Participation Agreement which shall remain enforceable by the Lessor), but if no Lease Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute a Lease Event of Default shall have occurred and be continuing, said assignee and the Lessor may each exercise their respective rights, privileges and remedies stated in this Lease to be provided for their respective benefits, and (iii) all obligations of the Lessor, to the Lessee under this Lease shall be and remain enforceable by the Lessee against, and only against, the Lessor.

It is understood and agreed that so long as no Lease Event of Default shall have occurred and be continuing, the Lessor, the Indenture Trustee and any other assignee of the Lessor shall not interfere, or permit any Person acting by, through or under the Lessor, the Indenture Trustee or such assignee to interfere, with any right of Lessee peaceably and quietly to hold, possess and use the Equipment in accordance with the terms of this Agreement.

#### SECTION 17. ASSIGNMENTS BY LESSEE; USE AND POSSESSION.

17.1. Lessee's Right to the Equipment. So long as no Lease Event of Default or an event, which, with the giving of notice or lapse of time, or both, would constitute a Lease Event of Default shall have occurred and be continuing, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any Item of the Equipment or sublease any thereof. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out

of its possession or control, any Item of the Equipment, except to the extent permitted by the provisions of Section 17.2 hereof.

17.2. Use and Possession on Lines Other Than Lessee's Own. So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Equipment and to the use thereof upon the lines of railroad owned or operated by it (either alone or jointly) or by any corporation, a majority of whose voting stock (*i.e.*, having ordinary voting power for the election of a majority of its Board of Directors) is owned directly or indirectly by the Lessee, or upon lines of railroad over which the Lessee or such corporation has trackage or other operating rights or over which equipment of the Lessee is regularly operated pursuant to contract, except that the Lessee agrees not to use any Items of the Equipment in unit trains in Canada or Mexico, and also to permit the use of any Item of Equipment upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all terms and conditions of this Lease. The Lessee may to the extent contemplated by the Reconstruction Agreement transfer possession of the Items of Equipment to the Rebuilder for the period necessary to permit the Rebuilder to comply with its obligations under that Agreement. Notwithstanding the foregoing, the Lessee shall at no time throughout the term of this Lease assign or permit the assignment of any Item of Equipment to service (including, without limitation, the regular operation or maintenance thereof) outside the lower 48 United States. No assignment or sublease entered into by the Lessee, whether or not permitted by the Lessor, shall relieve the Lessee of any liability or obligation hereunder which shall be and remain those of a principal and not a surety.

17.3. Merger, Consolidation or Acquisition of Lessee. Nothing in this Section 17 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all of the lines of railroad of the Lessee, provided that such assignees, successors or transferees shall have duly assumed by a written agreement satisfactory in form and substance to the Lessor, the Indenture Trustee, the Note Purchaser and any other holder from time to time of a Note the obligations of the Lessee hereunder and that they will not, upon the effectiveness of such merger or consolidation or acquisition

of properties and the assumption of such obligations, be in default under any provision of this Lease and that such merger or consolidation or acquisition of properties shall not alter in any way the Lessee's obligations to the Lessor hereunder which shall be and remain those of a principal and not a guarantor; provided, further, that the corporation formed by such consolidation or merger or which shall have acquired or leased all or substantially all of the lines of railroad of the Lessee shall have a net worth, determined in accordance with GAAP (as defined in the Participation Agreement), at least equal to the net worth of the Lessee, so determined, immediately prior to giving effect to such consolidation or such conveyance, transfer or lease, as the case may be.

#### SECTION 18. PURCHASE OPTION; RENEWAL OPTION.

18.1. Purchase Option. Provided that no Lease Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such a Lease Event of Default, shall have occurred and be continuing, the Lessee shall have the option to purchase all but not less than all of the Items of Equipment then leased hereunder at the expiration of the initial term hereof, and, if the Lessee shall have renewed this Lease pursuant to Section 18.2 hereof, at the expiration of such renewal term, at a price equal to the Fair Market Value of such Items of Equipment. The Lessee shall give the Lessor written notice not less than six months nor more than nine months prior to the end of such term of its election to exercise the purchase option provided for in this Section, which notice shall be irrevocable. Payment of the option price shall be made at the place of payment specified in Section 2.3 hereof in immediately available funds against delivery of a bill of sale transferring and assigning to the Lessee all right, title and interest of the Lessor in and to the Equipment. The Lessor shall transfer such Equipment "as is, where is", without representation or warranty as to the condition thereof or any other matters except only that title thereto is free and clear of liens which are permitted by Section 9 hereof.

18.2. Renewal Option. Provided that no Lease Event of Default or an event which, with the giving of notice or lapse of time, or both, would constitute a Lease Event of Default shall have occurred and be continuing, the Lessee shall have the following renewal option:

(a) The Lessee shall have the option to renew and extend this Lease as to all, but not less than all, of the Items of Equipment then leased hereunder for one additional renewal term of one year or such longer term as may be agreed between the Lessor and the Lessee upon and subject to the terms and conditions herein contained for the original term of this Lease; provided that the Fixed Rental payable for and during such renewal term shall be an amount equal to the Fair Rental Value (as hereinafter defined) of such Items of Equipment and that the Casualty Value payable for and during such renewal term in respect of any Item of Equipment suffering a Casualty Occurrence during such term shall be an amount equal to the higher of (i) the Fair Market Value (as hereinafter defined) of such Item of Equipment as of the beginning of such renewal term, or (ii) an amount equal to 20% of the Total Cost of such Item of Equipment, and the Fair Rental Value and Fair Market Value shall have been agreed upon by the Lessor and the Lessee or, failing such agreement on or before 90 days prior to the commencement of such renewal term, determined as provided in Section 18.4 hereof. The renewal term shall commence immediately upon the expiration of the initial term. The Lessee shall give the Lessor written notice of any such election not less than six months nor more than nine months prior to the commencement of the renewal term provided for in this Section 18.2, which notice shall be irrevocable.

(b) The Fair Rental Value of an Item of Equipment shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee and an informed and willing lessor under no compulsion to lease and on the assumption that such Item is in the condition required upon the return of such Item pursuant to Section 13 hereof.

(c) The Fair Market Value of an Item of Equipment shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer and an informed and willing seller under no compulsion to sell and on the assumption that such Item is in the condition required upon the return of such Item pursuant to Section 13 hereof.

18.3. Delivery of Equipment. Unless the Lessee has elected to purchase an Item of Equipment then leased hereunder or to renew this Lease in respect of all Items of Equipment as provided in this Section 18, the remaining Items of Equipment shall be returned to the Lessor at the end of the original term, or the then current renewal term, as the case may be, in accordance with Section 13 hereof.

18.4. Determination of Fair Rental Value or Fair Market Value. If on or before the 90th day prior to the expiration of any term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value or Fair Market Value of the Items of Equipment, such Fair Market Value and, if required, such Fair Rental Value, shall be determined in accordance with the foregoing definitions by the following procedure: For an initial period not exceeding 15 days the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within the first 15 days of such 90-day period, each party shall appoint an independent appraiser within 20 days after such initial 15-day period, and the two appraisers so appointed shall within 25 days after such initial 15-day period appoint a third independent appraiser. If no such third appraiser is appointed within 25 days after such initial 15-day period, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine such value of the Items of Equipment within 30 days after his, her or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of such value of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers, if any, shall be excluded if such determination differs by an amount greater than 50% of the average value determined by the other two, the remaining determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as such value, and if no such exclusion is required, the three determinations shall be averaged and such average shall be so final and binding. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining the Fair Rental Value or the Fair Market Value and shall be in lieu of any judicial or

other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

SECTION 19. INTEREST ON OVERDUE RENTALS AND AMOUNT PAID BY LESSOR.

Anything to the contrary herein contained notwithstanding any nonpayment of rent due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the additional obligation on the part of the Lessee to pay also an amount determined by the application of the rate of interest specified below (or the maximum lawful rate, whichever is less (the "Overdue Rate")) to the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid. The rate of interest referred to in the foregoing sentence shall be: (1) a rate per annum 2% above the rate per annum ordinarily applicable to the Series A Notes, in the case of such interest payable in respect of overdue Interim Rent; (2) a rate per annum 2% above the rate per annum ordinarily applicable to the Series A Notes in the case of such interest applicable to that portion of overdue Fixed Rent which bears the same proportion to all overdue Fixed Rent as the outstanding principal amount of Series A Notes bears to the aggregate outstanding principal amount of all Notes and 2% above the rate per annum ordinarily applicable to Series B Notes in the case of such interest applicable to that portion of overdue Fixed Rent which bears the same proportion of all overdue Fixed Rent as the outstanding principal amount of Series B Notes bears to the aggregate outstanding principal amount of all Notes; and (3) 2% above the rate per annum announced from time to time by Morgan Guaranty Trust Company of New York at its principal office in New York, New York as its prime rate, in the case of such interest in respect of any other overdue rentals or other amounts to which the foregoing sentence applies.

SECTION 20. MISCELLANEOUS.

20.1. Limitations of Liability. It is expressly understood and agreed by and between the Lessor and the Lessee and their respective successors and assigns that this Lease is executed by Wilmington Trust Company ("WTC"), not individually or personally but solely as Owner Trustee under the Trust Agreement in the exercise of the power and authority conferred and vested in it as such Owner Trustee,

that each and all of the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by WTC or the Owner Participant, or for the purpose or with the intention of binding WTC or the Owner Participant personally, but are made and intended for the purpose of binding only the Trust Estate as defined in the Trust Agreement, that this Lease is executed and delivered by WTC solely in exercise of the powers expressly conferred upon WTC as Owner Trustee under the Trust Agreement, that actions to be taken by the Lessor pursuant to its obligations hereunder may, in certain instances, be taken by the Lessor only upon specific authority of the Owner Participant, that nothing herein contained shall be construed as creating any liability on WTC or the Owner Participant, individually or personally, or any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of, WTC or the Owner Participant, to perform any covenant either express or implied contained herein, all such liability, if any, being expressly waived by the Lessee and by each and every Person now or hereafter claiming by, through or under the Lessee, and that so far as WTC or the Owner Participant individually or personally are concerned, the Lessee and any Person claiming by, through or under the Lessee shall look solely to the Trust Estate as defined in the Trust Agreement for the performance of any obligation under this Lease; provided that nothing in this Section 20.1 shall be construed to limit in scope or substance those representations and warranties of WTC made expressly in its individual capacity and set forth in the Participation Agreement. The term "Lessor" as used in this Lease shall include any trustee succeeding WTC as Owner Trustee under the Trust Agreement or the Owner Participant if the trust created thereby is revoked. Any obligation of the Lessor hereunder may be performed by the Owner Participant, and any such performance shall not be construed as revocation of the trust created by the Trust Agreement. Nothing contained in this Lease shall restrict the operation of the provisions of the Trust Agreement with respect to its revocation or the resignation or removal of the Owner Trustee thereunder.

It is expressly understood and agreed by and between the Lessor and the Lessee and their respective successors and assigns that this Lease is executed in said Lessee's corporate capacity and that nothing herein contained shall be construed as creating any liability on any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of the Lessee to perform any covenant either express or



20.3. Right of Lessor to Perform. If the Lessee shall fail to comply with any of its covenants herein contained, either the Lessor or, in the case of an assignment by the Lessor pursuant to Section 16 hereof, the Indenture Trustee or other assignee thereunder may, but shall not be obligated to, make advances to perform the same and to take all such action as may be necessary to obtain such performance, provided, however, that nothing in this Section 20.3 shall be deemed as between the Lessor as Owner Trustee and the Indenture Trustee to enlarge the rights of Lessor as set forth in Section 5.3 of the Indenture. Any payment so made by any such party and all cost and expense (including, without limitation, attorneys' fees and expenses) incurred in connection therewith shall be payable by the Lessee to the party making the same upon demand as Supplemental Rental hereunder together with interest thereon at the Overdue Rate.

20.4. Execution in Counterparts. This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

20.5. Law Governing. This Lease shall be construed in accordance with the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by any applicable Federal statute, rule or regulation.

20.6. Headings and Table of Contents. All Section headings and the Table of Contents are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

20.7. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be as to such jurisdiction ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized and the corporate seals to be hereto affixed as of the day and year first above written.

WILMINGTON TRUST COMPANY,  
not in its individual capacity  
but solely as Owner Trustee

By [Signature]  
Authorized Officer

[CORPORATE SEAL]

ATTEST:  
[Signature]  
Authorized Officer

CSX TRANSPORTATION, INC.

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

[CORPORATE SEAL]

ATTEST:  
\_\_\_\_\_  
Assistant Secretary

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized and the corporate seals to be hereto affixed as of the day and year first above written.

WILMINGTON TRUST COMPANY,  
not in its individual capacity  
but solely as Owner Trustee

By \_\_\_\_\_  
Authorized Officer

[CORPORATE SEAL]

ATTEST:

\_\_\_\_\_  
Authorized Officer

CSX TRANSPORTATION, INC.

By *Denis J. Vaisard*  
Title:

*Treasurer - Equipment Unit*

[CORPORATE SEAL]

ATTEST:

*R. J. Hochstadt*  
Assistant Secretary

STATE OF New York  
COUNTY OF New York SS.:

On this 24<sup>th</sup> day of December, 1987, before me personally appeared Wm. B. Soudon III, to me personally known, who being by me duly sworn, says that he is the Vice President of WILMINGTON TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Ligia M. Gomez  
Notary Public

[NOTARIAL SEAL]

My commission expires:

LIGIA M. GOMEZ  
Notary Public, State of New York  
No. 31-4621503  
Qualified in New York County  
Commission Expires January 31, 1990

STATE OF \_\_\_\_\_ )  
: SS.:  
\_\_\_\_\_ OF \_\_\_\_\_ )

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

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

[NOTARIAL SEAL]

My commission expires:

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) : SS:

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

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

[NOTARIAL SEAL]

My commission expires:

STATE OF MARYLAND)  
: SS:  
CITY OF BALTIMORE)

On this 24th day of December, 1987, before me personally appeared Denis J. Voisard, to me personally known, who being by me duly sworn, says that he is the Assistant Vice President-Treasurer - Equipment Unit of CSX TRANSPORTATION, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Joyce Ann Nolan*  
\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My commission expires: July 1, 1990

INITIAL CERTIFICATE OF ACCEPTANCE  
UNDER EQUIPMENT LEASE

To: Wilmington Trust Company, as Owner Trustee,  
(the "Lessor")

I, a duly appointed and authorized representative of CSX TRANSPORTATION, INC. (the "Lessee") under the Equipment Lease as of December 1, 1987 between the Lessor and the Lessee, do hereby certify that I have received, approved and accepted delivery under the Lease of the following Items of Equipment:

TYPE OF EQUIPMENT:	100-ton, 52-foot Gondolas
DATE ACCEPTED:	December 29, 1987
NUMBER OF UNITS:	785
MARKED AND NUMBERED:	B&O 371000-371799, inclusive, but excepting:
	371080    371360    371623
	371140    371425    371641
	371143    371469    371653
	371182    371486    371707
	371359    371552    371793

The execution of this Certificate will in no way relieve or decrease the responsibility of any manufacturer, rebuilder or contractor for any warranties it has made with respect to the Equipment.

Dated: December 29, 1987

---

Authorized  
Representative of the Lessee

(CSX Transportation, Inc.)

SCHEDULE B-2  
to Equipment Lease

SUBSEQUENT CERTIFICATE OF ACCEPTANCE  
UNDER EQUIPMENT LEASE

To: Wilmington Trust Company, as Owner Trustee,  
(the "Lessor")

I, a duly appointed and authorized representative of CSX TRANSPORTATION, INC. (the "Lessee") under the Equipment Lease as of December 1, 1987 between the Lessor and the Lessee, do hereby certify that I have received, inspected, approved and accepted delivery under the Lease of the following Items of Equipment:

TYPE OF EQUIPMENT: 100-ton, 52-foot Gondolas

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF UNITS:

MARKED AND NUMBERED:

I do further certify that the foregoing Items of Equipment are in good order and condition, and conform to the specifications applicable thereto, that the Lessee has no knowledge of any defect in any of the foregoing Items of Equipment with respect to design, manufacture, condition or in any other respect, and that each Item has been labeled by means of a plate or a stencil printed in contrasting colors upon each side of the Item in letters not less than one inch in height as follows:

"Owned by a Bank or Trust Company and  
Subject to a Security Agreement Filed  
with the Interstate Commerce Commission."

(CSX Transportation, Inc.)



EXHIBIT A

GONDOLA CARS = 785\*

INIT	OLD NUMBER		NEW NUMBER	INIT	OLD NUMBER		NEW NUMBER
BO	370116	- CSXT	704516	BO	370774	- CSXT	705157
BO	370121	- CSXT	704521	BO	370773	- CSXT	705175
BO	370127	- CSXT	704527	BO	370774	- CSXT	705176
BO	370181	- CSXT	704580	BO	370779	- CSXT	705181
BO	370226	- CSXT	704625	BO	370819	- CSXT	705201
BO	370242	- CSXT	704641	BO	370851	- CSXT	705233
BO	370292	- CSXT	704690	BO	370873	- CSXT	705259
BO	370311	- CSXT	704708	BO	370879	- CSXT	705260
BO	370321	- CSXT	704717	BO	370893	- CSXT	705274
BO	370330	- CSXT	704726	BO	370896	- CSXT	705277
BO	370336	- CSXT	704732	BO	370899	- CSXT	705280
BO	370356	- CSXT	704752	BO	370906	- CSXT	705287
BO	370374	- CSXT	704769	BO	370911	- CSXT	705292
BO	370386	- CSXT	704781	BO	370918	- CSXT	705299
BO	370398	- CSXT	704793	BO	370949	- CSXT	705330
BO	370407	- CSXT	704802	BO	370956	- CSXT	705339
BO	370409	- CSXT	704804	BO	370961	- CSXT	705342
BO	370411	- CSXT	704806	BO	370967	- CSXT	705348
BO	370423	- CSXT	704816	BO	370992	- CSXT	705373
BO	370425	- CSXT	704820	BO	371000	- CSXT	705395
BO	370426	- CSXT	704821	BO	371001	- CSXT	705396
BO	370450	- CSXT	704844	BO	371002	- CSXT	705397
BO	370457	- CSXT	704851	BO	371003	- CSXT	705398
BO	370458	- CSXT	704852	BO	371004	- CSXT	705399
BO	370481	- CSXT	704872	BO	371005	- CSXT	705400
BO	370493	- CSXT	704884	BO	371006	- CSXT	705401
BO	370506	- CSXT	704896	BO	371007	- CSXT	705402
BO	370508	- CSXT	704898	BO	371008	- CSXT	705403
BO	370523	- CSXT	704912	BO	371009	- CSXT	705404
BO	370545	- CSXT	704934	BO	371010	- CSXT	705405
BO	370562	- CSXT	704951	BO	371011	- CSXT	705406
BO	370566	- CSXT	704955	BO	371012	- CSXT	705407
BO	370575	- CSXT	704964	BO	371013	- CSXT	705408
BO	370598	- CSXT	704986	BO	371014	- CSXT	705409
BO	370600	- CSXT	704988	BO	371015	- CSXT	705410
BO	370601	- CSXT	704989	BO	371016	- CSXT	705411
BO	370604	- CSXT	704992	BO	371018	- CSXT	705413
BO	370625	- CSXT	705012	BO	371019	- CSXT	705414
BO	370633	- CSXT	705020	BO	371020	- CSXT	705415
BO	370635	- CSXT	705022	BO	371021	- CSXT	705416
BO	370640	- CSXT	705027	BO	371022	- CSXT	705417
BO	370642	- CSXT	705029	BO	371023	- CSXT	705418
BO	370669	- CSXT	705054	BO	371024	- CSXT	705419
BO	370685	- CSXT	705069	BO	371025	- CSXT	705420
BO	370697	- CSXT	705081	BO	371026	- CSXT	705421
BO	370699	- CSXT	705083	BO	371027	- CSXT	705422
BO	370719	- CSXT	705103	BO	371028	- CSXT	705423
BO	370721	- CSXT	705105	BO	371029	- CSXT	705424
<del>BO</del>	<del>370732</del>	<del>- CSXT</del>	<del>705116</del>	BO	371030	- CSXT	705425
BO	370735	- CSXT	705119	BO	371031	- CSXT	705426
BO	370755	- CSXT	705139	BO	371032	- CSXT	705427
BO	370759	- CSXT	705143	BO	371033	- CSXT	705428

6/3/98