

**Arent, Fox, Kintner, Plotkin & Kahn**

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REGISTRATION NO. 11917-B  
OCT 22 1980-1 52 PM  
INTERSTATE COMMERCE COMMISSION

REGISTRATION NO. 11917-C  
OCT 22 1980-1 52 PM  
INTERSTATE COMMERCE COMMISSION

**John D. Hushon**  
(202) 857-6290

October 22, 1980  
JDH-80/301

No. OCT 22 1980  
Date OCT 22 1980  
Fee \$ 50.00  
ICC Washington, D. C.

Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Madam:

Enclosed please find ten fully executed copies of the following document between the parties listed below relating to certain railroad rolling stock as described therein:

Loan and Security Agreement dated as of August 1, 1980 together with Supplement No. 1 attached thereto (Supplement dated October 18, 1980).

- A. Parties: Lender and Secured Party
- Borrower and Party Granting Security Interest:

Manufacturers Hanover Trust Company Corporation  
Whittaker Corporation  
Berwick Forge & Fabricating Division  
30 Rockefeller Plaza  
N.Y. N.Y. 10020

*Leasing*  
*Shahida Mann*

Operating Lease Services, Inc.

- B. Addresses: Lender

Manufacturers Hanover Leasing Corporation  
30 Rockefeller Plaza  
New York, New York 10020  
Attn: Vice President, Credit Department, Eastern United States

- Borrower:

Operating Lease Services, Inc.  
47 Locust Hill Road  
Darien, Connecticut 06820  
Attn: Paul E. Tierney, Jr.

C. Equipment: Thirty-five (35) 100 ton, 50 foot 6 inch boxcars with AAR mechanical designation "XP" and bearing road numbers NN 201-235.

Previous documents with respect to this Equipment have been filed with and recorded by you and assigned ICC Recording Nos. 11917 and 11917-A.

*Handwritten notes on left margin:*  
Mey B...  
M...  
M...

Secretary  
Interstate Commerce Commission  
October 22, 1980  
Page Two

I respectfully request that the original of this document be recorded under the provisions of 49 U.S.C. §11303. I would also appreciate your stamping the additional copies of the above documents which are not required for your filing purposes and returning them to me. A check in the amount of \$50.00 is enclosed to cover the filing fees.

The undersigned certifies that he is acting as counsel to Operating Lease Services, Inc., that he has knowledge of the matters set forth in the above described documents and that the summary description herein is accurate.

Sincerely yours,



John D. Hushon

Enclosures

**Interstate Commerce Commission**  
Washington, D.C. 20423

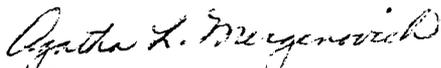
OFFICE OF THE SECRETARY

John D. Hushon  
Arent, Fox, Kintner, Plotkin & Kahn  
Federal Bar Bldg.-1815 H St. N. W.  
Washington, D. C. 20006

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/22/80 at 1:55PM, and assigned re-  
recording number(s). 11917-A & 11917-B

Sincerely yours,

  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

RECORDATION NO. 11917-B Filed 142.

OCT. 22 1980-1 55 PM

INTERSTATE COMMERCE COMMISSION

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LOAN AND SECURITY AGREEMENT

between

OPERATING LEASE SERVICES, INC.

and

MANUFACTURERS HANOVER LEASING CORPORATION

Dated as of August 1, 1980

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Filed and recorded with the Interstate Commerce  
Commission pursuant to 49 U.S.C. 11303 on  
, 1980 at , Recordation No. .

## TABLE OF CONTENTS

		<u>Page</u>
SECTION 1.	DEFINITIONS.....	1
1.1	Defined Terms.....	1
1.2	Use of Defined Terms.....	7
1.3	Other Definitional Provisions.....	7
SECTION 2.	AMOUNT AND TERMS OF LOAN.....	8
2.1	Commitment.....	8
2.2	Use of Proceeds.....	8
2.3	The Note.....	8
2.4	Prepayment with Premium.....	8
2.5	Casualty Occurrence Prepayment.....	9
2.6	Notice of Prepayment.....	9
2.7	Computation of Interest.....	10
SECTION 3.	REPRESENTATIONS AND WARRANTIES.....	10
3.1	Corporate Existence.....	10
3.2	Power and Authorization.....	10
3.3	No Legal Bar.....	11
3.4	No Material Litigation.....	11
3.5	No Default.....	11
3.6	Lease, etc.....	11
3.7	Title to Box-cars; Specifications...	12
3.8	First Lien.....	13
3.9	Principal Office.....	13
3.10	Offering of Note.....	13
SECTION 4.	CONDITIONS OF BORROWING.....	14
SECTION 5.	GRANT OF LIEN AND SECURITY INTEREST.	18
5.1	Box-cars.....	18
5.2	Lease.....	19
5.3	Security Deposit Account.....	20
5.4	Letter Agreement.....	20
SECTION 6.	COVENANTS.....	20
6.1	Financial Statements and Reports....	20
6.2	Reports.....	21
6.3	Sale, Lease, Merger or Consolida- tion by Company.....	22
6.4	Corporate Existence; Compliance with Laws and Rules.....	23
6.5	Principal Office.....	24

	<u>Page</u>	
6.6	Indemnities, etc.....	24
6.7	Performance of Agreements.....	25
6.8	Preservation of Collateral.....	25
6.9	Further Assurances; Recordation and Filing.....	25
6.10	ICC Jurisdiction.....	26
6.11	Maintenance of Insurance.....	26
6.12	Location of Box-cars.....	26
6.13	Casualty Occurrence.....	27
6.14	Maintenance.....	28
6.15	Notice of Default.....	28
6.16	Inspection.....	28
6.17	Addition or Substitution of Leases.....	28
6.18	Marking of Box-cars.....	31
6.19	Change in Designation, Etc.....	31
SECTION 7.	POWER OF ATTORNEY.....	31
7.1	Appointment.....	31
7.2	No Duty.....	33
7.3	Additional Rights.....	33
SECTION 8.	EVENTS OF DEFAULT.....	33
SECTION 9.	REMEDIES.....	36
SECTION 10.	MISCELLANEOUS.....	38
10.1	Nature of Obligations.....	38
10.2	Reimbursement of Lender.....	39
10.3	Notices.....	40
10.4	No Waiver; Cumulative Remedies.....	40
10.5	Acquisition for Investment.....	41
10.6	Amendments and Waivers; Survival of Representations and Warranties..	41
10.7	Successors.....	41
10.8	Construction.....	41
10.9	Severability.....	41
10.10	Counterparts.....	42

SCHEDULE I	Financed Box-cars
SCHEDULE II	Additional Box-cars
EXHIBIT A	Form of Note
EXHIBIT B	Prepayment Premiums
EXHIBIT C	Form of Legal Opinion of Counsel to the Company
EXHIBIT D	Form of Legal Opinion of Special ICC Counsel to the Company
EXHIBIT E	Form of Legal Opinion of Counsel to Nevada Northern Railway Company
EXHIBIT F	Form of Security Deposit Agreement
EXHIBIT G	Form of Bill of Sale
EXHIBIT H	Form of Certificate of Acceptance
EXHIBIT I	Form of Supplement
EXHIBIT J	Form of Certificate of Cost

LOAN AND SECURITY AGREEMENT, dated as of August 1, 1980, between OPERATING LEASE SERVICES, INC., a Connecticut corporation (the "Company"), and MANUFACTURERS HANOVER LEASING CORPORATION, a New York corporation (the "Lender").

W I T N E S S E T H :

WHEREAS, the Company is engaged in the business of owning railroad box-cars and leasing them to others; and

WHEREAS, the Company desires to obtain a loan from the Lender in order to finance 100% of the Box-car Costs (as hereinafter defined) of 30 box-cars constructed by Whittaker Corporation (Berwick Forge and Fabricating Division) and described in Schedule I hereto (the "Financed Box-cars"); and

WHEREAS, the Company has leased the Financed Box-Cars and the five box-cars described in Schedule II hereto (the "Additional Box-cars") to the Nevada Northern Railway Company pursuant to the Lease (as hereinafter defined) between the Company and said railroad; and

WHEREAS, the Company will evidence its borrowings hereunder by the issuance of a promissory note which, together with the Company's obligations and liabilities under this Agreement, will be secured by, among other things, a lien on and security interest in the Financed Box-cars, the Additional Box-cars and the rights of the Company under the Lease; and

WHEREAS, the Lender is agreeable to making the loan on the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual agreements contained herein, the parties hereto agree as follows:

SECTION 1. DEFINITIONS

1.1 Defined Terms. As used in this Agreement the following terms shall have the following meanings:

"Agreement" shall mean this Loan and Security Agreement, including all Schedules, Exhibits and Supplements hereto, as the same may from time to time be amended, supplemented or otherwise modified.

"Box-cars" shall mean, at any time, the 100-ton XP box-cars and any other box-cars which are described in any Supplement at such time, together with (i) any and all parts, mechanisms, devices and replacements referred to in Subsection 6.14 hereof from time to time incorporated in or installed on or attached to any of such box-cars, (ii) any and all additions and improvements from time to time incorporated in or installed on or attached to any of such box-cars pursuant to any requirement of law or governmental regulation and (iii) any and all Non-Removable Improvements.

"Box-car Cost" shall mean, for each Unit (other than a Replacement Unit), (i) the manufacturer's invoice price for such Unit; (ii) all engineering, inspection and related fees, transportation costs, and all applicable local or state sales taxes, if any, as set forth in the manufacturer's invoice with respect to such Unit or as otherwise evidenced in a manner satisfactory to the Lender, plus (iii) legal expenses of the Company with respect to the financing of such Unit hereunder, provided that the sum of the costs described in clauses (ii) and (iii) of this paragraph shall not exceed \$1300 per Unit. The "Box-car Cost" of a Replacement Unit shall be the Box-car Cost of the Unit which it replaced.

"Builder" shall mean Whittaker Corporation (Berwick Forge and Fabricating Division), a California corporation.

"Business Day" shall mean any day other than a Saturday, a Sunday or a legal holiday under the laws of the State of New York.

"Casualty Occurrence" shall mean any of the following events or conditions with respect to any Unit:

(i) such Unit shall become lost for a period of at least 60 consecutive days, or shall be stolen, destroyed or irreparably damaged from any cause whatsoever; or

(ii) the confiscation, condemnation, seizure or forfeiture of, or other requisition of title to, or use of, such Unit by any governmental authority or any Person acting under color of governmental

authority, provided that a requisition of use of such Unit by a governmental authority shall not be deemed a Casualty Occurrence so long as such governmental authority pays to the Company during each quarterly payment period under the Note, for the use of such Unit, an amount at least equal to the installment of principal and interest payable on such Note at the end of such quarterly payment period multiplied by a fraction, the numerator of which is the Box-car Cost of such Unit and the denominator of which is the aggregate Box-car Costs of all Box-cars which are then subject to the lien and security interest of this Agreement.

"Casualty Value" with respect to any Unit shall mean the amount obtained by multiplying the aggregate unpaid principal amount of the Note at the time Casualty Value is being determined by a fraction, the numerator of which is the Box-car Cost of such Unit and the denominator of which is the aggregate Box-car Costs of all Box-cars which are then subject to the lien and security interest of this Agreement.

"Casualty Value Determination Date" shall have the meaning set forth in Subsection 6.13 (a) hereof.

"Closing Date" shall have the meaning set forth in Subsection 2.1 hereof.

"Collateral" shall mean the Box-cars, the Lease, the Letter Agreement, the moneys and investments at any time in the Security Deposit Account and all other property, interests and rights described or referred to in Subsection 5.1, 5.2, 5.3 or 5.4 hereof or in any Supplement, or otherwise subjected to the lien and security interest created by this Agreement or intended so to be by the provisions of this Agreement.

"Damaged Unit" shall mean any Unit which has suffered a Casualty Occurrence.

"Default" shall mean any of the events specified in Section 8 hereof, whether or not there has been satisfied any requirement in connection with such event for the giving of notice or the lapse of time or both.

"DRGW" shall mean the Denver & Rio Grande Western Railroad Co., a Delaware corporation.

"DRGW Assignment" shall mean the letter agreement dated April 16, 1980 between the Railroad and the DRGW, as the same may from time to time be amended, supplemented or otherwise modified with the prior written consent of the Lender.

"Event of Default" shall mean any of the events specified in Section 8 hereof, provided that there has been satisfied any requirement in connection with such event for the giving of notice or the lapse of time or both.

"Financed Box-cars" shall mean the 30 XP box-cars described in Schedule I hereto being financed by the proceeds of the Loan made hereunder.

"Guaranties" shall mean, collectively, the Guaranties dated as of the date hereof executed and delivered by the Guarantors in favor of the Lender pursuant to Subsection 4.1(b) hereof, as such Guaranties may from time to time be amended, supplemented or otherwise modified.

"Guarantors" shall mean, collectively, Keith R. Gollust and Paul E. Tierney, Jr.

"Kennecott" shall mean Kennecott Corporation, a New York corporation.

"Lease" shall mean, collectively,  
(i) the Lease Agreement dated as of May 30, 1980 between the Company and the Railroad, and (ii) each additional lease or

substituted lease entered into by the Company pursuant to Subsection 6.17 hereof.

"Lessee" shall mean any Person (including, but not limited to, the Railroad) which shall be a party to a Lease and shall lease the Box-cars which are subject to such Lease pursuant to the terms thereof.

"Letter Agreement" shall mean the letter dated June 12, 1980 from Kennecott Corporation to Operating Lease Services, Inc., as the same may from time to time be amended, supplemented or otherwise modified with the prior consent of the Lender.

"Lien" shall mean any mortgage, pledge, hypothecation, assignment, security interest, lien, charge or encumbrance of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any lease having substantially the same economic effect as a conditional sale or other title retention agreement, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

"Loan" shall mean the loan made by the Lender to the Company under this Agreement.

"Non-Removable Improvement" shall mean any addition or improvement incorporated in or installed on or attached to any Unit which is not readily removable without causing material damage to such Unit or without diminishing or impairing the utility or condition which such Unit would have had at the time of removal had such addition or improvement not been made.

"Note" shall mean the promissory note of the Company described in Section 2.3 hereof.

"Obligations" shall have the meaning set forth in Section 5 hereof.

"Payment Date" shall have the meaning set forth in Section 2.4(a) hereof.

"Permitted Liens" shall mean, with respect to any Unit, (i) the rights of the Lessee under any Lease to which such Unit is subject; (ii) Liens for taxes (A) which are not yet due, or (B) the validity of which is being contested in good faith by appropriate proceedings, so long as such proceedings do not involve any reasonable danger of the sale, forfeiture or loss of such Unit or any part thereof and the Company shall have set aside on its books adequate reserves with respect thereto; (iii) until the making of the Loan hereunder, the lien and security interest of the Builder under the Purchase Agreement; and (iv) materialmen's, mechanics', repairmen's and other like Liens arising in the ordinary course of business (A) securing obligations which are not more than 30 days overdue, or (B) the validity of which is being contested in good faith by appropriate proceedings, so long as such proceedings do not involve any reasonable danger of the sale, forfeiture or loss of such Unit or any part thereof and the Company shall have set aside on its books adequate reserves with respect thereto.

"Person" shall mean an individual, partnership, corporation, joint venture, trust, unincorporated organization, or government or any agency or political subdivision thereof.

"Proceeds" shall have the meaning assigned to it under the Uniform Commercial Code of the State of New York and, in any event, shall include, but not be limited to, (i) any and all proceeds of any insurance, warranty or guarantee payable to the Company from time to time with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever) made or due and payable to the Company from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of any of the Collateral by any governmental authority (or any Person acting under color of governmental authority), and (iii) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

"Purchase Agreement" shall mean the Conditional Sale Agreement dated as of May 30, 1980 between the Company and the Builder.

"Railroad" shall mean the Nevada Northern Railway Company, a Maine corporation.

"Replacement Unit" shall have the meaning set forth in Subsection 6.13(c) hereof.

"Security Deposit Account" shall have the meaning set forth in Section 2.1(a) of the Security Deposit Agreement.

"Security Deposit Agreement" shall mean the Security Deposit Agreement among the Company, the Lender and the bank named therein as Agent, substantially in the form of Exhibit F hereto, as the same may from time to time be amended, supplemented or otherwise modified.

"Supplements" shall mean each supplement substantially in the form of Exhibit I hereto which is executed and delivered by the Company to the Lender pursuant to this Agreement.

"Unit" shall mean one of the Box-cars.

1.2 Use of Defined Terms. All terms defined in this Agreement shall have their defined meanings when used in the Note or in any certificates, reports or other documents made or delivered pursuant hereto. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles.

1.3 Other Definitional Provisions. (a) The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(b) Terms defined in the singular shall have a comparable meaning when used in the plural and vice versa.

## SECTION 2. AMOUNT AND TERMS OF LOAN

2.1 Commitment. Subject to the terms and conditions of this Agreement, the Lender agrees to make a loan to the Company on such date (the "Closing Date"), not later than December 20, 1980, as the Company shall designate to the Lender by at least four Business Days' prior written notice (effective upon receipt), to finance the aggregate Box-car Costs of the Financed Box-cars, provided that the principal amount of such loan made by the Lender under this Agreement shall not exceed the lesser of (i) \$1,500,000 and (ii) 100% of the aggregate Box-car Costs of the Financed Box-cars.

2.2 Use of Proceeds. The Company will use the proceeds of the Loan solely to pay the aggregate Box-car Costs of the Financed Box-cars.

2.3 The Note. The Loan shall be evidenced by a secured non-recourse promissory note of the Company, in a principal amount equal to the amount of the Loan, substantially in the form of Exhibit A hereto (the "Note"). The Note shall be dated the date of issue, bear interest on the unpaid principal amount thereof from the date thereof at the rate of 14-1/2% per annum, and be payable (i) in a single installment of interest only on December 31, 1980, and (ii) thereafter in 60 consecutive quarterly installments of principal and interest payable on the last day of March, June, September and December in each year, commencing March 31, 1981, each of such installments being in an amount equal to 4.1102881% of the original principal amount of the Note, provided that, in any event, the last quarterly installment payable on the Note shall be in an amount sufficient to pay in full all accrued interest on, and the entire unpaid principal amount of, the Note, and provided further, that if any partial prepayment of the Note is made pursuant to Subsection 2.4 or 2.5 hereof, each installment due and payable under the Note after such partial prepayment shall be reduced in the same proportion as the then outstanding principal amount of such Note shall have been reduced by such partial prepayment. Interest on any overdue principal of and premium, if any, on the Note shall be payable from the due date thereof at the rate of 18% per annum for the period during which such principal or premium, if any, shall be overdue.

2.4 Prepayment with Premium. (a) The Company may, at its option, upon notice as provided in Subsection 2.6 hereof, prepay the Note as a whole or in part on any date fixed for the payment of an installment of principal and interest pursuant to Subsection 2.3 hereof (a "Payment Date"), at the principal amount so to be prepaid, together

with accrued interest thereon to the date fixed for such prepayment, plus a premium equal to the applicable percentage of the principal amount so to be prepaid as set forth in Exhibit B hereto, provided that no such prepayment shall be made prior to the thirtieth Payment Date hereunder.

(b) In the event that the aggregate rental paid to the Company pursuant to the Lease during any three consecutive calendar quarters shall be less than 110% of the aggregate amounts of principal and interest becoming due under the Note during such calendar quarters, then the Company may, upon the giving of notice as provided in Subsection 2.6 hereof within 60 days after the end of such third calendar quarter, prepay the Note on the Payment Date specified in such notice in a principal amount not exceeding the amount determined by multiplying the then unpaid principal amount of the Note by a fraction, the numerator of which is the aggregate Box-car Costs of all Units which are affected by the foregoing events and the denominator of which is the aggregate Box-car Costs of all Box-cars which are then subject to the lien and security interest of this Agreement, at the principal amount so to be prepaid together with interest accrued thereon to the date fixed for such prepayment, plus a premium equal to the applicable percentage of the principal amount so to be prepaid as set forth in Exhibit B hereto.

(c) Except as otherwise provided in this Subsection 2.4, the Note may not be voluntarily prepaid.

2.5 Casualty Occurrence Prepayment. In the event that any Unit shall suffer a Casualty Occurrence and the Company shall not replace such Unit pursuant to Subsection 6.13 hereof, the Company will prepay the Note without premium in accordance with the provisions of said Subsection 6.13.

2.6 Notice of Prepayment. The Company shall give written notice to the Lender of any prepayment of the Note not less than 10 days nor more than 30 days before the date fixed for such prepayment, specifying (a) the date fixed for such prepayment, (b) the Subsection hereof under which such prepayment is to be made, (c) the principal amount of the Note to be prepaid, (d) the premium, if any, and accrued interest applicable to such prepayment and (e) if such prepayment is to be made pursuant to Subsection 2.5 hereof, the additional information referred to in Subsection 6.13 hereof. Such notice of prepayment shall also certify all facts which are conditions precedent to such prepayment, including, if such prepayment is to be made pursuant to Subsection 2.4(b) or

2.5 hereof, the calculations used in determining the unpaid principal amount of the Note to be prepaid. Upon the giving of such notice, the unpaid principal amount of the Note, together with the premium, if any, and accrued interest thereon, shall become due and payable on the date fixed for such prepayment.

2.7 Computation of Interest. Interest on the Note shall be calculated on the basis of a 360-day year of twelve 30-day months. All payments (including prepayments) by the Company on account of the principal of, premium, if any, and interest on the Note shall be made to the Lender at its office at 30 Rockefeller Plaza, New York, New York (or at such other place of which the Lender shall notify the Company in writing), in lawful money of the United States of America and in immediately available funds. If any such payment becomes due and payable on a day that is not a Business Day, the maturity thereof shall be extended to the next succeeding Business Day.

### SECTION 3. REPRESENTATIONS AND WARRANTIES

In order to induce the Lender to enter into this Agreement and to make the Loan, the Company represents and warrants to the Lender that:

3.1 Corporate Existence. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Connecticut.

3.2 Power and Authorization. The Company has full power, authority and legal right to own its properties and to conduct its business as now conducted, to execute, deliver and perform this Agreement, the Supplements, the Note, the Lease, and the Security Deposit Agreement, and the Company has taken all necessary corporate action to authorize the execution, delivery and performance of this Agreement, the Supplements, the Note, the Lease and the Security Deposit Agreement. This Agreement has been duly executed and delivered by the Company and constitutes, and each Supplement, the Note and the Security Deposit Agreement when executed and delivered by the Company will constitute, valid and binding obligations of the Company enforceable in accordance with their respective terms. No consent of any other party (including stockholders of the Company) and no consent, license, approval or authorization of, exemption by, or filing, registration or declaration with, any governmental authority is required in connection with the execution, delivery or performance by the Company of this Agreement, each Supplement, the Note or the

Security Deposit Agreement except for the filing of this Agreement and each Supplement with the Interstate Commerce Commission, the filing of financing statements with respect to this Agreement with the Secretary of State of the State of Connecticut and the filings with respect to the Lease referred to in Subsection 3.6(a) hereof.

3.3 No Legal Bar. The execution, delivery and performance by the Company of this Agreement, the Supplements, the Note, the Lease and the Security Deposit Agreement will not violate any provision of any law or regulation or of any order, judgment, award or decree of any court, arbitrator or governmental authority applicable to the Company or of the Certificate of Incorporation, By-Laws or any preferred stock provision of the Company or of any mortgage, indenture, contract or other agreement to which the Company is a party or which is binding upon the Company or any of its properties or assets, and will not constitute a default thereunder, and (except as contemplated by this Agreement) will not result in the creation or imposition of any Lien on any of the properties or assets of the Company.

3.4 No Material Litigation. There are no actions, suits or proceedings (whether or not purportedly on behalf of the Company) pending or, to the knowledge of the Company, threatened against the Company or any of its properties or assets in any court or before any arbitrator or before or by any governmental body, which (i) relate to any of the Collateral or to any of the transactions contemplated by this Agreement, or (ii) would, if adversely determined, have a material adverse effect on the financial condition, business or operations of the Company. The Company is not in default with respect to any material order, judgment, award, decree, rule or regulation of any court, arbitrator or governmental body.

3.5 No Default. No Default or Event of Default has occurred and is continuing under this Agreement.

3.6 Lease, etc. (a) The Lease has been duly authorized, executed and delivered by the Company and, to the best of the Company's knowledge, by the Railroad. The Lease constitutes a valid and binding obligation of the Company and, to the best of the Company's knowledge, the Railroad, enforceable in accordance with its terms. All consents of other parties (including, without limitation, stockholders of the Company and the Railroad) and all consents, licenses, approvals or authorizations of, exemptions by, and filings, registrations or declarations with, any governmental authority required to be obtained, effected

or given by or to the Company or, to the best of the Company's knowledge, the Railroad in connection with the execution, delivery and performance by the Company and the Railroad of the Lease have been duly obtained, effected or given and are in full force and effect. The copy of the Lease dated as of May 30, 1980 between the Company and the Railroad, as delivered by the Company to the Lender, is a true, correct and complete copy of the entire agreement between the Company and the Railroad with respect to the Box-cars.

(b) Neither the Company nor (to the best of the Company's knowledge) the Railroad is in default in the performance or observance of any covenant, term or condition contained in the Lease, and no event has occurred and no condition exists which constitutes, or which with the giving of notice or the lapse of time or both would constitute, an event of default under the Lease. The Company and (to the best of the Company's knowledge) the Railroad have fully performed all of their respective obligations under the Lease, and the right, title and interest of the Company in, to and under the Lease is not subject to any defense, offset, claim or counterclaim, nor have any of the foregoing been asserted or alleged against the Company as to the Lease.

(c) To the best of the Company's knowledge, (i) the DRGW Assignment has been duly authorized, executed and delivered by the DRGW and constitutes a legal, valid and binding obligation of the DRGW in accordance with its terms, and the DRGW is not in default in the performance or observance of any covenant, term or condition contained therein, and (ii) the Letter Agreement has been duly authorized, executed and delivered by Kennecott and constitutes a legal, valid and binding obligation of Kennecott in accordance with its terms, and Kennecott is not in default in the performance or observance of any covenant, term or condition contained therein. The Company has delivered to the Lender a true, correct and complete copy of the DRGW Assignment and of the Letter Agreement.

**3.7 Title to Box-cars; Specifications.** When the Lender shall make the Loan to the Company hereunder, (i) the Company will have good and valid title to, and will be the lawful owner of, the Box-cars, free and clear of all Liens whatsoever except the lien and security interest created by this Agreement and Permitted Liens, and (ii) the Box-cars will conform to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association

of American Railroads applicable to railroad equipment of the same type as the Box-cars. At the time of delivery thereof by the Builder, each Unit (other than a Replacement Unit) was new and unused.

3.8 First Lien. Upon the filing of this Agreement, any Supplement and the Lease in the manner prescribed in Section 11303, Title 49 of the United States Code and in the related regulations of the Interstate Commerce Commission, and the filing of financing statements covering the Collateral in the office of the Secretary of State of the State of Connecticut, this Agreement will constitute a legal, valid and perfected first lien on and first priority security interest in the Lease (and the Proceeds thereof), and each Unit (and the Proceeds thereof) as security for the Obligations, free and clear of all other Liens whatsoever except Permitted Liens. No security agreement, financing statement, equivalent security or lien instrument or continuation statement covering all or any part of the Collateral is on file or of record with the Interstate Commerce Commission or with any other public office, except (a) such as may have been filed by or on behalf of the Company in favor of the Lender pursuant to this Agreement, and (b) the Purchase Agreement, which has been filed with the Interstate Commerce Commission. When the Lender shall make the Loan to the Company hereunder, the lien and security interest created by the Purchase Agreement on the Units will concurrently be duly discharged and released of record in the office of the Interstate Commerce Commission.

3.9 Principal Office. The principal place of business, the chief executive office and the place at which the books and records of the Company are kept is 47 Locust Hill Road, Darien, Connecticut 06820.

3.10 Offering of Note. The Company has not, either directly or through any agent, offered the Note or any related securities to, or solicited any offers to acquire the Note or any related securities from, or otherwise negotiated in respect of the Note or any related securities with, any Person other than the Lender; and the Company agrees that the Company will not, directly or indirectly, offer the Note to, or solicit offers to acquire the Note from, or otherwise approach, negotiate or communicate in respect of the Note with, any Person or Persons so as thereby to bring the issue or disposition of the Note within the provisions of Section 5 of the Securities Act of 1933, as amended.

## SECTION 4. CONDITIONS OF BORROWING

The Lender shall not be required to make the Loan hereunder unless:

(a) the Security Deposit Agreement shall have been duly executed and delivered by each of the parties thereto;

(b) each of the Guaranties shall have been duly executed and delivered to the Lender and shall be in form and substance satisfactory to the Lender;

(c) the Lender shall have received the following documents, each in form and substance satisfactory to the Lender:

(i) a copy, certified by the Secretary of the Company on the Closing Date, of the resolutions of the Board of Directors of the Company approving the transactions contemplated by this Agreement and authorizing the execution, delivery and performance by the Company of this Agreement, the Note, the Supplements, the Lease, the Security Deposit Agreement and all other documents and instruments required hereby;

(ii) a certificate of the Secretary of the Company, dated the Closing Date, as to the incumbency and signatures of each of the officers of the Company executing this Agreement or any document relating hereto on behalf of the Company;

(iii) evidence reasonably satisfactory to the Lender as to the corporate power and authority of the Railroad to enter into the Lease;

(iv) an opinion of counsel for the Railroad, dated the Closing Date and substantially in the form of Exhibit E hereto;

(v) evidence that this Agreement has been duly filed, registered and recorded with the Interstate Commerce Commission in accordance with Section 11303, Title 49 of the United States Code, and that financing

statements with respect hereto have been duly filed with the Secretary of State of the State of Connecticut;

(vi) the executed counterpart of the Lease, identified as the "original counterpart" by the Company on the signature page thereof pursuant to Paragraph 28.1 of the Lease;

(vii) evidence that the Lease has been duly filed, registered and recorded with the Interstate Commerce Commission in accordance with Section 11303, Title 49 of the United States Code;

(viii) a certificate of the Railroad, in which the Railroad (A) acknowledges notice of and consents to the assignment to the Lender of all of the Company's right, title and interest in, to and under the Lease, (B) acknowledges receipt of a copy of this Agreement, (C) acknowledges receipt of irrevocable instructions from the Company pursuant to Section 16.1 of the Lease to pay all amounts due thereunder directly to the Security Deposit Account, or as the Lender may otherwise direct, (D) certifies that the Lease is in full force and effect and constitutes a valid and binding obligation of the Railroad enforceable in accordance with its terms, and (E) certifies that the Railroad does not own or lease any box-cars nor does it presently lease from or manage on behalf of others any box-cars or use any box-cars owned by others other than (1) the Box-cars, and (2) such other box-cars as are delivered to the Railroad in normal interline interchange service in accordance with the interchange rules and agreements of the Interstate Commerce Commission and the Association of American Railroads, together with a telex from the Railroad dated the Closing Date confirming the statements described in this Subsection 4(c)(viii) as of the Closing Date;

(ix) a Note in the principal amount of the Loan, duly executed by the Company;

(x) a copy of the warranty bill of sale from the Builder, substantially in the form of Exhibit G hereto, transferring to the Company good title to such Box-cars free and clear of all Liens;

(xi) a copy of the Certificate of Acceptance of the Company with respect to the Box-cars, in the form of Exhibit H hereto;

(xii) a Certificate of Cost with respect to the Financed Box-cars and the Additional Box-cars, substantially in the form of Exhibit J hereto, accompanied by a true and complete copy of the invoice from the Builder with respect to such Box-cars, identifying such Box-cars and specifying the price payable to the Builder;

(xiii) a completed Supplement duly executed by the Company, identifying the Box-cars and subjecting such Box-cars to the lien and security interest created by this Agreement, together with evidence that such Supplement has been duly filed, registered and recorded with the Interstate Commerce Commission in accordance with Section 11303, Title 49 of the United States Code;

(xiv) evidence of insurance on the Box-cars which indicates compliance with the provisions of Subsection 6.11 hereof;

(xv) a certificate, dated the Closing Date and signed by the President or any Vice President of the Company, to the same effect as paragraph (d) of this Section 4 and to the further effect that (A) the Box-cars have been delivered to and accepted by the Company; (B) the Company has valid and legal title to, and is the lawful owner of, such Box-cars, free and clear of all Liens except the lien and security interest created by this Agreement and Permitted Liens; and (C) such Box-cars have been duly accepted by the Railroad and duly subjected to the Lease;

(xvi) an opinion of Messrs. Keating, Muething & Klekamp, special counsel for the Company, dated the Closing Date and substantially in the form of Exhibit C hereto, and an opinion of Messrs. Arent, Fox, Kintner, Plotkin & Kahn, special ICC counsel for the Company, dated the Closing Date and substantially in the form of Exhibit D hereto;

(xvii) an opinion of counsel for the Builder, dated the Closing Date and addressed to the Lender and the Company, in form and substance satisfactory to counsel for the Lender, to the effect that (A) the Builder is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation and has all requisite corporate power and authority to own its property and to conduct its business as presently conducted; (B) the Purchase Agreement has been duly authorized, executed and delivered by the Builder and constitutes a legal, valid and binding obligation of the Builder enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, moratorium and similar laws affecting the enforcement of creditors' rights generally; (C) at the time of delivery thereof by the Builder to the Company, the Box-cars were free and clear of all claims, liens and encumbrances of any kind except the security interest of the Builder under the Purchase Agreement, the rights of the Railroad under the Lease and the rights of the Lender hereunder; and (D) the Builder's bill of sale relating to the Box-cars has been duly authorized, executed and delivered by the Builder and is effective to confirm the transfer to the Company of good and marketable title to the Box-cars;

(xviii) an executed counterpart of the Letter Agreement;

(xix) an executed or certified copy of the DRGW Assignment, together with a certificate of the DRGW dated the Closing Date certifying that the DRGW Assignment is in full force and effect on and as of the Closing Date;

(xx) any other documents, affidavits or certificates that the Lender may reasonably request;

(d) the representations and warranties contained in Section 3 hereof shall be true and correct on and as of the Closing Date with the same effect as if made on and as of such date, and no Default or Event of Default shall be in existence on the Closing Date or would occur as a result of the Loan;

(e) there shall not have been, in the judgment of the Lender, any material adverse change in the financial condition, business or operations of the Company, the Railroad or Kennecott subsequent to December 31, 1979; and

(f) there shall not have been, in the judgment of the Lender, any material adverse change in the number of annualized outbound box-car loadings at the Magna, Utah facility of Kennecott.

#### SECTION 5. GRANT OF LIEN AND SECURITY INTEREST

As collateral security for the prompt and complete payment when due (whether at the stated maturity, by prepayment, by acceleration or otherwise) of the principal of, premium, if any, and interest on the Note and the due and punctual payment and performance by the Company of all of its other obligations and liabilities under or arising out of or in connection with this Agreement or the Note (all of the foregoing being hereinafter called the "Obligations"), and in order to induce the Lender to make the Loan hereunder:

5.1 Box-cars. The Company does hereby assign, convey, mortgage, pledge and transfer to the Lender, and does hereby grant to the Lender a continuing security interest in, all Box-cars now owned or at any time hereafter acquired by the Company and any and all Proceeds thereof.

5.2 Lease. (a) The Company does hereby assign, convey, mortgage, pledge and transfer to the Lender, and

does hereby grant to the Lender a continuing security interest in, all right, title and interest of the Company in, to and under the Lease, including, without limitation, all right, title and interest of the Company in and to all rents, issues, profits, revenues and other income arising under the Lease and other moneys due and to become due to the Company under or arising out of the Lease, all claims for damages arising out of the breach of the Lease, the right of the Company to terminate the Lease (except as permitted by Subsection 6.17 hereof) and to compel performance of the terms and provisions thereof, and all chattel paper, contracts, instruments and other documents evidencing the Lease or any moneys due or to become due thereunder or related thereto, and all Proceeds of any and all of the foregoing. Each and every manually executed copy of the Lease which the Company or any affiliate thereof has in its control or possession shall have marked thereon a notice indicating the Lender's interest therein.

(b) The Company (i) authorizes and directs the Railroad and any other Lessee under the Lease to make payment of all amounts payable by the Railroad or such other Lessee, as the case may be, to the Company under the Lease, including, without limitation, all rents, issues, profits, revenues and other income arising under the Lease, directly to the Security Deposit Account or as the Lender may otherwise direct; and (ii) will hold in trust any such amounts which may be received by it and forthwith pay the same to the Security Deposit Account or as the Lender may otherwise direct; and the Company irrevocably authorizes and empowers the Lender to ask, demand, receive, receipt and give acquittance for any and all such amounts which may be or become due and payable or remain unpaid to the Company by the Railroad or any other Lessee under the Lease at any time or times under or arising out of the Lease, to endorse any checks, drafts or other orders for the payment of money payable to the Company in payment therefor, and in the Lender's discretion to file any claims or take any action or proceedings either in its own name or in the name of the Company or otherwise which the Lender may deem to be necessary or advisable in the premises. The Company hereby irrevocably authorizes the Lender, in its own name or in the name and on behalf of the Company, to give notification to the Railroad and any other Lessee under the Lease that payment thereunder is to be made as provided in this Subsection 5.2(b).

(c) It is expressly agreed by the Company that, anything herein to the contrary notwithstanding, the

Company shall remain liable under the Lease to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with and pursuant to the terms and provisions thereof. The Lender shall not have any obligation or liability under the Lease by reason of or arising out of this Agreement or the assignment of the Lease to the Lender pursuant hereto, nor shall the Lender be required or obligated in any manner to perform or fulfill any of the obligations of the Company under or pursuant to the Lease, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment or performance by any party under the Lease, or to present or file any claim, or to take any action to enforce the observance of any obligations of any party to the Lease.

5.3 Security Deposit Account. The Company does hereby assign, convey, mortgage, pledge and transfer to the Lender, and does hereby grant to the Lender a continuing security interest in, all moneys and investments at any time held in the Security Deposit Account.

5.4 Letter Agreement. The Company does hereby assign, convey, mortgage, pledge or transfer to the Lender, and does hereby grant to the Lender a continuing security interest in, all right, title and interest of the Company in, to and under the Letter Agreement, including, without limitation, all claims for damages arising out of the breach by Kennecott of any provision of the Letter Agreement and the right of the Company to compel performance of the terms and provisions of the Letter Agreement. Each and every manually executed copy of the Letter Agreement which the Company or any affiliate thereof has in its control or possession shall have marked thereon a notice indicating the Lender's interest therein.

## SECTION 6. COVENANTS

The Company hereby covenants and agrees that from the date of this Agreement and so long as any of the Notes remain outstanding and unpaid:

6.1 Financial Statements and Reports. The Company will furnish, or cause to be furnished, to the Lender:

- (a) within 30 days after the end of each quarterly period of each calendar year, a certificate of the President or any Vice President

of the Company stating that, to the best of his knowledge after due inquiry, the Company has observed and performed each and every covenant and agreement of the Company contained in this Agreement, the Supplements, the Note, the Lease, and the Security Deposit Agreement and that no Default or Event of Default hereunder or default or event of default under the Lease has occurred during such quarterly period or is then in existence, except as specifically indicated;

(b) as soon as available but in any event not later than April 30 of each year, a duplicate original of the annual report filed by the Railroad with the Interstate Commerce Commission or any governmental authority succeeding to all or a part of the functions thereof;

(c) during any period when the Railroad shall not be required to file annual reports containing its financial statements with the Interstate Commerce Commission or any successor governmental authority, as soon as available but in any event not later than 120 days after the close of each fiscal year of the Railroad, a report setting forth such financial and other information with respect to the Railroad for such fiscal year as is contained in the report filed by the Railroad with the Interstate Commerce Commission for the year ended December 31, 1979; and

(d) promptly, such additional information with respect to the Box-cars or the Lease as the Lender may from time to time reasonably request.

**6.2 Reports.** (a) The Company will furnish to the Lender, within 45 days after the end of each six-month period ending June 30 or December 31 of each year, a report as to the Utilization of the Units (as defined in Section 4 of the Lease originally assigned hereunder) during such six-month period, in such detail as shall be reasonably satisfactory to the Lender, which report shall be executed by the President or any Vice President of the Company.

(b) The Company will furnish or cause to be furnished to the Lender:

(i) within 25 days after the end of each calendar month, a copy of the report of the activity of the Box-cars for such month required

to be submitted to the Company by the Railroad under Paragraph 10.1(a) of the Lease originally assigned hereunder;

(ii) within 100 days after the end of each calendar year, a copy of the statement signed by an executive officer of the Railroad required to be submitted by the Railroad to the Company pursuant to Paragraph 10.1(b) of the Lease originally assigned hereunder;

(iii) within five days after delivery thereof to the Company, copies of all notices, reports, records and other documents delivered to the Company by the Railroad pursuant to Paragraphs 10.1(c) and 10.1(f) of the Lease originally assigned hereunder; and

(iv) at the times set forth in the foregoing clauses (i), (ii) and (iii), a report, statement, notice, record or other document, as the case may be, in substantially the same form as, and containing the same information as is required to be contained in, the report, statement, notice, record or other document referred to in said clause (i), (ii) or (iii) with respect to any Box-cars which are not subject to the Lease originally assigned hereunder.

(c) The Company will prepare and deliver to the Lender, or cause to be prepared and delivered to the Lender, within a reasonable time prior to the required date of filing (or, to the extent permissible, file or cause to be filed on behalf of the Lender) all reports (other than income tax returns), if any, relating to the maintenance, registration and operation of the Box-cars required (to the Company's knowledge) to be filed by the Lender with any federal, state or other regulatory agency by reason of the Lender's lien on and security interest in the Box-cars or the provisions of this Agreement.

6.3 Sale, Lease, Merger or Consolidation by Company. The Company will not sell, lease, transfer or otherwise dispose of all or substantially all of its properties and assets as an entirety, or consolidate with or merge into any Person, or permit any Person to merge into it, unless:

(a) the successor formed by or resulting from such consolidation or merger or the transferee or lessee to which such sale, lease,

transfer or other disposition shall be made shall be a corporation duly organized and existing under the laws of the United States of America or any State thereof;

(b) the obligations, covenants and agreements of the Company under this Agreement, the Supplements, the Note, the Lease and the Security Deposit Agreement shall be expressly assumed, by written instrument furnished to the Lender and in form and substance satisfactory to the Lender, by such successor (if such successor shall not be the Company), transferee or lessee; and

(c) immediately after giving effect to such transaction and to the assumption of the obligations, covenants and agreements of the Company under this Agreement, the Supplements, the Note, the Lease, and the Security Deposit Agreement, the Company or such successor (if such successor shall not be the Company) or such transferee or lessee shall not be in default in the performance or observance of any covenant, agreement or condition contained in this Agreement.

6.4 Corporate Existence; Compliance with Laws and Rules. (a) The Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights and franchises, provided that this covenant shall not prevent a consolidation or merger of, or a sale, lease, transfer or other disposition of all or substantially all of the property and assets of, the Company not prohibited by the provisions of Subsection 6.3 hereof.

(b) The Company will (i) comply, and will use its best efforts to cause any Lessee under the Lease and every other user of the Box-cars to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of the Box-cars) with all laws of the jurisdictions in which its or such Lessee's or such user's operations involving the Box-cars may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other governmental authority exercising any power or jurisdiction over the Box-cars, to the extent that such laws or rules affect the title, operation or use of the Box-cars,

and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Company will conform therewith at its own expense, and (ii) comply with all other applicable laws and regulations of any governmental authority relative to the conduct of its business or the ownership of its properties or assets, provided that the Company may, in good faith, contest the validity or application of any such law or rule by appropriate proceedings which do not, in the opinion of the Lender, involve any reasonable danger of the sale, forfeiture or loss of the Box-cars or any part thereof.

6.5 Principal Office. The Company will not change the location of its principal place of business, its chief executive office or the place at which its books and records are kept from the address specified in Section 3.9 hereof unless it shall have given the Lender at least 30 days' prior written notice of such change, and the Company will at all times maintain its principal place of business, chief executive office and the place at which its books and records are kept within the United States of America.

6.6 Indemnities, etc. (a) In any suit, proceedings or action brought by the Lender under the Lease or to enforce any of the provisions thereof, the Company will save, indemnify and keep the Lender harmless from and against all expense, loss or damage suffered by reason of any reduction, abatement, defense, setoff, counterclaim or recoupment for any reason whatsoever of any Lessee under the Lease arising out of a breach by the Company of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to or in favor of any such Lessee or its successor from the Company, and all such obligations of the Company shall be and remain enforceable against and only against the Company and shall not be enforceable against the Lender.

(b) The Company agrees to indemnify and hold the Lender harmless against any and all liabilities, obligations, losses, damages, claims, suits, costs, expenses and disbursements (including legal fees and expenses) incurred by or asserted against the Lender with respect to claims for personal injury or property damage arising from its participation in the transactions contemplated by this Agreement or the Lease; provided, however, that this indemnity shall not apply to such a claim with respect to a Box-car which (i) arises from an act or event occurring when such Box-car is in the possession or control of the Lender or after such Box-car has been sold by the Lender in the exercise of its remedies provided for in Section 9 hereof, or (ii) results from the willful misconduct or gross negligence of the Lender.

6.7 Performance of Agreements. The Company will perform and comply in all material respects with all its obligations under the Lease, the Security Deposit Agreement and all other agreements to which it is a party or by which it is bound relating to the Collateral, and the Company will use its best efforts to cause each other party to any thereof so to perform and comply.

6.8 Preservation of Collateral. (a) The Company will not create, permit or suffer to exist, and will defend the Collateral against and take such other action as is necessary to remove, any Lien, claim or right in or to the Collateral (other than (i) the lien and security interest created by this Agreement and (ii) Permitted Liens) and will defend the right, title and interest of the Lender in and to the Box-cars, the Lease, the other Collateral and the Proceeds of all of the foregoing against the claims and demands of all other Persons whomsoever.

(b) The Company will not, without the prior written consent of the Lender, sell, transfer or otherwise dispose of any of the Collateral or attempt or offer to do so.

(c) The Company will not, without the prior written consent of the Lender, agree to or permit (i) any material amendment or other modification of the Lease, (ii) any termination of the Lease in whole or in part except in accordance with the provisions of Subsection 6.17 hereof, or (iii) any amendment or other modification of, or any consent or waiver with respect to, the Letter Agreement or the DRGW Assignment.

(d) The Company will advise the Lender promptly, in reasonable detail, of any Lien or claim made or asserted against any of the Collateral and of any event affecting the Lender's lien on and security interest in the Collateral.

6.9 Further Assurances; Recordation and Filing. The Company will, at its sole cost and expense, do, execute, acknowledge and deliver all further acts, supplements, mortgages, security agreements, conveyances, transfers and assurances necessary or advisable for the perfection and preservation of the lien and security interest created by this Agreement in the Collateral, whether now owned or hereafter acquired. The Company will cause this Agreement and all Supplements hereto, and all financing and continuation statements and similar notices required by applicable law, at all times to be kept, recorded and filed at no expense to the Lender in such manner and in such places as may be required by law in order fully to preserve and protect the rights of the Lender hereunder.

6.10 ICC Jurisdiction. The Company will not take or permit to be taken any action within its control which would subject it or its operations to the jurisdiction of the Interstate Commerce Commission, if such jurisdiction will adversely affect the ability of the Company to perform its obligations under this Agreement, any Supplement, the Note, the Lease, ~~the Consent and Agreement~~ or the Security Deposit Agreement or adversely affect the validity or enforceability of this Agreement, any Supplement, the Note, the Lease or the Security Deposit Agreement. PJ

6.11 Maintenance of Insurance. The Company will maintain or cause to be maintained with financially sound and reputable companies, insurance policies (i) insuring each Box-car against loss by fire, explosion, theft and such other casualties as are usually insured against by companies engaged in the ownership and leasing of railroad freight cars and with coverage in an amount at least equal to the Casualty Value of such Box-car (but such coverage for all Box-cars owned or leased by the Company may be limited to \$1,000,000 for each occurrence), (ii) insuring the Company and the Lender against liability for personal injury and property damage caused by or relating to the Box-cars or their use with coverage in the amount of at least \$10,000,000, and (iii) insuring the Company for the loss of revenues from each Unit in excess of 10 Units which becomes inoperable due to damage, for an 80-day period commencing 10 days after the date of such damage. All such insurance policies shall (A) be in such form and have such coverage as shall be satisfactory to the Lender, naming the Lender as an additional assured with losses payable to the Company and the Lender as their respective interests may appear, (B) provide for at least 30 days' prior written notice to the Lender before any cancellation, termination or material change with respect to such insurance shall be effective, (C) contain a breach of warranty clause in favor of the Lender, and (D) provide that the Lender shall have no obligation or liability for premiums, commissions, assessments or calls in connection with such insurance. The Company shall, on or before November 1 of each year commencing with the year 1981, deliver to the Lender a report of a reputable insurance broker with respect to the insurance on the Box-cars.

6.12 Location of Box-cars. The Company will, within 30 days after it obtains knowledge that more than 10% of the Box-cars are located outside the continental United States of America, cause sufficient of such Box-cars to be returned to the continental United States so that the number of Box-cars located outside the continental United States shall not exceed 10% of all the Box-cars.

6.13 Casualty Occurrence. (a) In the event of a Casualty Occurrence with respect to any Unit, the Company shall promptly give the Lender written notice of such Casualty Occurrence, which notice shall (i) identify the Unit which has suffered the Casualty Occurrence, (ii) set forth the Casualty Value of such Damaged Unit (and the calculations used in the determination thereof) as of the date which is 30 days after the date of such notice (the "Casualty Value Determination Date"), and (iii) specify whether the Company will, on the Casualty Value Determination Date, prepay the Note pursuant to paragraph (b) of this Subsection 6.13 (in which case such notice shall also contain the information required by Subsection 2.6 hereof) or replace the damaged Unit pursuant to paragraph (c) of this Subsection 6.13.

(b) If the notice given pursuant to paragraph (a) of this Subsection 6.13 specifies that the Company will prepay the Note on the Casualty Value Determination Date, the Company will, on such date, (i) prepay the Note in an aggregate principal amount equal to the Casualty Value of the Damaged Unit as of such date, without premium, and (ii) pay the accrued interest on the principal amount so prepaid to the date of prepayment.

(c) If the notice given pursuant to paragraph (a) of this Subsection 6.13 specifies that the Company will replace the Damaged Unit, the Company will, on or prior to the Casualty Value Determination Date:

(i) replace the Damaged Unit with a box-car of the same type, which has a value and utility at least equal to, which is no older than, and which is in as good condition as, the Damaged Unit immediately prior to the Casualty Occurrence (assuming that such Damaged Unit was then in the condition required to be maintained by Subsection 6.14 hereof) and which is free and clear of all Liens other than Permitted Liens,

(ii) take all steps necessary to subject such replacement box-car (the "Replacement Unit") to the lien and security interest of this Agreement and to subject such Replacement Unit to the Lease, and

(iii) deliver to the Lender such documents evidencing the foregoing as the Lender may reasonably request, including, without limitation, (A) a duly executed Supplement describing the Replacement Unit and subjecting the Replacement Unit to the lien and

security interest of this Agreement, together with evidence that such Supplement has been duly filed, registered and recorded with the Interstate Commerce Commission in accordance with Section 11303, Title 49 of the United States Code, (B) a duly executed schedule subjecting the Replacement Unit to the Lease, together with evidence that such schedule has been duly filed, registered and recorded with the Interstate Commerce Commission in accordance with Section 11303, Title 49 of the United States Code, and (C) documents and opinions of counsel with respect thereto corresponding to those described in clauses (x), (xi), (xii), (xiv), (xv), (xvi), (xvii) and (xx) of Subsection 4(c) hereof.

Upon the Company's compliance with the foregoing provisions of this Subsection 6.13, the Lender will, if no Default or Event of Default has occurred and is continuing, execute and deliver to the Company such instruments as shall be necessary to release such Damaged Unit from the lien and security interest of this Agreement (without recourse to, or representation or warranty by, the Lender).

6.14 Maintenance. The Company will, at its expense, keep and maintain the Box-cars in good repair, condition and working order and will cause to be furnished all parts, mechanisms, devices and servicing required therefor so that the value, condition and operating efficiency thereof will at all times be maintained and preserved, ordinary wear and tear excepted.

6.15 Notice of Default. The Company will, promptly after obtaining knowledge thereof, give written notice to the Lender of the occurrence of any Default or Event of Default hereunder or of any default or event of default under the Lease.

6.16 Inspection. The Company will permit any Person designated by the Lender to visit and inspect any of the Collateral (subject to the rights of the Lessee under the Lease) and any of the books and records of the Company pertaining to the Collateral.

6.17 Addition or Substitution of Leases. (a) If pursuant to the provisions of any Lease the Company has the right to terminate such Lease with respect to all or a portion of the box-cars leased thereunder because of a failure to maintain the utilization rate of the box-cars leased thereunder at the rate specified therein (such as is contemplated by the provisions of Paragraphs 5.1 and 6.2 of the Lease originally assigned hereunder), upon any such failure

the Company may terminate such Lease with respect to any of the box-cars leased thereunder, provided that within 90 days after such termination (1) the box-cars withdrawn from such Lease shall be duly leased under another lease (an "additional lease") meeting the requirements of paragraph (c) of this Subsection 6.17 and, if the Lender in its good faith opinion deems it necessary or advisable in order to reasonably insure at least Minimum Utilization (as defined in Paragraph 4.1 of the Lease originally assigned hereunder) of such box-cars, shall be placed in assigned service under an agreement no less favorable to the Lessee under such additional lease than the DRGW Assignment and made subject to a shipper's agreement (an "additional letter agreement") no less favorable to the Company than the Letter Agreement; (2) such additional lease and additional letter agreement (insofar as they pertain to the Box-cars) shall have been duly assigned to the Lender and subjected to the lien and security interest of this Agreement, all recordations, filings and other action necessary to establish, perfect, protect and preserve the rights of the Company and the Lender in and to such additional lease and additional letter agreement and the lien and security interest of this Agreement on such additional lease and additional letter agreement shall have been duly made or taken, and the Lender shall have received such instruments and documents as it may reasonably request in order to evidence the foregoing; and (3) the Lender shall have received an opinion of counsel for the Company to the effect that this Agreement constitutes a legal, valid and perfected first lien on and first priority security interest in such additional lease and additional letter agreement (and the Proceeds thereof) to the extent that such additional lease and additional letter agreement relate to the Box-cars subject thereto, and all recordations, filings and other action necessary to establish, perfect, protect and preserve, as security for the Obligations, such lien and security interest have been duly made or taken (specifying the same).

(b) If pursuant to the provisions of any Lease the Company has the right to terminate such Lease upon the occurrence of an event of default by the Lessee thereunder, upon the occurrence and continuance of any material event of default by the Lessee thereunder, the Company may terminate the Lease with respect to all of the Box-cars leased thereunder. If the Company so terminates such Lease, within 90 days after such termination (i) all of the Box-cars previously subject to such Lease shall be duly leased by the Company under another lease (a "substituted lease") meeting the requirements of paragraph (c) of this Subsection 6.17, and, if the Lender in its good faith opinion deems it necessary or advisable in order to reasonably insure at

least Minimum Utilization (as defined in Paragraph 4.1 of the Lease originally assigned hereunder) of such box-cars, shall be placed in assigned service under an agreement no less favorable to the Lessee under such substituted lease than the DRGW Assignment and made subject to a shipper's agreement (a "substituted letter agreement") no less favorable to the Company than the Letter Agreement; (ii) such substituted lease and substituted letter agreement (insofar as they pertain to the Box-cars) shall be duly assigned by the Company to the Lender and subjected to the lien and security interest of this Agreement, all recordations, filings and other action necessary to establish, perfect, protect and preserve the rights of the Company and the Lender in and to such substituted lease and substituted letter agreement and the lien and security interest of this Agreement on such substituted lease and substituted letter agreement shall be duly made or taken, and the Company shall deliver to the Lender such instruments and documents as the Lender may reasonably request in order to evidence the foregoing; and (iii) the Company shall deliver to the Lender an opinion of counsel for the Company to the effect that this Agreement constitutes a legal, valid and perfected first lien on and first priority security interest in such substituted lease and substituted letter agreement (and the Proceeds thereof) to the extent that such substituted lease and substituted letter agreement relate to the Box-cars subject thereto, and all recordations, filings and other action necessary to establish, perfect, protect and preserve, as security for the Obligations, such lien and security interest have been duly made or taken (specifying the same).

(c) Each additional lease referred to in paragraph (a) of this Subsection 6.17, and each substituted lease referred to in paragraph (b) of this Subsection 6.17, (i) shall have a term which is non-cancellable by the Lessee thereunder (except under the same circumstances as the Lease originally assigned hereunder is cancellable by the Railroad) and which expires not earlier than the term of the Lease originally assigned hereunder, and (ii) shall have substantially the same other terms and be in substantially the same form as the Lease to which such Box-cars were originally subject, or, if the Company is in good faith unable to enter into a lease having such other terms and in such form, shall have such other commercially reasonable terms and be in such form as shall be agreeable to the Company provided that the rentals, use fees or similar charges payable under the latter form of lease with respect to the Box-cars subject thereto during each quarterly payment period under the Note shall be in an amount at least equal to the installment of principal, premium, if any, and

interest payable on such Note at the end of such quarterly payment period multiplied by a fraction, the numerator of which is the aggregate Box-car Costs of the Box-cars subject thereto and the denominator of which is the aggregate Box-car Costs of all Box-cars which are then subject to the lien and security interest of this Agreement.

6.18 Marking of Box-cars. The Company will cause each Unit to be kept marked with the name, railroad markings and/or other insignia used by the Lessee thereof and numbered with such identifying number as shall be set forth in the Supplement pertaining to such Unit and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the following: "MORTGAGED TO A FINANCIAL INSTITUTION UNDER A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION" or other appropriate words designated by the Lender, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lender's interest in the Box-cars and its rights under this Agreement. The Company will replace or will cause to be replaced promptly any such name, markings or other insignia, such number or such words which may be removed, defaced or destroyed. The Company will not permit the identifying number of any Unit to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been delivered to the Lender and filed, recorded and deposited by the Company in all public offices where this Agreement shall have been filed, recorded or deposited.

6.19 Change in Designation, etc. Except as may be required by the Interstate Commerce Commission or other governmental authority having jurisdiction over the Box-cars, the Company will not, without the prior written consent of the Lender, change the mechanical designation of any of the Box-cars from the "XP" designation provided for under the rules and regulations of the Association of American Railroads.

#### SECTION 7. POWER OF ATTORNEY

7.1 Appointment. The Company hereby irrevocably constitutes and appoints the Lender and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Company and in the name of the Company or in its own name, from time to time in the Lender's discretion, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, the Company hereby gives the Lender the power and right, on behalf of the Company, without notice to or assent by the Company, to do the following:

(a) upon default by the Company in the performance of Subsection 6.8(a) or 6.11, the Lender may, but shall not be obligated to, (i) effect any insurance called for by the terms of Subsection 6.11 and pay all or any part of the premiums therefor and the costs thereof and (ii) pay and discharge any Liens on or claims or rights in or to the Collateral which rank prior to or pari passu with the lien and security interest created by this Agreement; and

(b) upon the occurrence and continuance of any Default specified in paragraph (i) of Section 8 hereof or of any Event of Default, (i) to receive payment of and receipt for any and all moneys, claims and other amounts due and to become due at any time in respect of or arising out of any Collateral; (ii) to sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications and notices in connection with accounts and other documents relating to the Collateral; (iii) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any thereof and to enforce any other right in respect of any of the Collateral; (iv) to defend any suit, action or proceeding brought against the Company with respect to any of the Collateral; (v) to settle, compromise or adjust any suit, action or proceeding described in clause (iv) above and, in connection therewith, to give such discharges or releases as the Lender may deem appropriate; and (vi) generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Lender were the absolute owner thereof for all purposes, and to do, at the Lender's option and the Company's expense, at any time or from time to time, all acts and things which the Lender deems necessary to protect, preserve or realize upon the Collateral and the Lender's security interest therein, in order to effect the intent of this Agreement, all as fully and effectively as the Company might do.

The Company hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

7.2 No Duty. The powers conferred on the Lender hereunder are solely to protect its interests in the Collateral and shall not impose any duty upon it to exercise any such powers. The Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees or agents shall be responsible to the Company for any act or failure to act, except for its or their own gross negligence or willful misconduct.

7.3 Additional Rights. (a) The Company authorizes the Lender, at any time and from time to time, to execute, in connection with the sale provided for in Section 9(c) of this Agreement, any indorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

(b) If the Company fails to perform or comply with any of its agreements contained herein, the Lender may itself perform or comply, or otherwise cause performance or compliance, with such agreement, and the expenses of the Lender incurred in connection with such performance or compliance, together with interest thereon at the rate of 18% per annum, shall be payable by the Company to the Lender on demand and shall constitute part of the Obligations secured hereby.

#### SECTION 8. EVENTS OF DEFAULT

If any of the following Events of Default shall occur and be continuing:

(a) Failure to pay any principal of, premium, if any, or interest on the Note when due and such failure shall continue for a period of three days;

(b) Any representation or warranty made by the Company in this Agreement, or made by the Company, Kennecott, the Railroad or any officer of any thereof in any document, certificate or financial or other statement furnished at any time under or in connection with this Agreement, or any representation or warranty made by either of the Guarantors in the

Guaranty executed and delivered by such Guarantor, shall prove to have been untrue when made in any material respect;

(c) Default by the Company in the observance or performance of (i) any covenant contained in Subsection 6.3, 6.8(c), 6.11, 6.12, 6.17 or 6.19 hereof, or (ii) any covenant contained in Subsection 6.8(a), 6.8(b), 6.8(d), 6.13, 6.14 or 6.18 hereof and such default shall continue for 30 days;

(d) Default by the Company in the observance or performance of any other covenant or agreement contained in this Agreement and not referred to in paragraph (c) of this Section 8, or in the observance or performance of any covenant or agreement contained in the Security Deposit Agreement, and such default shall continue for 30 days after written notice thereof, specifying such default and requesting that the same be remedied, shall have been given to the Company by the Lender;

(e) Default by either of the Guarantors in the observance or performance of any covenant or agreement contained in the Guaranty executed and delivered by such Guarantor, and such default shall continue for 30 days after written notice thereof, specifying such default and requesting that the same be remedied, shall have been given to such Guarantor (with a copy thereof to the Company) by the Lender;

(f) Either of the Guaranties shall at any time for any reason cease to be in full force and effect, or shall be declared to be null and void in whole or in part, or the validity or enforceability thereof shall be contested by the Company or the Guarantor thereunder, or the Guarantor thereunder shall disclaim in writing any of his obligations thereunder;

(g) The termination of any Lease by the Lessee thereunder because of a breach by the Company of any term, covenant or condition contained in such Lease;

(h) The entry of a decree or order for relief by a court having jurisdiction in respect of

the Company or either of the Guarantors, or adjudging the Company or either of the Guarantors a bankrupt or insolvent, or approving as properly filed a petition seeking a reorganization, arrangement, adjustment or composition of or in respect of the Company or either of the Guarantors in an involuntary proceeding or case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee or sequestrator (or similar official) of the Company or either of the Guarantors or of any substantial part of the property of the Company or either of the Guarantors, or ordering the winding-up or liquidation of the affairs of the Company, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; or

(i) The institution by the Company or either of the Guarantors of proceedings to be adjudicated a bankrupt or insolvent, or the consent by the Company or either of the Guarantors to the institution of bankruptcy or insolvency proceedings against the Company or such Guarantor, as the case may be, or the commencement by the Company or either of the Guarantors of a voluntary proceeding or case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by the Company or either of the Guarantors to the filing of any such petition or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian or sequestrator (or other similar official) of the Company or either of the Guarantors or of any substantial part of the property of the Company or either of the Guarantors, as the case may be, or the making by the Company or either of the Guarantors of an assignment for the benefit of creditors, or the admission by the Company or either of the Guarantors in writing of its or his inability to pay its or his debts generally as they become due and its or his willingness to be adjudicated a bankrupt, or the failure of the Company or either of the Guarantors generally to

pay its or his debts as they become due, or the taking of corporate action by the Company in furtherance of any of the foregoing;

then, and in any such event, the Lender may exercise any or all remedies granted to it under this Agreement and under applicable law, and may further, by notice of default given to the Company, (i) terminate forthwith its commitment to make the Loan hereunder (if the Loan has not at the time been made), or (ii) declare the Note to be forthwith due and payable, whereupon the principal amount of the Note, together with accrued interest thereon, shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Note to the contrary notwithstanding.

#### SECTION 9. REMEDIES

If an Event of Default shall occur and be continuing:

(a) All payments received by the Company in connection with or arising out of any of the Collateral shall be held by the Company in trust for the Lender, shall be segregated from other funds of the Company and shall forthwith upon receipt by the Company be turned over to the Lender, in the same form as received by the Company (duly indorsed by the Company to the Lender, if required); any and all such payments so received by the Lender (whether from the Company or otherwise) may, in the sole discretion of the Lender, be held by the Lender as collateral security for the Obligations, and/or then or at any time thereafter applied in whole or in part by the Lender against all or any part of the Obligations then due in such order as the Lender shall elect. Any balance of such payments held by the Lender and remaining after payment in full of all the Obligations shall be paid over to the Company or to whomsoever may be lawfully entitled to receive the same;

(b) The Lender may institute suits, actions and proceedings for the collection of all amounts then payable in respect of the Obligations, and, subject to and in accordance with the provisions of Subsection 10.1 hereof, enforce any judgment obtained;

(c) The Lender may exercise in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the Uniform Commercial Code of the State of New York. Without limiting the generality of the foregoing, the Company expressly agrees that in any such event the Lender, without demand of performance or other demand, advertisement or notice of any kind (except the notice specified below of time and place of public or private sale) to or upon the Company or any other Person (all and each of which demands, advertisements and/or notices are hereby expressly waived), may forthwith collect, receive, appropriate and realize upon the Collateral or any part thereof and may take possession of the Box-cars and/or may forthwith sell, assign, give option or options to purchase, or lease or otherwise dispose of and deliver the Collateral, or any part thereof, in any manner permitted by applicable law (or contract to do so) in one or more parcels at public or private sale or sales, at the office of any broker or at any of the Lender's offices or elsewhere at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk, with the right of the Lender upon any such sale or sales, public or private, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in the Company after such sale or sales, which right or equity of redemption is hereby expressly waived or released. If any notification of intended disposition of any of the Collateral is required by law, such notification shall be deemed reasonably and properly given if mailed at least ten (10) days before such disposition, postage prepaid, addressed to the Company at the address set forth in Subsection 10.3 hereof. The Company further agrees, at the Lender's request, to collect the Box-cars (to the extent possible) and make them available to the Lender at such place or places which the Lender shall reasonably select. The Lender shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization and sale, after deducting all reasonable costs and expenses of every kind incurred therein or incidental to the care, safekeeping or otherwise of any or all of the Collateral or in any way relating to the rights of the Lender hereunder, including reasonable attorney's

fees and legal expenses, to the payment in whole or in part of the Obligations, in such order as the Lender may elect, and only after so applying such net proceeds, after payment in full of the Obligations and after the payment by the Lender of any other amount required by any provision of law, including Section 9-504(1)(c) of the Uniform Commercial Code of the State of New York, need the Lender account for the surplus, if any, to the Company. To the extent permitted by applicable law, the Company waives all claims, damages and demands against the Lender arising out of the repossession, retention or sale of the Collateral. If the proceeds of any sale or disposition of the Collateral are insufficient to pay in full all of the Obligations, the Company shall remain liable for the unpaid portion thereof to the extent, if any, that such unpaid Obligations are recourse to the Company under the provisions of Subsection 10.1 hereof. The Company hereby waives presentment, demand, protest and any notice (to the extent permitted by applicable law) of any kind in connection with this Agreement or any Collateral; and

(d) Beyond the use of reasonable care in the custody thereof the Lender shall not have any duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of it or as to any income therefrom.

## SECTION 10. MISCELLANEOUS

10.1 Nature of Obligations. Any provision of this Agreement to the contrary notwithstanding (except as hereinafter provided), no recourse shall be had against the Company personally or against any incorporator, shareholder, officer or director of the Company for any obligation of the Company under or in respect of this Agreement or the Note, it being expressly understood that, as respects the aforementioned Persons, such obligations are non-recourse obligations enforceable only against the Collateral; provided, however, that notwithstanding the foregoing, full recourse shall be had against the Company personally (a) for all obligations of the Company under Subsections 6.6, 6.8(a), 7.3(b), and 10.2 hereof, and (b) for all losses, damages and expenses suffered or incurred by the Lender as a result of (i) any breach by the Company

of any of its other covenants or agreements contained in this Agreement (except the agreements contained in clause (ii) of Subsection 6.17(a) and in the second sentence of Subsection 6.17(b)), or (ii) any representation or warranty made by the Company in this Agreement or made by the Company or any officer thereof in any document, certificate or statement furnished under or in connection with this Agreement being untrue in any material respect when made. Nothing contained in this Subsection 10.1 shall limit the right of the Lender to seek injunctive or other equitable relief with respect to any of the Company's obligations, representations or warranties.

Notwithstanding the foregoing provisions of this Subsection 10.1, the Company may at any time, by written notice to the Lender, elect to become personally liable for all or a specified portion of the principal of, premium, if any, and interest on the Note, whereupon the portion of the principal of, premium, if any, and interest on the Note specified in such notice shall, without further act, immediately and irrevocably become full recourse obligations of the Company enforceable against it and its assets, anything contained in this Agreement or the Note to the contrary notwithstanding. In such an event, the Lender may endorse on the Note a legend specifying the full or partial recourse nature thereof, and the Company shall execute such legend.

10.2 Reimbursement of Lender. The Company agrees, whether or not the transactions contemplated by this Agreement shall be consummated, to pay, or reimburse the Lender for, all out-of-pocket expenses (including the reasonable legal fees and disbursements of counsel for the Lender) incurred by the Lender in connection with the preparation, execution, enforcement (or the preservation of any rights hereunder) and any modification of this Agreement, any Supplement, the Note, the Lease and the Security Deposit Agreement. The Company also agrees to pay, and to save the Lender harmless from, any and all liabilities with respect to, or resulting from any delay in paying, documentary, excise, recording, filing, stamp or similar taxes, fees and other governmental charges (including interest and penalties), if any, which may be payable or determined to be payable in respect of the execution, delivery or recording of this Agreement, any Supplement, the Note, the Lease, the Consent and Agreement, the Security Deposit Agreement or any modification of any thereof or any waiver or consent under or in respect of any thereof. The obligations of the Company under this Subsection 10.2 shall survive payment of the Note and termination of this Agreement.

10.3 Notices. Except as otherwise expressly provided herein, all notices, requests and demands to or upon the respective parties to this Agreement shall be deemed to have been given or made when delivered by hand or deposited in the mail, first class postage prepaid, or in the case of telegraphic notice, when delivered to the telegraph company, or in the case of telex notice, when sent, addressed as follows or to such other address as may be hereafter designated in writing by the respective parties hereto:

The Company      Operating Lease Services, Inc.  
                          47 Locust Hill Road  
                          Darien, Connecticut 06820  
                          Attention: Paul E. Tierney, Jr.

With copies to:

Operating Lease Services, Inc.  
 c/o Gollust & Tierney, Inc.  
 Suite 4510  
 30 Rockefeller Plaza  
 New York, New York 10020  
 Attention: Paul E. Tierney, Jr.

Nevada Northern Railway  
 Company  
 P.O. Box 16600  
 Salt Lake City, Utah 84116  
 Attention: William Melville

Kennecott Corporation  
 P.O. Box 11248  
 Salt Lake City, Utah 84147  
 Attention: William Melville

The Lender      Manufacturers Hanover Leasing  
                          Corporation  
                          30 Rockefeller Plaza  
                          New York, New York 10020  
                          Attention: Vice President  
                          Credit Department  
                          Eastern United States  
                          Telex: 127578

10.4 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the

part of the Lender, any right, power or privilege under this Agreement, the Note, any Supplement or any of the Collateral shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

The rights and remedies provided herein and therein are cumulative and not exclusive of any rights or remedies provided by law.

10.5 Acquisition for Investment. The Lender represents that it is acquiring the Note in the ordinary course of its commercial lending business for its own account for investment and not with a view to, or for sale in connection with, the distribution of the Note, nor with any present intention of selling the Note, but subject, nevertheless, to any requirement of law that the disposition of its property shall at all times be within its control.

10.6 Amendments and Waivers; Survival of Representations and Warranties. The provisions of this Agreement may from time to time be amended, supplemented or otherwise modified or waived only by a written agreement signed by the Company and the Lender. All representations and warranties made by the Company in this Agreement and any certificates delivered pursuant hereto shall survive the execution and delivery of this Agreement and the making of the Loan hereunder.

10.7 Successors. This agreement shall be binding upon and inure to the benefit of the Company and the Lender and their respective successors and assigns, except that the Company may not transfer or assign any of its rights hereunder without the prior written consent of the Lender.

10.8 Construction. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

10.9 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without in-

validating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.10 Counterparts. This Agreement may be executed by one or more of the parties hereto on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

OPERATING LEASE SERVICES, INC.

Attest:

By Keith P. Goltz  
Title: Vice President

By Paul E. Terney Jr.  
Title: President

(Seal)

MANUFACTURERS HANOVER LEASING CORPORATION

Attest:

By Jane D. Scarbolo  
Title: asst. Sec.

By J. Marcus  
Title: v.p.

(Seal)



SCHEDULE I

Description of Financed Box-cars

<u>Specifications</u>	<u>Quantity</u>	<u>Road Numbers (both inclusive)</u>
100 - ton, 50'-6" XP box-cars	30	NN 201 - NN 230

SCHEDULE II

Description of Additional Box-cars

<u>Specifications</u>	<u>Quantity</u>	<u>Road Numbers (both inclusive)</u>
100 - ton, 50'-6" XP box-cars	5	NN 231 - NN 235

[Form of Note]

OPERATING LEASE SERVICES, INC.

\$

New York, New York

, 19

FOR VALUE RECEIVED, OPERATING LEASE SERVICES, INC. (the "Company") hereby promises to pay to the order of MANUFACTURERS HANOVER LEASING CORPORATION (the "Lender") at its office at 30 Rockefeller Plaza, New York, New York, in lawful money of the United States of America, the principal amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), and to pay interest at said office, in like money, on the unpaid principal amount hereof from the date hereof at the rate of 14-1/2% per annum. Such principal and interest shall be due and payable (i) in a single installment of interest only on December 31, 1980 and (ii) thereafter in 60 consecutive quarterly installments of principal and interest, each in the amount of \$ \_\_\_\_\_, on the last day of March, June, September and December in each year, commencing March 31, 1981, provided that, in any event, the final quarterly installment shall be in an amount sufficient to pay in full all accrued interest on, and the entire unpaid principal amount of, this Note, and provided further, that in the event any partial prepayment of this Note is made pursuant to Subsection 2.4 or 2.5 of the Agreement referred to below, each installment due and payable on this Note after such partial prepayment shall be reduced in the same proportion as the then outstanding principal amount of this Note shall have been reduced by such partial prepayment. Each payment with respect to this Note shall be applied first to the payment of interest hereon then due and payable and then to the payment of principal. Interest on any overdue principal of and premium, if any, on this Note shall be payable from the due date thereof at the rate of 18% per annum for the period during which such principal or premium shall be overdue.

This Note is the Note of the Company issued pursuant to the Loan and Security Agreement dated as of August 1, 1980 between the Company and the Lender, as the same may from time to time be amended, supplemented or otherwise modified (the "Agreement"), is entitled to the benefits thereof and is subject to prepayment, in whole

or in part, in certain cases without premium and in other cases with a premium as provided therein.

This Note is secured by the Collateral described in the Agreement. Reference is made to the Agreement for a description of the nature and extent of the security for this Note and the rights of the holder hereof with respect to such security.

Upon the occurrence of any one or more of the Events of Default specified in the Agreement, the amounts then remaining unpaid on this Note may be declared to be immediately due and payable as provided in the Agreement.

Any provision in this Note to the contrary notwithstanding, no recourse shall be had for the payment of the principal of or any premium or interest on this Note against the Company personally or against any incorporator, shareholder, officer or director of the Company, the Lender agreeing that it will look solely to the Collateral (as defined in the Agreement) and the proceeds thereof for the payment of this Note.

This Note shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

OPERATING LEASE SERVICES, INC.

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

EXHIBIT B

Prepayment Premiums

<u>If Prepayment is Made on:</u>	<u>Percentage of Principal Amount</u>
First Payment Date (3/31/81) .....	14.26%
Second Payment Date .....	14.02
Third Payment Date .....	13.78
Fourth Payment Date .....	13.54
Fifth Payment Date .....	13.30
Sixth Payment Date .....	13.06
Seventh Payment Date .....	12.82
Eighth Payment Date .....	12.58
Ninth Payment Date .....	12.34
Tenth Payment Date .....	12.10
Eleventh Payment Date .....	11.86
Twelfth Payment Date .....	11.62
Thirteenth Payment Date .....	11.38
Fourteenth Payment Date .....	11.14
Fifteenth Payment Date .....	10.90
Sixteenth Payment Date .....	10.66
Seventeenth Payment Date .....	10.42
Eighteenth Payment Date .....	10.18
Nineteenth Payment Date .....	9.94
Twentieth Payment Date .....	9.70
Twenty-First Payment Date .....	9.46
Twenty-Second Payment Date .....	9.22
Twenty-Third Payment Date .....	8.98
Twenty-Fourth Payment Date .....	8.74
Twenty-Fifth Payment Date .....	8.50
Twenty-Sixth Payment Date .....	8.26
Twenty-Seventh Payment Date .....	8.02
Twenty-Eighth Payment Date .....	7.78
Twenty-Ninth Payment Date .....	7.54
Thirtieth Payment Date .....	7.30
Thirty-First Payment Date .....	7.06
Thirty-Second Payment Date .....	6.82
Thirty-Third Payment Date .....	6.58
Thirty-Fourth Payment Date .....	6.34
Thirty-Fifth Payment Date .....	6.10
Thirty-Sixth Payment Date .....	5.86
Thirty-Seventh Payment Date .....	5.62
Thirty-Eighth Payment Date .....	5.38
Thirty-Ninth Payment Date.....	5.14

If Prepayment is  
Made on:

Percentage of  
Principal Amount

Fortieth Payment Date .....	4.90%
Forty-First Payment Date .....	4.66
Forty-Second Payment Date .....	4.42
Forty-Third Payment Date .....	4.18
Forty-Fourth Payment Date .....	3.94
Forty-Fifth Payment Date .....	3.70
Forty-Sixth Payment Date .....	3.46
Forty-Seventh Payment Date .....	3.22
Forty-Eighth Payment Date .....	2.98
Forty-Ninth Payment Date .....	2.74
Fiftieth Payment Date .....	2.50
Fifty-First Payment Date .....	2.26
Fifty-Second Payment Date .....	2.02
Fifty-Third Payment Date .....	1.78
Fifty-Fourth Payment Date .....	1.54
Fifty-Fifth Payment Date .....	1.30
Fifty-Sixth Payment Date .....	1.06
Fifty-Seventh Payment Date .....	.82
Fifty-Eighth Payment Date .....	.58
Fifty-Ninth Payment Date .....	.34
Sixtieth Payment Date (12/31/95) ....	0

[Form of Legal Opinion of  
Counsel to the Company]

, 19

Manufacturers Hanover Leasing  
Corporation  
30 Rockefeller Plaza  
New York, New York 10020

Dear Sirs:

We are special counsel for Operating Lease Services, Inc., a Connecticut corporation (the "Company"), and have acted as its special counsel in connection with the execution and delivery of the Loan and Security Agreement dated as of August 1, 1980 between the Company and you (the "Agreement").

This opinion is furnished to you pursuant to clause (xvi) of Subsection 4(c) of the Agreement. Terms used herein which are defined in the Agreement shall have the respective meanings set forth in the Agreement, unless otherwise defined herein.

In connection with this opinion, we have examined executed counterparts of the Agreement and Supplement No. 1 thereto, the Note, the Lease, the Consent and Agreement, the Purchase Agreement, the Letter Agreement, the DRGW Assignment, the Security Deposit Agreement and such closing documents, corporate documents and records of the Company, certificates of public officials and such other documents as we have deemed necessary or appropriate for the purposes hereof.

Based upon the foregoing, we are of the opinion that:

1. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Connecticut.

2. The Company has full power, authority and legal right to own its properties and to conduct its business as now conducted, to execute, deliver and perform the Agreement, the Supplements, the Note, the Lease,

the Purchase Agreement and the Security Deposit Agreement, and the Company has taken all necessary corporate action to authorize the execution, delivery and performance of the Agreement, the Supplements, the Note, the Lease, the Purchase Agreement and the Security Deposit Agreement. No consent of any other party (including stockholders of the Company) and no consent, license, approval or authorization of, exemption by, or filing, registration or declaration with, any governmental authority of the United States of America or the State of Connecticut is required in connection with the execution, delivery or performance by the Company of the Agreement, the Supplements, the Note, the Lease, the Purchase Agreement or the Security Deposit Agreement, except for (i) the filings and recordings referred to in paragraph 7 below, and (ii) filings or recordings with the Interstate Commerce Commission, as to which we express no opinion.

3. The Agreement, Supplement No. 1 thereto, the Note, the Lease, the Purchase Agreement and the Security Deposit Agreement have each been duly executed and delivered by the Company and each of such documents constitutes a legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, moratorium or similar laws affecting the enforcement of creditors' rights generally.

4. The execution, delivery and performance by the Company of the Agreement, the Supplements, the Note, the Lease, the Purchase Agreement and the Security Deposit Agreement will not violate any provision of any Federal or Connecticut law or regulation or of any order, judgment, award or decree of any court, arbitrator or governmental authority applicable to the Company or of the Certificate of Incorporation, By-Laws or any preferred stock provision of the Company or of any mortgage, indenture, contract or other agreement to which the Company is a party or which is binding upon the Company or any of its properties or assets, will not constitute a default thereunder, and (except as contemplated by the Agreement) will not result in the creation or imposition of any Lien on any of the properties or assets of the Company.

5. There are no actions, suits or proceedings (whether or not purportedly on behalf of the Company) pending or, to the best of our knowledge, threatened against the Company or any of its properties or assets in any court or before any arbitrator or before or by any governmental body, which (i) relate to any of the Collateral or to any of the transactions contemplated by the Agreement, or (ii) would, if adversely determined, have a material adverse effect on the financial condition, business or operations of the Company.

6. The Company has good and marketable title to, and is the lawful owner of, the Box-cars numbered NN 201 through NN 235 (inclusive), free and clear of all Liens whatsoever except the lien and security interest created by the Agreement and Permitted Liens.

7. Financing statements with respect to your security interest in the Lease and in the Letter Agreement have been duly filed in the office of the Secretary of State of the State of Connecticut and no other financing statement asserting the grant by the Company of a security interest in the Lease or the Letter Agreement (or in the Proceeds thereof) has been so filed. No other filing, registration or recording or other action is necessary in order to perfect, protect and preserve, as security for the Obligations, the lien on and security interest in the Lease and the Letter Agreement and the Proceeds thereof created by the Agreement, except for filings or recordings with the Interstate Commerce Commission, as to which we express no opinion, and except that continuation statements must be filed within six months prior to the expiration of the five-year periods following the date of filing of the financing statements filed with the Secretary of State of the State of Connecticut. The Agreement constitutes a legal, valid and perfected first lien on and first priority security interest in the Box-cars numbered NN 201 through NN 235 (inclusive), the Lease, the Letter Agreement and the Proceeds thereof, as security for the Obligations, prior to all other Liens.

In rendering the opinion expressed in paragraph 6 above, we have assumed that at the time of delivery thereof

by the Builder to the Company, the Box-cars referred to in said paragraph were free and clear of all claims, liens and encumbrances of any kind except the security interest retained by the Builder under the Purchase Agreement and the rights of the Railroad under the Lease, and that the Builder's bill of sale relating to such Box-cars was effective to confirm the transfer to the Company of good and marketable title to each such Box-car, subject only to such security interest and rights. In rendering the opinions with respect to the Lease expressed in the second and third sentences of paragraph 7 above, we have assumed that the Lender has taken possession of the only executed counterpart of the Lease identified as the "original counterpart" by the Company on the signature page thereof. In rendering the opinion expressed in the last sentence of paragraph 7 above, we have relied as to matters governed by Title 49 of the United States Code, and as to the filings and recordings with the Interstate Commerce Commission (and as to the absence of any other filings and recordings), without independent verification, upon the opinion of Messrs. Arent, Fox, Kintner, Plotkin & Kahn, delivered to you on the date hereof pursuant to clause (xvi) of Subsection 4(c) of the Agreement.

Although the undersigned counsel are not members of the Bar of any jurisdiction other than Ohio, and have obtained no opinions with respect to such matters from members of the Bar of any other jurisdiction, we have made an independent examination of the laws of the States of Connecticut and New York as reported in standard compilations and have reached the foregoing opinions with respect to such laws solely on the basis of such independent examination.

This letter is addressed solely to Manufacturers Hanover Leasing Corporation, may not be relied upon by any other party except Messrs. Arent, Fox, Kintner, Plotkin & Kahn and is to be treated as a confidential communication between the undersigned and the addressee.

Very truly yours,

[Form of Legal Opinion of Special ICC  
Counsel to the Company]

, 19

Manufacturers Hanover Leasing  
Corporation  
30 Rockefeller Plaza  
New York, New York 10020

Dear Sirs:

We have acted as special ICC counsel for Operating Lease Services, Inc., a Connecticut corporation (the "Company"), in connection with the execution and delivery of the Loan and Security Agreement dated as of August 1, 1980 between the Company and you (the "Agreement").

This opinion is furnished to you pursuant to clause (xvi) of Subsection 4(c) of the Agreement. Terms used herein which are defined in the Agreement shall have the respective meanings set forth in the Agreement, unless otherwise defined herein.

In connection with this opinion, we have been furnished and submitted to the Interstate Commerce Commission ("ICC") for filing and recordation (which filing and recordation was accepted by the ICC) executed counterparts of the Agreement and Supplement No. 1 thereto (the "Supplement"), and the Lease.

Based upon the foregoing, we are of the opinion that:

1. The Agreement, the Supplement and the Lease have been duly filed and recorded with the ICC in accordance with Section 11303, Title 49 of the United States Code, and no other agreement or document has been so filed or recorded as of the date hereof asserting a grant by the Company of an interest in or a lien on the Box-cars numbered NN 201 through NN 235 (inclusive) or the Lease. Financing statements with respect to your security interest in the Lease and in the Letter Agreement have been duly filed in the office of the Secretary of State of the State of Connecticut and no other financing statement asserting a grant by the Company of a security interest in the Lease or the Letter Agreement (or in the Proceeds thereof) has been so filed. No other filing, registration or recording is necessary in order to perfect, protect and preserve, as

security for the Obligations, the lien on and security interest in the Box-cars numbered NN 201 through NN 235 (inclusive), the Lease, the Letter Agreement and the Proceeds thereof created by the Agreement, except that continuation statements must be filed within six months prior to the expiration of each five-year period following the date of filing of the financing statements filed with the Secretary of State of the State of Connecticut.

2. The Agreement constitutes a legal, valid and perfected first lien on and first priority security interest in the Box-cars numbered NN 201 through NN 235 (inclusive), the Lease, the Letter Agreement and the Proceeds thereof, as security for the Obligations, prior to all other Liens.

3. No filing or recording with the ICC is necessary in order to perfect, protect and preserve your lien on and security interest in the moneys and investments at any time on deposit in the Security Deposit Account established by the Security Deposit Agreement.

4. No filing or recording with the ICC of the DRGW Assignment or the Letter Agreement is necessary in order to perfect, protect and preserve (i) the rights of the Railroad under the Letter Agreement, (ii) the rights of the Railroad under the DRGW Assignment or (iii) your lien on and security interest in the Box-cars numbered NN 201 through NN 235 (inclusive), the Lease or the Proceeds thereof.

In rendering the opinions expressed above, we have relied as to matters governed by the Uniform Commercial Code of the State of Connecticut and as to the filings with the Secretary of State of the State of Connecticut (and as to the absence of any other filings) upon the opinion of Messrs. Keating, Muething & Klekamp, special counsel for the Company, delivered to you on the date hereof pursuant to clause (xvi) of Subsection 4(c) of the Agreement and as to filings with the ICC (and as to the absence of any other filings) upon the certificate of Transportation Traffic Services, Inc., as to which we believe we, you, and your counsel are justified in relying.

This opinion may be relied upon by the Company as if it were addressed to the Company.

Very truly yours,

[Form of Legal Opinion of  
Counsel to Nevada Northern  
Railway Company]

, 19 -

Manufacturers Hanover Leasing  
Corporation  
30 Rockefeller Plaza  
New York, New York 10020

Dear Sirs:

I am counsel for the Nevada Northern Railway Company (the "Railroad") and have acted as its counsel in connection with the execution and delivery of the Lease dated as of May 30, 1980 between Operating Lease Services, Inc. (the "Company") and the Railroad (the "Lease").

In connection with this opinion, I have examined the Lease and such corporate documents and records of the Railroad, certificates of public officials and such other documents as I have deemed necessary or appropriate for the purposes hereof.

Based upon the foregoing, I am of the opinion that:

1. The Railroad is a corporation duly organized, validly existing and in good standing under the laws of the State of Maine.
2. The Railroad has full power, authority and legal right to own its properties and to conduct its business as now conducted, and to execute, deliver and perform the Lease.
3. The Railroad is duly authorized to execute and deliver the Lease, and is duly authorized to perform its obligations thereunder and use the Equipment (as defined in the Lease) under the Lease.

4. The execution and delivery of the Lease by the Railroad, and the performance by the Railroad of its obligations thereunder, do not and will not conflict with any provision of law or the charter or by-laws of the Railroad or any indenture, mortgage, deed of trust or agreement or instrument binding upon the Railroad or to which the Railroad is a party.

5. The execution, delivery and performance of the Lease by the Railroad and the consummation by the Railroad of the transactions contemplated thereby do not require the consent, approval or authorization of, or notice to, any federal or state governmental authority or public regulatory body or any other party (including the stockholders of the Railroad).

6. The Lease has been duly authorized, executed and delivered by the Railroad and is a legal, valid and binding obligation of the Railroad enforceable in accordance with its terms (except as enforceability may be affected by bankruptcy, reorganization, insolvency, moratorium or similar laws affecting the rights of creditors generally).

7. There are not, to the best of my knowledge, any pending or threatened actions or proceedings before or by any court, governmental body or administrative agency which would, if adversely determined, have a material adverse effect on the financial condition, business or operations of the Railroad.

This opinion may be relied upon by the Company as if it were addressed to the Company.

Very truly yours,

SECURITY DEPOSIT AGREEMENT

SECURITY DEPOSIT AGREEMENT dated as of August 1, 1980 among Operating Lease Services, Inc. (the "Company"), Manufacturers Hanover Leasing Corporation (the "Lender"), and Manufacturers Hanover Trust Company, as agent for the Lender under this Agreement (the "Agent").

W I T N E S S E T H :

WHEREAS, the Lender and the Company have entered into a Loan and Security Agreement dated as of August 1, 1980 (herein, as the same may be amended, supplemented or modified from time to time, called the "Loan and Security Agreement"), pursuant to which the Lender has agreed to make a loan to the Company in an amount not exceeding \$1,500,000 in order to finance the purchase by the Company of railroad box-cars; and

WHEREAS, all right, title and interest of the Company in, to and under the Lease Agreement dated as of May 30, 1980 (the "Lease") between the Company and the Nevada Northern Railway Company (the "Railroad"), including all rents, revenues and other amounts due and to become due to the Company thereunder, have been assigned by the Company to the Lender by the provisions of Section 5 of the Loan and Security Agreement as collateral security for the prompt and complete payment of the Obligations (as defined in the Loan and Security Agreement); and

WHEREAS, pursuant to the provisions of the Loan and Security Agreement and related documents, amounts payable to the Company under the Lease are to be paid directly to the Lender by deposit in the Security Deposit Account established and maintained pursuant to this Agreement; and

WHEREAS, the Loan and Security Agreement requires, as a condition to the Lender's obligation to make the Loan thereunder, that this Agreement shall have been duly executed and delivered by each of the parties hereto; and

WHEREAS, Manufacturers Hanover Trust Company has agreed to act as Agent for the Lender pursuant to the terms of this Agreement;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

#### ARTICLE ONE

1.1 Appointment of Agent. The Lender hereby appoints Manufacturers Hanover Trust Company as its agent under this Agreement and hereby authorizes the Agent to take such action on the Lender's behalf and to exercise such powers and perform such duties hereunder as are specifically delegated to or required of the Agent by the terms hereof, together with such powers as are reasonably incidental thereto. Manufacturers Hanover Trust Company agrees to act as the agent of the Lender on the terms and conditions of this Agreement.

#### ARTICLE TWO

2.1 Security Deposit Account. (a) Concurrently with the execution and delivery of this Agreement there shall be established by the Lender with the Agent a cash collateral account entitled "Operating Lease Services, Inc. - 1980 NNRC Security Deposit Account" (the "Security Deposit Account"), which Security Deposit Account shall be maintained at all times until termination thereof in accordance with Section 2.3 hereof. All moneys and securities in the Security Deposit Account shall constitute collateral security for the payment by the Company of the Obligations and shall at all times be subject to the control of the Lender, acting through the Agent in accordance with the provisions of this Agreement, provided that the Agent shall act with respect to the Security Deposit Account in accordance with the terms of this Agreement.

(b) All moneys at any time deposited in the Security Deposit Account, whether by the Railroad under the Lease or by the Company or by any other person, and all interest or other income earned with respect thereto, are herein called the "Pledged Deposits".

(c) The Company hereby assigns, delivers, pledges and conveys to the Lender, and grants to the Lender a security interest in, the Pledged Deposits as collateral security for the prompt and unconditional payment in full of the Obligations.

(d) The Company shall not have any rights or powers with respect to the Pledged Deposits or any part thereof, except (i) as provided in Section 2.3 hereof, (ii) the right to have the Pledged Deposits applied to the payment of the Obligations in accordance with the provisions of Section 2.2 hereof and (iii) the right to receive the excess of the proceeds of any sale of investments over the cost thereof to the extent permitted by the provisions of Section 3.1(c) hereof.

2.2 Application of Pledged Deposits. (a) The Pledged Deposits shall be accumulated in the Security Deposit Account and paid over by the Agent to the Lender for application by the Lender to the payment of the Obligations as and when the Obligations become due and payable (whether at the maturity thereof or by prepayment, acceleration or otherwise); provided, however, that so long as the Agent shall not have been notified by the Lender that a Default or Event of Default under the Loan and Security Agreement has occurred and is continuing, any amounts on deposit in the Security Deposit Account in excess of the total payments required to be made with respect to the Obligations within the next succeeding three months as specified by the Lender shall, upon written request of the Company delivered to the Agent, and the Lender, be paid by the Agent to the Company. The Lender shall initially provide the Agent with a schedule listing the dates on which the Obligations become due and payable and the amount of the Obligations becoming due and payable on each such date, which schedule may be amended from time to time by the Lender by written notice to the Agent. A copy of such schedule and of each amendment thereto shall be delivered by the Lender to the Company.

(b) Notwithstanding the provisions of paragraph (a) of this Section 2.2, if the Lender shall at any time notify the Agent that an Event of Default under the Loan and Security Agreement has occurred and is continuing, then the Agent shall, if and to the extent requested by the Lender, from time to time promptly

withdraw the Pledged Deposits from the Security Deposit Account and deliver the same to the Lender, such Deposits to be applied by the Lender to the payment of the Obligations in such order as it may determine.

2.3 Release of Pledge and Control of Pledged Deposits. When the Obligations have been satisfied and paid in full, the Lender shall instruct the Agent to distribute the funds then on deposit in the Security Deposit Account to the Company. The Agent agrees to distribute such funds to the Company upon receipt of such instruction, whereupon the Security Deposit Account shall terminate.

### ARTICLE THREE

3.1 Investment. (a) Cash held by the Agent in the Security Deposit Account (i) shall not be invested or reinvested except as provided in the following paragraph (b), and (ii) shall not bear interest.

(b) The Agent is hereby authorized and directed (unless the Lender shall have notified the Agent that a Default or Event of Default under the Loan and Security Agreement has occurred and is continuing), to the fullest extent practicable and reasonable, to invest or reinvest any cash held in the Security Deposit Account, in accordance with written instructions of the Company in direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America or any agency thereof, money instruments of United States banks with assets of at least \$1,000,000,000, investment grade commercial paper and similar securities, and repurchase agreements fully secured by any of the foregoing, provided that the Agent shall be under no obligation to make any investment in an amount less than \$10,000.

(c) The Agent shall sell all or any designated part of the securities held in the Security Deposit Account if (i) so directed by the Company by the delivery of a written request or (ii) at any time proceeds thereof are required for any withdrawal under Article Two of this Agreement. If

any such sale (or any payment at maturity) produces a net sum less than the cost (including accrued interest paid as such) of the securities so sold or paid, the Agent shall give written notice of such deficiency to the Company and the Company shall promptly pay to the Agent cash in an amount equal to such deficiency for deposit in the Security Deposit Account. The Agent shall not be liable for any depreciation in the value of any such securities. If any such sale (or any payment at maturity) produces a net sum greater than the cost (including accrued interest paid as such) of the securities so sold or paid, the Agent shall, unless the Lender shall have notified the Agent that a Default or Event of Default under the Loan and Security Agreement has occurred and is continuing, promptly pay the excess to the Company.

(d) All such securities, the interest thereon, and the net proceeds of the sale or payment thereof (to the extent such interest and proceeds shall not have been paid to the Company in accordance with the terms hereof) plus any deficiency paid by the Company to the Agent shall be held in the Security Deposit Account for the same purposes as the cash used to purchase such securities.

#### ARTICLE FOUR

4.1 The Agent's Fees, Expenses and Responsibilities. (a) The Company agrees to pay the reasonable fees and expenses of the Agent (including reasonable counsel fees) incurred in connection with its execution and delivery of this Agreement and the performance of its duties hereunder. The duties of the Agent are only such as are specifically provided herein or as provided by any written instructions herein provided for signed by the party hereto who is authorized hereunder to deliver such instructions to the Agent, and no implied covenants or obligations shall be read into this Agreement against the Agent. The Agent shall have no liability hereunder except for the performance by it in good faith of the acts to be performed by it hereunder and except for its own willful default or misconduct or gross negligence. In accepting this agency, the Agent acts solely as the agent of the Lender and not in its individual capacity. No provision of this Agreement shall require the Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment

of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. In the event the Agent shall become involved in any litigation relating to the Pledged Deposits, the Agent is authorized to comply with any final order or decree entered in such litigation.

(b) The Agent shall be under no responsibility with respect to any of the moneys deposited with it hereunder other than to comply with the specific duties and responsibilities herein set forth or set forth in written instructions herein provided for and, without limiting the generality of the foregoing, the Agent shall have no obligation or responsibility to determine (i) the correctness of any notice, statement or calculation made by the Company or the Lender, (ii) whether any deposit in the Security Deposit Account is proper or (iii) whether any Pledged Deposits paid to the Lender pursuant hereto are properly applied by the Lender. The Agent may consult with counsel and shall be fully protected in respect of any action taken, suffered or omitted by it in accordance with counsel's advice. The Company hereby assumes liability for and agrees (whether or not any of the transactions contemplated hereby are consummated) to indemnify and hold harmless the Agent from and against any and all liabilities, obligations, losses, damages, penalties, taxes, claims, actions, suits, costs, expenses and disbursements (including counsel fees and expenses) of whatsoever kind and nature which may be imposed on, incurred by or asserted at any time against the Agent and in any way relating to or arising out of this Agreement or the administration of the Security Deposit Account or the action or inaction of the Agent hereunder, except only that the Company shall not be required to indemnify the Agent in the case of willful default or misconduct or gross negligence on the part of the Agent. The indemnities contained in this Section 4.1(b) shall survive the termination of this Agreement. The Agent shall not be required to institute legal proceedings of any kind. The Agent shall have no responsibility for the genuineness or validity of any document, notice, request, instruction or other item delivered to it and shall be fully protected in acting in accordance with written schedules, notices, requests or instructions given to it hereunder and believed by it to have been signed by the proper party or parties.

4.2 Notices. All notices, instructions and other communications to any party hereto shall be in writing and may be made or delivered in person, or by first class mail addressed to such party as provided

below (or to such other address as such party may hereafter specify in a written notice to the other parties hereto), or by telex dispatched to such party at the number set forth below (or at such other number as such party may hereafter specify in a written notice to the other parties hereto):

The Company:

Operating Lease Services, Inc.  
47 Locust Hill Road  
Darien, Connecticut 08620  
Attention: Paul E. Tierney, Jr.

With a copy to:

Operating Lease Services Inc.  
c/o Gollust & Tierney, Inc.  
30 Rockefeller Plaza  
New York, New York 10020  
Attention: Paul E. Tierney, Jr.

The Lender:

Manufacturers Hanover Leasing  
Corporation  
30 Rockefeller Plaza  
New York, New York 10020

Telex No.: 127578

The Agent:

Manufacturers Hanover Trust Company  
Corporate Trust Department  
40 Wall Street  
New York, New York 10005  
Att: Leslie Savrin,  
Assistant Trust Officer.

All notices, instructions and other communications shall be deemed given when received by the party to whom addressed.

4.3 Amendments and Supplements. No agreement shall be effective to amend, supplement or discharge in whole or in part this Agreement unless such agreement is in writing and signed by the parties hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

4.4 Resignation, Removal and Succession of Agent. (a) The Agent may resign without cause at any time and be fully discharged from its duties hereunder by giving 30 days' prior written notice to the Lender. The Agent may be removed without cause at any time by the Lender upon 10 days' prior written notice by the Lender to the Agent. The Lender agrees to furnish the Company with copies of all notices given or received by it pursuant to this paragraph (a).

(b) If any notice of resignation or of removal shall have been given pursuant to paragraph (a) of this Section 4.4, then a successor Agent shall be appointed by the Lender.

(c) Upon appointment and acceptance as Agent, each successor Agent shall forthwith, without further act or deed, succeed to all the rights and duties of its predecessor under this Agreement. Such predecessor shall promptly deliver to such successor Agent all moneys and securities held hereunder, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Agent under this Agreement. Upon the written request of the successor Agent or the Lender, and upon payment of all amounts due to the predecessor Agent under this Agreement, such predecessor Agent shall transfer, assign and confirm to the successor Agent all of its rights under this Agreement by executing and delivering from time to time to the successor Agent such further instruments and by taking such other action as may reasonably be deemed by such successor Agent or the Lender to be necessary or appropriate in connection therewith.

4.5 Nature of Agency and Security Deposit Account. The Company understands and agrees that the Agent is acting hereunder solely as the agent of the Lender, and that all funds at any time on deposit in the Security Deposit Account are in the possession and control of the Lender through its agent.

4.6 Use of Defined Terms. Terms used herein which are defined in the Loan and Security Agreement shall have the respective meanings set forth in the Loan and Security Agreement, unless otherwise defined herein.

4.7 Representations and Warranties of Agent. The Agent makes no representation or warranty as to the validity, legality or enforceability of this Agreement, the Loan and Security Agreement or of any agreement, certificate or document referred to herein or therein or involved in the transactions contemplated hereby or thereby, or as to the correctness of any statements contained in any such agreement, certificate or document, except that the Agent represents and warrants to the Company and the Lender that this Agreement has been duly executed and delivered by one of its officers who is duly authorized to effect such execution and delivery on its behalf.

4.8 Action by Company. The Company may perform any of its duties hereunder or exercise any of its rights hereunder by and through duly authorized agents specifically designated for such purposes.

4.9 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

OPERATING LEASE SERVICES, INC.

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

MANUFACTURERS HANOVER LEASING  
CORPORATION

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

MANUFACTURERS HANOVER TRUST COMPANY

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

EXHIBIT G

BILL OF SALE

WHITTAKER CORPORATION (BERWICK FORGE AND FABRICATING DIVISION) (the "Builder"), in consideration of the sum of One Dollar and other good and valuable consideration paid by Operating Lease Services, Inc. (the "Buyer"), receipt of which is hereby acknowledged, does hereby grant, bargain, sell, transfer and set over unto the Buyer, its successors and assigns, the following described equipment which has been delivered by the Builder to the Buyer, to wit:

<u>Number of Units</u>	<u>Description</u>	<u>Serial Numbers</u>
------------------------	--------------------	-----------------------

TO HAVE AND TO HOLD all and singular the equipment above described to the Buyer, its successors and assigns, for its and their own use and behoof forever.

And the Builder hereby warrants to the Buyer, its successors and assigns, that at the time of delivery to the Buyer the Builder was the lawful owner of said equipment and that it was at such time free and clear of all claims, liens, security interests, encumbrances and demands of any nature except only the rights of the Builder and the Buyer under a certain Conditional Sale Agreement dated as of May 30, 1980 between the Builder and the Buyer, and the rights of the Nevada Northern Railway Company (the "NNRC") under a certain Lease Agreement dated as of May 30, 1980 between the Buyer and the NNRC; that said equipment is free from all claims, liens and encumbrances and demands suffered by, through, or under the Builder and that the Builder has good right to sell the same as aforesaid; and the Builder covenants that it will warrant and defend such title against all such claims, liens, encumbrances and demands whatsoever.

WHITTAKER CORPORATION  
(BERWICK FORGE AND  
FABRICATING DIVISION)

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

Dated: \_\_\_\_\_, 19

EXHIBIT H

Certificate of Acceptance No. 1

Reference is made to (i) the Lease Agreement dated as of May 30, 1980 between Operating Lease Services, Inc. ("Owner") and the Nevada Northern Railway Company ("Railroad"); (ii) the Conditional Sale Agreement dated as of May 30, 1980 between the Owner and Whittaker Corporation (Berwick Forge and Fabricating Division) ("Builder"); both relating to up to Thirty-Five (35) 100-ton XP Boxcars ("Units").

The undersigned hereby certifies that:

1. He is an agent of the Owner duly authorized to receive delivery of, inspect and accept the Units on behalf of the Railroad and the Owner;

2. The Units whose Serial Numbers are listed below (i) have been delivered by the Builder, (ii) have been inspected by the undersigned, (iii) conform to the specifications for the Units referred to in the Conditional Sale Agreement, and (iv) are marked in accordance with the requirements of Section 8 of the Lease Agreement.

The undersigned hereby accepts the Units whose Serial Numbers are listed below on behalf of (a) the Owner pursuant to the Conditional Sale Agreement, and (b) the Railroad pursuant to the Lease Agreement.

Dated: \_\_\_\_\_ OPERATING LEASE SERVICES, INC.

BY: \_\_\_\_\_

Total Number of Units: 35

Serial Numbers of Units: 201 through 235 inclusive

ICC Recordation No.

SUPPLEMENT NO.

Supplement No. \_\_\_\_\_ to Loan and Security Agreement ("Agreement") dated as of August 1, 1980 between OPERATING LEASE SERVICES, INC. ("Company") and MANUFACTURERS HANOVER LEASING CORPORATION ("Lender").

1. This Supplement is executed and delivered pursuant to the Agreement in order more particularly to identify certain of the Collateral in which the Company has granted a lien and security interest to the Lender, and to confirm the lien and security interest created by the Agreement on such Collateral. Any term defined in the Agreement and used herein shall have its defined meaning herein.

2. The Company has assigned, conveyed, mortgaged, pledged and transferred to the Lender and granted to the Lender a security interest in, and does hereby assign, convey, mortgage, pledge and transfer to the Lender and grant to the Lender a security interest in, the following Collateral:

thirty-five (35) 100-ton, 50'-6" XP box-cars numbered NN 201 through NN 235 (the "Box-cars") and any Proceeds thereof.

3. The Box-cars conform to all requirements and interchange standards of the Association of American Railroads, the Interstate Commerce Commission and the Department of Transportation and are marked in accordance with Section 6.18 of the Agreement.

4. All the terms and conditions of the Agreement are hereby incorporated in this Supplement and made a part hereof. By their execution and delivery of this Supplement the parties hereto hereby reaffirm all of the terms and conditions of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Supplement on \_\_\_\_\_, 19 \_\_\_\_.

OPERATING LEASE SERVICES, INC.

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

ATTEST:

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

MANUFACTURERS HANOVER LEASING CORPORATION

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

ATTEST:

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

