9-031A017

CHICAGO AND NORTHWESTERN TRANSPORTATION COMPANY

No. JAN 31 1989
Date
$ 13.00
Washington, D.C.

OFFICE OF THE SECRETARY
DIRECT DIAL NUMBER

312/559-6158

January 30, 1989

File No.: A-13191

ICC OFFICE OF THE SECRETARY
JAN 31 10 54 PM '89
MOTOR OPERATING UNIT

Ms. Noretta McGee
Secretary
Interstate Commerce Commission
Washington, DC 20423

RECORDATION NO. 16178 Filed 1425
JAN 31 1989 - 11 00 AM
INTERSTATE COMMERCE COMMISSION

Dear Ms. McGee:

Pursuant to Section 11303 (formerly Section 20(c)) of the Interstate Commerce Act, enclosed for recordation are counterparts of the Equipment Lease Agreement between Chicago and North Western Transportation Company and The Prudential Insurance Company of America dated as of January 2, 1989, covering fifty (50) fully enclosed tri-level auto racks listed in Schedule A attached to the Equipment Lease Agreement.

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

1. Chicago and North Western Transportation Company, One North Western Center, Chicago, Illinois 60606.

2. The Prudential Insurance Company of America, Three Gateway, 100 Mulberry Street, Newark, NJ 07102

Enclosed is a check in the amount of $13.00 to cover your recording fee. Please retain one counterpart for your files and return the remaining counterparts showing recordation data to me.

Sincerely,

Lisa M. Fanelli

Lisa M. Fanelli
Assistant Secretary

Enclosures

cc: J. E. Voldseth
J. G. Marski
R. S. Morgan
M. H. Shumate
Arthur Andersen & Co.
ATTN: Joe Adams

csp27-3(21)

Interstate Commerce Commission

Washington, D.C. 20423

1/3//89

OFFICE OF THE SECRETARY

Lisa M. Fanelli
Assistant Secretary
Chicago & North Western Transp. Co.
One North Western Center
Chicago,Illinois 60606

Dear Ms. Fanelli:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/31/89 at 11:00am , and assigned recordation number(s). 16104-A & 16178

Sincerely yours,

Noreta R. McGee

Secretary

Enclosure(s)

SE-30
(7/79)

Chicago and NorthWestern
Railway Company

165 N. Canal St.
Chicago, Illinois 60606

Office of the Secretary
312.559.6156

December 29, 1994

File: A-13191
EOC: L-436

Mr. Sidney Strickland, Jr.
Secretary
Interstate Commerce Commission
Washington, DC 20423

RE: Equipment Lease Agreement between The Prudential Insurance Company of America, Lessor, and Chicago and North Western Transportation Company, Lessee, dated January 2, 1989

ICC Recordation No.: 16178

Dear Mr. Strickland:

In connection with the above agreements, please be advised that the name of Chicago and North Western Transportation Company was changed to **Chicago and North Western Railway Company** effective May 6, 1994, pursuant to the Certificate of Amendment of Restated Certificate of Incorporation of Chicago and North Western Transportation Company filed with the State of Delaware on May 5, 1994.

Sincerely,

K. A. Dombrowski
Assistant Secretary

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On this 29th day of December, 1994, before me personally appeared K. A. Dombrowski, to me personally known, who, by me being duly sworn, says that she is Assistant Secretary of Chicago and North Western Railway Company and that the foregoing instrument was signed on behalf of said corporation by authority of its board of directors, and she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

My commission expires: April 12, 1995 Penny Menchey

" OFFICIAL SEAL "
PENNY MENCHEY
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 4/12/95

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RECORDATION NO. 16178 Filed 1425
JAN 31 1989 · 11 50 AM
INTERSTATE COMMERCE COMMISSION

EQUIPMENT LEASE AGREEMENT

BETWEEN

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, LESSOR

AND

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, LESSEE

EQUIPMENT LEASE AGREEMENT

THIS EQUIPMENT LEASE AGREEMENT (the "Lease"), is dated as of the second day of January, 1989 and is by and between THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey mutual insurance company, (the "Lessor") and CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation (the "Lessee" or "Railroad").

WITNESSETH:

1. Net Lease. The Lessor hereby agrees, subject to satisfaction of the conditions hereinafter set forth, to lease to the Lessee and the Lessee hereby agrees to lease from the Lessor automobile racks (individually called an "Item of Equipment" or "unit of Equipment" and collectively the "Equipment") described on the attached Schedule A. The aggregate of the Cost, as hereinafter defined, of the Items of Equipment described on the Equipment List shall at no time exceed ONE MILLION NINE HUNDRED THOUSAND DOLLARS ($1,900,000.00). This Lease is a net lease and the Lessee acknowledges and agrees that the Lessee's obligation to pay all Rentals, as hereinafter defined, hereunder, and the rights of Lessor in and to such Rentals, shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense, counterclaim or recoupment (herein referred to as the "Abatements") for any reason whatsoever, including without limitation, Abatements due to any present or future claims against the Lessor under this Lease or otherwise,

or against the manufacturer, seller, or Vendor, as hereinafter defined, of any Item of Equipment. Except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the respective obligations of the Lessor or the Lessee be affected, by reason of any defect in or damage to, or any loss or destruction of, the Equipment or any Item of Equipment thereof from whatsoever cause, or the interference with the use thereof by any private person, corporation or governmental authority, or the invalidity or unenforceability or lack of due authorization of this Lease or lack of right, power or authority of the Lessor or the Lessee to enter into this Lease, or for any other cause, whether similar or dissimilar to the foregoing, any present or future law or regulation to the contrary notwithstanding, it being the express intention of the Lessor and the Lessee that all Rentals payable by the Lessee hereunder shall be, and continue to be, payable in all events unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. If for any reason whatsoever this Lease shall be terminated in whole or in part by operation of law or otherwise, except as expressly provided herein, the Lessee nonetheless agrees to pay to the Lessor an amount equal to each payment of Rental with respect to each Item of Equipment pursuant to the provisions hereof at the time such payment would have become due and payable in accordance with the terms hereof had this Lease not been so terminated. The Lessee hereby waives, and hereby agrees to waive at any future time at the request of the Lessor, to the extent

now or then permitted by applicable law, any and all rights which it may now have or which at any time hereafter may be conferred upon it by statute or otherwise to terminate, cancel, quit or surrender this Lease except in accordance with the express terms hereof. Each payment of Rental made by the Lessee to the Lessor shall be final as between the Lessor and the Lessee (except as to any amount, which the Lessee shall be entitled to recover, by which such Rental exceeds the correct amount that should have been paid in accordance with any provision hereof for adjustment or other determination of the Rental), and the Lessee will not (except as aforesaid) seek to recover all or any part of any such payment of the Rental from the Lessor for any reason whatsoever.

2. Term. The term (the "Term") of this Lease for each Item of Equipment shall begin on the date of the delivery to and acceptance by the Lessee of each such Item of Equipment hereunder ("Interim Lease Commencement Date(s)"). The base lease term (the "Base Lease Term") shall commence on October 1, 1989 (the "Base Lease Commencement Date") and shall terminate on June 30, 2001, subject to the provisions of Section 13. The word "Term" as used herein shall include up to two consecutive Renewal Terms (as hereinafter defined) permitted hereunder. Upon ninety (90) days' delivered written notice prior to expiration of the Base Lease Term or the first Renewal Term, as the case may be, the Lessee shall have the right to renew the Lease provided no Event of Default or event which with the passage of time or giving of notice would constitute an Event of Default shall have occurred

and be continuing with respect to all, but not less than all, of the Equipment for two consecutive two-year periods (a "Renewal Term") at the Fair Market Rental.

3. Rentals and Rental Payment Dates. There will be no interim rents payable by Lessee to Lessor. The Lessee agrees to pay the Lessor for each Item of Equipment leased hereunder forty-seven (47) quarterly payments ("Rentals") in arrears during the Base Lease Term as prescribed in rental schedules herewith attached as Schedule "B" (as such Schedule may be revised in accordance with this Section) as a percentage of Equipment Cost for each Item of Equipment as referenced on the applicable Certificate of Inspection and Acceptance for such Item of Equipment (the "Cost"). Rental payments (individually the "Rental" and collectively the "Rentals) shall be made on the dates prescribed in Schedule "B" (individually a "Rental Payment Date" and collectively the "Rental Payment Dates"). If any of the Rental Payment Dates are not Business Days, the Rental otherwise payable on such date shall be payable in immediately available funds on the next succeeding Business Day. For purposes of this Lease, the term "Business Day" means calendar days, excluding Saturdays, Sundays, and holidays on which Lessor's or Lessee's offices or banks in New York, New York or Chicago, Illinois are closed for business.

In the event the Lessee shall be in default in the payment of any sum of money to be paid under this Lease, whether Rental or otherwise, the Lessee shall pay the Lessor, as

additional Rental, to the extent permitted by applicable law, interest on such unpaid sum from its due date to date of payment by the Lessee at a rate equal to 2% over the Prime Rate ("Overdue Rate"). Prime Rate shall mean, for purposes of this Lease, the rate of interest publicly announced by Morgan Guaranty Trust Company of New York from time to time as its prime rate.

Rental and all other amounts payable to the Lessor hereunder shall be made by Federal Funds wire transfer to the account of PRUCAPITAL MANAGEMENT, INC., as agent for the Lessor at Morgan Guaranty Trust Company of New York, 23 Wall Street, New York, New York 10015, Account No. 050-53-305 together with notice so as to provide the Lessor with the use of the funds on or before 11 a.m., C.S.T., on the due date.

The Lessee and the Lessor agree that, except as hereinafter provided, the Rentals payable hereunder and the Stipulated Loss Values set forth in Schedule "C" (as such schedule may be revised in accordance with this Section) hereto will be adjusted upward or downward to reflect:

(A) any changes included in any legislation which amends the Internal Revenue Code of 1986 (the "Code") on or prior to the delivery and acceptance of a Unit of Equipment, which increases or decreases the Net Return (as defined in Section 28) of the Lessor contemplated in originally evaluating this transaction and is applicable to Assumed Tax Benefits (as defined in Section 28) with respect to any of the Items of Equipment in accordance with, if relevant, any election made by the Lessor in its sole discretion; and

(B) closings on dates and in such amounts which cause May 1, 1989 not to be the weighted average of all Closing Dates for all Items of Equipment.

If, as a result of the occurrence of one or both of the foregoing events (A) or (B), Rentals payable hereunder and/or the Stipulated Loss Values set forth in Schedule B hereto would require adjustment upward or downward, then Rentals and/or the Stipulated Loss Values during the Base Lease Term shall be adjusted upward or downward on a ratable basis; provided, however, that such adjustment shall be made only to the extent necessary to preserve Lessor's Net Return (as defined in Section 28) taking into account the effect of any prior event which resulted in a Rental Adjustment under Section 28 hereof.

Any rental adjustment will be effective as of the first Rental Payment Date following the event giving rise to such adjustment and will be made in such manner as will result, in the Lessor's reasonable judgment, in preserving Lessor's Net Return as defined in Section 28 had such event not occurred, (i) based on the rates of Federal, state and local taxes in effect from time to time on, or measured by, net income, and (ii) in all other respects based on the assumptions and methods of calculation utilized by the Lessor in originally evaluating the transaction described in this Lease and related documents.

The Lessor shall furnish the Lessee prior to the effective date of any rental adjustment with a notice setting forth in

reasonable detail the computations and methods used in computing such rental adjustment but shall not be required to divulge its after-tax rate of return with regard to any such computation. Lessee shall have the right to review Lessor's rental adjustments for reasonableness and to approve such adjustment. Such review and approval shall occur within ten days of notification by Lessor of the rental adjustment. If Lessee shall not have notified Lessor of its disapproval of such rental adjustment within such ten day period, such adjustment shall be deemed approved. If Lessee finds the rental adjustment unreasonable, the parties shall consult and agree upon a mutually agreeable rental adjustment. If Lessee and Lessor are unable to reach agreement on a rate within thirty (30) days of Lessor's notice, the decision shall be promptly referred to a mutually agreeable independent third party familiar with leasing transactions, whose decision will be final and whose commercially reasonable costs shall be paid by Lessee.

Lessor shall not be obligated to lease to Lessee any Item of Equipment not delivered to and accepted by Lessee by June 29, 1989 unless an extension of time is mutually agreed upon by Lessor and Lessee.

4. Taxes Against Lessor or Equipment. The Lessee agrees to pay and to indemnify and hold the Lessor harmless from, all license and registration fees and sale, use, personal property,

stamp or other taxes, levies, imposts, duties, charges or withholdings of any nature whatsoever together with any penalties, fines or interest thereon imposed against the Lessor, the Lessee or the Equipment or any part thereof by any federal, state, foreign or local government or taxing authority, during the term or in connection with the termination of this Lease, upon or with respect to the Equipment or any part thereof or upon the purchase, ownership, delivery, leasing, possession, use, operation, return or other disposition (except for any disposition by the Lessor other than a disposition occurring upon an Event of Default) thereof, or upon the Rentals, receipts or earnings arising therefrom, or upon or with respect to this Lease (excluding, however, (i) any taxes imposed by the federal government on, based on, or measured by, the net income of the Lessor including but not limited to any franchise taxes, value added taxes or any other taxes in lieu of income taxes; (ii) any income, franchise taxes or value added taxes imposed by any taxing authority other than the federal government on, based on, or measured by, the net income of the Lessor which in the aggregate do not exceed the amount of any such taxes imposed by reason of this transaction which would be payable to the taxing authorities of the jurisdictions, other than the United States of America, in which the Lessor has its principal place of business assuming no allocation or apportionment to any other taxing authority, and (iii) any tax or similar charge included in the Cost of any Item of Equipment, except to the extent that any of the foregoing

events referred to in clauses (i) through (iii) arose by virtue of a violation of any of Lessee's obligations hereunder); unless, and only to the extent and for the period that, any such tax, levy, impost, duty, charge or withholding is being contested by the Lessee in good faith and by appropriate proceedings (all such taxes, fees and charges as defined in this sentence being hereinafter referred to as the "Indemnified Taxes" or the "Taxes"). Any payment made by Lessee pursuant to this Section 4 shall reflect, on an After Tax Basis (as defined in Section 28), the net increase in Lessor's federal, state or local income taxes as a result of the inclusion in Lessor's income of any amount required to be paid by Lessee under this Section 4. In case any report or return is required to be made with respect to any obligation of the Lessee under this Section or arising out of this Section, the Lessee will either prepare and file such report or return in such manner as will show the ownership of the Equipment in the Lessor and, upon reasonable request of the Lessor, send a copy of such report or return to the Lessor or will timely notify Lessor of such requirement and the Lessee will prepare such report or return for filing by the Lessor in such manner as shall be satisfactory to the Lessor. If claim is made against the Lessor for any Indemnified Taxes, the Lessor shall promptly notify the Lessee in writing. If reasonably requested by the Lessee in writing, the Lessor shall, at the Lessee's expense, take such action as the Lessee may reasonably request with respect to such asserted liability, provided that the Lessee

furnishes an opinion of independent counsel, selected by the Lessee and satisfactory to the Lessor, to the effect that there is a reasonable basis for contesting such asserted liability. If Lessor elects to pay any tax required to be paid by Lessee hereunder (provided, however, that Lessor is not required or obligated to pay such tax), Lessor shall pay such tax under protest, if reasonably so requested by Lessee and if such protest is necessary and proper. If payment is made by Lessor, Lessee shall reimburse Lessor for such payment on demand together with interest at the Overdue Rate for the number of days such payment is unreimbursed by the Lessee and the Lessor shall, at the Lessee's expense, take such action as the Lessee may reasonably request to recover such payment and shall, if requested, permit the Lessee in the Lessor's name to file a claim or prosecute an action to recover such payment. If the Lessor shall obtain a refund of all or any part of such taxes, fees or other charges previously reimbursed by the Lessee in connection with any such contest or any amount representing interest thereon applicable to the amount paid by the Lessee and for the period of such payment, the Lessor shall pay to the Lessee the amount of such refund and/or interest received by the Lessor net of expenses, but only if no Event of Default, or event which with notice of lapse of time or both would constitute an Event of Default, shall have occurred and be continuing. All of the obligations of the Lessee under this Section with respect to any Indemnified Taxes imposed or accrued before the expiration or other termination of this

Lease shall continue in full force and effect notwithstanding such expiration or other termination and are expressly made for the benefit of, and shall be enforceable by, the Lessor.

5. Lessee's Failure to Pay Taxes, Insurance, Etc. Should the Lessee fail to make any payment or do any act as herein provided, then the Lessor shall have the right, but not the obligation, without releasing Lessee from any obligation hereunder, to make or do the same, and to pay, purchase, contest or compromise any Lien (as hereinafter defined) not permitted hereunder which in the Lessor's reasonable judgment appears to materially affect the Equipment or the Lessor's rights with respect thereto, and in exercising any such rights, incur any liability and expend whatever amounts in its discretion it may deem necessary therefor, provided, however, that the Lessor shall take no such action nor expend any such amount without prior notice to the Lessee at least twenty (20) days preceding such proposed action or expenditure or, if to prevent any Lien from attaching to any Item of Equipment due to any statutory limitation under any law or regulation it is necessary to take such action or make such expenditure within such twenty (20) day period, within such statutory limitation period, and shall consider all reasonable requests made by the Lessee prior to taking such action or making such expenditure. All sums so incurred or expended by the Lessor shall be upon demand immediately due and payable by the Lessee and shall bear interest at the Overdue Rate

from the date so incurred or expended by the Lessor to the date the Lessor is reimbursed therefor by the Lessee.

6. Use, Ownership and Sublease Rights. So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease. The Lessee shall use, operate, maintain and store the Equipment in a careful and proper manner in accordance with standards customary in the railroad industry and consistent with those used in maintaining other rolling stock or like equipment owned or leased by the Lessee and shall comply with all laws, ordinances and regulations in any way relating to the possession, use, operation or maintenance of the Equipment. The Lessee agrees to pay all reasonable costs incurred in connection with the use and operation of each Item of the Equipment, during the Term thereof, including but not limited to, repairs, maintenance, storage and servicing, except to the extent that such costs are paid by the manufacturer or Vendor.

The Lessee acknowledges and agrees that it does not have and will not acquire legal title to the Equipment, it being expressly understood that this Lease is an agreement of lease only. The Equipment is and shall at all times remain the sole and exclusive property of the Lessor. The only interest the Lessee shall have in the Equipment is that of a lessee hereunder. The Lessee shall affix to each Item of Equipment and keep and maintain, plainly and distinctly, permanently and conspicuously upon each such Item of Equipment the following words:

"Owned by The Prudential Insurance Company of America-Owner-Lessor"

The Lessee shall keep the Equipment free from any markings or labeling which might be interpreted as a claim of ownership thereof by the Lessee or any party other than the Lessor or its assigns except that the Equipment may be lettered with the name or initials or other insignia customarily used by Lessee on similar equipment. So long as no Event of Default or event which with the passage of time or the giving of notice would constitute an Event of Default shall have occurred and be continuing, the Lessee shall be entitled to sublease the Equipment for its intended purpose to reputable railroad or other non-foreign corporations or entities, if the Lessee shall have first obtained the written consent, not to be unreasonably withheld, of the Lessor; provided, however, that the Lessee shall have the right to sublease the Equipment or any Item of Equipment without the consent of the Lessor to any reputable corporation or entity organized under the laws of the United States of America or any state thereof or the District of Columbia without the Lessor's consent if such sublease (i) shall provide that the Equipment will be operated and maintained in accordance with the terms hereof, and (ii) is for a term not longer than the lesser of six (6) months or one day less than the remaining term of this Lease provided however, that Lessee may not so sublease any Item of Equipment to the same sublessee for more than six (6) months in the aggregate in any twelve (12) month period. Lessee shall provide Lessor with notification of any such sublease and a copy

of such sublease. The Lessee shall not assign or permit the assignment of the Equipment for use or operation involving other than occasional operation and maintenance thereof in Canada. All subleases shall be subject and subordinate to the terms and provisions of this Lease and the interests of the Lessee hereunder. In the case of any such sublease, the Lessee's obligations to the Lessor shall remain those of a principal and not a surety.

Lessee shall not use the Equipment outside the geographic limits of the United States of America except for occasional use in Canada.

7. Alterations. The Lessee shall make any alterations, additions or improvements to the Equipment if such alterations, additions or improvements to the Equipment are required by law, governmental regulation or by the Association of American Railroads (the "AAR"). Lessee shall have the right, without Lessor's consent, to make modifications, alterations, additions or improvements to the Equipment which do not damage the Equipment or which do not diminish the value of the Equipment. Lessee shall use best efforts to promptly notify Lessor of any such modification, alteration, addition or improvement. All modifications, alterations, additions or improvements which are not readily removable shall without further act become the property of the Lessor and shall be free of all Liens and the Lessee shall provide a bill of sale to the Lessor for all such alterations, additions or improvements. Lessee shall have the right to remove any modification, alteration, addition or improvement at the end

of the Term at its expense provided that such removal does not damage the Equipment and such modifications, alterations, additions or improvements are not required by law, governmental regulation or by the AAR.

8. Maintenance and Repair. The Lessee, at its sole cost and expense, shall keep the Equipment in good operating order, repair and condition and shall furnish any and all parts, mechanisms or devices required to keep the Equipment in good mechanical and working order, ordinary wear and tear excepted. In performing maintenance and repair, the Lessee shall maintain the Equipment to the standard of maintenance performed and without discrimination in its maintenance procedures and practices used between the Equipment and other similar equipment owned or leased by the Lessee and as is customary in the railroad industry and in compliance with all requirements of law, governmental regulation and the AAR.

9. Delivery, Acceptance and Payment of Lessor's Cost.

(a) The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Equipment. Upon delivery of each Item of Equipment, the Lessee will cause an employee of the Lessee to inspect the same and, if such Item of Equipment is found to be acceptable, to accept delivery of such Item of Equipment and such date of acceptance shall be the "Acceptance Date" for such Item of Equipment and the Lessee shall execute and deliver to the Lessor on or before the Closing Date (defined below) for such Item of Equipment the Certificate of Inspection

and Acceptance in the form of Exhibit "A" hereto whereupon such Item of Equipment shall be deemed to have been delivered to and accepted by the Lessee hereunder on the Acceptance Date and shall be subject thereafter to all the terms and conditions of this Lease. Prior to execution of each Certificate of Inspection and Acceptance the Lessee shall have made at its expense all necessary inspections and tests of each Item of Equipment referred to therein, to determine whether such Item of Equipment conforms to the Lessee's specifications. Each Item of Equipment that appears on a Certificate of Inspection and Acceptance, as between Lessee and Lessor, shall be deemed to conform to the Lessee's specifications, shall be deemed to be in good condition and without defects and shall be deemed to be an Item of Equipment subject to the terms of this Lease. "Closing Date" is any date that the Lessor makes a payment to the vendor of the Equipment (the "Vendor") for any Item of Equipment.

On each Acceptance Date title to each Item of Equipment so accepted by the Lessee shall be deemed to have been transferred to and accepted by the Lessor (and such Item of Equipment shall be deemed accepted by the Lessee under this Lease) and shall be an Item of Equipment leased to the Lessee pursuant to this Lease and the Lessor shall thereupon be unconditionally obligated to pay to the Vendor, on the applicable Closing Date, and upon receipt of the notice and other documents specified in Section 9(b) hereof, the Lessor's Cost of each such Item of Equipment.

(b) From time to time, the Lessee shall deliver to the Lessor a written notice of a proposed Closing Date with respect to one or more Items of Equipment theretofore accepted by the Lessee on behalf of the Lessor hereunder for which no Closing Date has previously occurred (or, if a Closing Date has previously occurred, for which one or more additional items of Lessor's Cost with respect thereto are due and payable). Such notice shall be given at least three (3) Business Days prior to the Closing Date specified therein, shall identify in reasonable detail all Items of Equipment or part thereof, the Lessor's Cost of which is to be paid on such Closing Date, shall specify each item of said Lessor's Cost and contain the name, address and place of payment of the Vendor of each Item of Equipment and shall be accompanied by (i) a full warranty bill of sale, substantially in the form of Exhibit "B" hereto, in favor of the Lessor with respect to each such Item of Equipment, dated the Acceptance Date thereof, (ii) an opinion of counsel to the Vendor substantially in the form of Exhibit "C" hereto, (iii) an invoice for each such Item of Equipment showing in reasonable detail all items of the Lessor's Cost thereof approved for payment by the Lessee and (iv) a Certificate of Inspection and Acceptance, substantially in the form of Exhibit "A" hereto dated the Acceptance Date, covering all such Items and specifying the Acceptance Date of each such Item of Equipment.

There shall be no more than five closings under this Lease the last of which shall be no later than July 3, 1989 unless otherwise mutually agreed upon by the Lessee and the Lessor. No

closing shall be for less than TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000) except for the final closing.

10. Inspection; Lessee Reports. The Lessor shall at all times during normal business hours have upon prior written notice to the Lessee's Assistant Vice President-Finance or Treasurer the right to reasonably enter the premises of the Lessee or any sublessee where the Equipment may be located for the purpose of inspecting and examining the condition, use, and operation of the Equipment to ensure compliance by the Lessee with its obligations hereunder, provided, that the Lessor shall have no duty to inspect and shall not incur any liability or obligation by reason of not making any such inspection.

The Lessee shall furnish the Lessor (i) within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year, the unaudited quarterly, and within one hundred twenty (120) days after the end of each fiscal year, the audited annual consolidated statement of income and expenses and consolidated balance sheet of the Lessee and its subsidiaries, such audited annual financial statements to be certified to by the Lessee's independent certified public accountants; (ii) the Lessee's annual form 10-K to the Securities and Exchange Commission and (iii) within one hundred twenty (120) days after the close of each fiscal year of the Lessee after the date hereof, a certificate of an authorized officer of the Lessee stating that he has reviewed the activities of the Lessee and that, to the best of his knowledge, there exists no Event of Default, as such term is defined in this Lease, and no event which with the giving

of notice or the lapse of time, or both, would become an Event of Default. Further, the Lessee agrees to furnish the Lessor from time to time such other schedules, certificates and reports in such form and detail as the Lessor may reasonably request.

11. Warranties. THE LESSOR IS NOT A MANUFACTURER OF THE EQUIPMENT OR A DEALER IN SIMILAR EQUIPMENT AND HAS NOT INSPECTED THE EQUIPMENT PRIOR TO DELIVERY TO AND ACCEPTANCE BY THE LESSEE. THE LESSOR HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO TITLE, CONDITION, COMPLIANCE WITH SPECIFICATIONS, QUALITY, DURABILITY, SUITABILITY, MERCHANTABILITY OR FITNESS FOR USE OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, AND FURTHERMORE SHALL NOT BE LIABLE TO LESSEE FOR CONSEQUENTIAL DAMAGES FOR ANY ACT, NEGLECT, OMISSION, BREACH OR DEFAULT OF LESSOR WITH RESPECT TO OPERATION OR USE OF THE EQUIPMENT. THE EQUIPMENT IS LEASED HEREUNDER BY THE LESSOR "AS-IS".

The Lessor hereby represents to the Lessee that the Lessor has the full right and authority to enter into this Lease on the terms herein stated, and that, conditioned upon the Lessee performing all of the terms, covenants and conditions hereof, the Lessor, its successors, assigns and agents will not disturb the Lessee's peaceable and quiet possession and use of the Equipment during the Term of this Lease, provided that no Event of Default has occurred and is continuing.

So long as and only so long as no Event of Default has occurred and is continuing, the Lessor hereby authorizes the Lessee

during the Term of this Lease to assert for the Lessor's account all of its right, title and interest in, under and to any warranty in respect of the Equipment issued by the manufacturer thereof, and agrees to execute and deliver such further instruments as may be reasonably necessary to enable the Lessee to enforce such warranty. All claims or actions on any warranty shall be made or prosecuted by the Lessee, at its sole cost and expense, and the Lessor shall have no obligation whatsoever to make any claim on such warranty. Any recovery under such a warranty shall be applied first to restore the Equipment; second, to pay the reasonable out-of-pocket expenses the Lessee incurs in enforcing such warranty claim; and third, to pay any balance to the Lessor. The Lessor further authorizes Lessee to obtain whatever service to the Equipment the manufacturer or Vendor customarily renders, provided that no such service shall be at the cost or expense of the Lessor.

12. Insurance. The Lessee will, at all times during the Term of this Agreement, at its own expense, insure the Equipment against public liability and property damage exposures to the same extent as apply to the Lessee's own exposures to liability and property damage losses on similar equipment which it then owns or leases. Insurance requirements with respect to limits, coverage and specific policy provisions for liability coverage will not be more restrictive than the terms and conditions and self-retention limits under insurance coverage carried by the Lessee on the date hereof or, if the Lessee fails to comply with

this requirement, under such terms and conditions and self-retention limits will not be more restrictive than those the Lessee has in its policies from time to time; provided, however, that the Lessee shall not maintain a deductible on public liability coverage of greater than TWENTY-FIVE MILLION DOLLARS ($25,000,000). Lessor will be named as an additional insured, as its interests may appear, under the Lessee's own property damage and liability policies. Lessee shall furnish, or cause to be furnished within thirty (30) days following a renewal date, to Lessor, as evidence of insurance, a verification or certificate of insurance prepared by the Lessee's independent insurance broker or captive insurers or a certificate of an authorized officer of the Railroad along with evidence of the coverage certified to by the Lessee's authorized officer (in the event that a verification or certificate of an insurance broker or captive insurer is not reasonably available). Such certificates or verifications shall provide that coverage shall not be cancelled without at least thirty (30) days' prior written notice to the Lessor in the event of nonpayment of premium by the Lessee when due.

If the Lessor shall receive any property insurance proceeds or condemnation payments in respect of an Item of Equipment suffering an Event of Loss, the Lessor shall, subject to the Lessee's having made payment of the Rental and Stipulated Loss Value, as herein defined, in respect of such Item of Equipment and provided no Event of Default (or other event which after

notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Stipulated Loss Value with respect to an Item of Equipment paid by the Lessee plus the balance of such proceeds or condemnation payments. Provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, all insurance proceeds received by the Lessor from the Lessee's property insurance coverage in respect of an Item of Equipment not suffering an Event of Loss shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Item of Equipment in respect of which such proceeds were paid has been fully repaired so as to comply with Section 8 of this Lease.

13. Stipulated Loss Value, Risk, Event of Loss, Condemnation.

For purposes of this Lease the stipulated loss value (the "Stipulated Loss Value") for an Item of Equipment as of any date of computation shall be the product of (x) the Cost paid by the Lessor for such Item of Equipment and (y) that Stipulated Loss Value percentage set forth in the Schedule of Stipulated Loss Values attached hereto as Schedule "C" and hereby made a part hereof opposite the applicable Rental Payment Date with respect to such Item of Equipment.

(a) Risk: Commencing on the Interim Lease Commencement Date and continuing until the expiration of the Term of this Lease (which includes the storage period as provided for in

Sections 15 and 18) and the return by the Lessee of the Equipment to the Lessor pursuant to the provisions hereof, Lessee assumes the entire risk of any Event of Loss (as defined below) and no such Event of Loss shall relieve the Lessee of any of its obligations hereunder.

(b) Definition - Event of Loss: For purposes of this Section an Event of Loss with respect to an Item of Equipment shall mean any of the following events: (i) the actual or constructive total loss of such Item of Equipment; or (ii) such Item of Equipment shall become lost, stolen, destroyed, damaged beyond repair or permanently rendered unfit for its intended use for any reason whatsoever; or (iii) the condemnation, confiscation or seizure of, or requisition of title to or use of, such Item of Equipment (a "Condemnation") for a period of two (2) consecutive years from the date of such Condemnation or through the end of the Lease Term, whichever is less; or (iv) the termination, for any reason whatsoever, of this Lease by operation of law.

(c) Deprivation Constituting an Event of Loss: Upon the Lessee's determination that an Event of Loss has occurred, the Lessee shall pay or cause to be paid to the Lessor, on the next succeeding Rental Payment Date, in immediately available funds, the Stipulated Loss Value and the Rental then due, as applicable, for such Item of Equipment as of such Rental Payment Date. At such time as the Lessor has received the above payments, the obligation of the Lessee to pay Rental hereunder with respect to such Item of Equipment shall terminate and, the

Lessor will transfer to the Lessee, without recourse or warranty, "as is, where is", all of the Lessor's right, title and interest, in and to the Item of Equipment with respect to which such Event of Loss occurred.

(d) Deprivation Not Constituting an Event of Loss: In the event of damage to any Item of Equipment not constituting an Event of Loss, the Lessee shall remain obligated to make all payments of Rental and other amounts due with respect to such Item of Equipment which may become due hereunder in the same manner as if such damage had not occurred. The Lessee shall repair and restore such Item of Equipment with new and unused components or with used components equivalent to those replaced prior to such damage to the condition it was in immediately prior to the occurrence which caused the need for such repair or restoration (assuming such Item of Equipment was maintained in accordance with the terms of this Lease). So long as no Event of Default shall have occurred and be continuing, all payments from insurance proceeds or otherwise with respect to any such damage shall be used to reimburse the Lessee for its out-of-pocket expenses upon receipt by the Lessor of satisfactory evidence that the Lessee has repaired such Item of Equipment. Should an Event of Default have occurred and be continuing, all such payments shall be paid over to and retained by the Lessor until such Event of Default has been cured or waived.

(e) The Lessor hereby appoints the Lessee its agent and Lessee hereby agrees to act as agent to dispose of any Item

of Equipment suffering an Event of Loss, or any component thereof, at the best price obtainable on an "as is, where is" basis and the Lessee shall notify the Lessor prior to any such sale; provided, however, that if an Event of Default has occurred and is continuing, Lessor may revoke such agency. Provided that the Lessee has previously paid the Stipulated Loss Value, as applicable, to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Stipulated Loss Value of such Item of Equipment plus the Lessee's out-of-pocket expenses in connection with such sale and shall pay any excess to the Lessor. The Lessee will initially pay all costs and expenses in connection with the sale of any Item of Equipment pursuant to an Event of Loss.

14. Indemnity. The Lessee agrees to defend at its own cost and to indemnify and hold harmless the Lessor, its successors and assigns, and their respective agents and employees, from and against any and all losses, claims, costs, expenses, (including attorneys' fees) damages and liabilities (including those for strict liability in tort), however caused by or resulting directly or indirectly in any manner from: the issuance of Lessor's purchase order; patent infringements, assignment of the Lessee's purchase order or agreement to purchase; the Lessee's failure, delay or refusal to accept delivery; the lease, owner-

ship, purchase, possession, return, disposition, use, condition (including without limitation latent or other defects whether or not discoverable) or operation of the Equipment; or the performance of this Lease (including without limitation such losses, claims, costs, expenses, damages and liabilities arising from the death or injury to agents or employees of the Lessee or the Lessor or any third person, or damage to the property of the Lessee or the Lessor, their agents or employees, or any third person) except for such damages, losses, expenses or liabilities arising out of the gross negligence or willful misconduct of the Lessor, its agents or employees.

This indemnification shall survive the expiration or other termination of this Lease and is for the benefit of and is enforceable by the Lessor, its successors and assigns, and their respective agents and employees.

Notwithstanding anything contained in this Lease to the contrary, the Lessee expressly does not assume any liabilities or obligations, nor shall the Lessee be required to pay, satisfy or discharge any claims, liens, charges or encumbrances, nor shall Lessee have any obligation to indemnify and save harmless the Lessor or any other person from and against any claim (except a claim arising out of a delay or refusal to accept delivery), lien, charge or encumbrance if such claim (except a claim arising out of a delay or refusal to accept delivery), lien, charge or encumbrance arose after redelivery to the Lessor of all the Equipment and expiration of the Term or was caused by the gross

negligence or wilfull misconduct of the Lessor or any claim asserted by any person having an interest in or claim against the Lessor or the Equipment not arising out of the Lessee's or any sublessee's use, possession, operation or disposition of the Equipment.

15. Purchase Option and Return of Equipment. Provided that no Event of Default or event which with the passage of time or giving of notice would constitute an Event of Default shall have occurred and be continuing hereunder, upon ninety (90) days delivered written notice, prior to the expiration of the Base Lease Term or a Renewal Term, the Lessee shall have the right to purchase not less than all of the Equipment at a price equal to the Fair Market Sales Value "as is, where is". For purposes of this Lease, Fair Market Sales Value and Fair Market Rental Value shall mean that sales value or rental which would be obtained in an arms length transaction between informed and willing parties (other than a lessee in possession) and shall exclude the value of additions to the units made at Lessee's expense which are removable by Lessee. In the absence of agreement by Lessee and/or Lessor on the Fair Market Sales Value or Fair Market Rental Value, such amount shall be determined by an independent appraiser acceptable to both Lessee and Lessor at Lessee's expense.

Upon the expiration of this Lease or termination of this Lease other than through an Event of Default with respect to the Items of Equipment, the Lessee, at its own risk and expense, will return such Equipment then subject to this Lease to the Lessor

pursuant to the Lessor's instructions to a location on the Lessee's lines of railroad designated by the Lessor and reasonably acceptable to the Lessee within thirty (30) days following receipt of the Lessor's instructions. Such Equipment, upon redelivery pursuant hereto, shall be free and clear of all mortgages, liens, security interest, charges, encumbrances and claims; provided however, Lessee has no responsibility to clear any mortgages, liens, security interests, charges, encumbrances or claims created solely by, through or under the Lessor and not the Lessee. Upon return of each Item of Equipment, if the Lessor shall so require, the Lessee will provide free storage and insurance for such Item for a period not exceeding sixty (60) days from the last day of any Term therefor. At the expiration of the sixty (60) day storage period the Lessor will pay to the Lessee for storage a reasonable daily storage rate which includes all costs for storage and insurance for each Item of Equipment being so stored beginning the first day after such sixty (60) day storage period and the Lessor shall use its best efforts to remove such stored Equipment from the Lessee's premises as soon as possible.

At the time of the return of such Equipment upon the expiration of this Lease or termination of this Lease other than through an Event of Default, there shall be a joint inspection of each Item of Equipment by representatives of both the Lessor and the Lessee and if the parties cannot agree as to compliance with the conditions hereinafter described, a mutually acceptable independent appraiser shall be appointed by the Lessor to inspect

each Item of Equipment in dispute for the purpose of determining the repairs, additions or replacements, if any, which are necessary to place each such Item of Equipment in dispute in the condition hereinafter described. The cost of such independent appraisal shall be born by the Lessee.

Upon return of the Equipment to the Lessor at the termination of the Lease, Lessee shall, upon request of Lessor, use its best efforts to assist Lessor in developing alternate lease arrangements with another lessee for the Equipment and shall execute whatever documents reasonably necessary to effect such alternate lease arrangement.

At the time of return, the Item(s) of Equipment shall be in the condition and state of repair required to be maintained under Section 8 hereof.

The Lessee shall be solely responsible for paying for all repairs, replacements and additions required as a consequence of such inspection; which repairs, replacements and additions shall be effectuated as quickly as possible.

Notwithstanding anything to the contrary contained herein, commencing on the expiration of the Lease Term and throughout the Lessor's sixty (60) day storage period the Lessee shall provide the Lessor, or any person designated by it, reasonable access to such Equipment and will allow the Lessor to display the Equipment to any authorized representative or representatives of prospective purchasers or lessees of such Equipment, so long as the Lessor, and designated person, such representative, such purchaser or such lessee shall prior to such access satisfy the same

inspection requirements required of Lessor in the first paragraph of Section 10 hereof. The return, removal, delivery, storage and transporting of the Equipment as provided in this Lease, including without limitation, Section 8 and Section 16, are of the essence of the Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Equipment.

16. Default, Remedies, Damages.

(a) Defaults: The following events shall constitute Events of Default:

(1) The Lessee shall fail to make any payment to the Lessor when due under this Lease and such failure to pay shall continue for a period of five (5) or more Business Days after such payment was due; or

(2) The Lessee shall fail to perform or observe any other material covenant, condition, or agreement to be performed or observed by it hereunder and such failure shall continue unremedied for a period of thirty (30) days after Lessee's receipt of written notice from the Lessor; or

(3) Any material representation or warranty made by the Lessee herein (other than those in Section 28) herein or in any document or certificate furnished the Lessor in connection herewith shall prove to be false in any respect at the time it was made and such representation or warranty shall continue to be

false at the time notice thereof is given from Lessor to Lessee and Lessee fails to remedy all material damages incurred by Lessor primarily as a result of such misrepresentation within thirty (30) days after receipt of such written notice; or

(4) A petition for reorganization under Title 11 of the United States Code, as now constituted or as may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereafter be amended; or

(5) Any other proceeding shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency laws, or laws relating to the

relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee, or for the property of the Lessee, in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within sixty (60) days after such proceedings shall have been commenced;

(b) Remedies: Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, the Lessor, at its option, may, in addition to any other rights it may have under the law, declare this Lease in default and the Lessor may do one or more of the following with respect to the Equipment or any Item of Equipment as Lessor in its sole discretion shall elect, to the extent permitted and subject to compliance with any mandatory requirements of applicable law:

(1) Proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease and to recover damages for the breach thereof;

(2) Repossess with or without notice and sue for the Rentals due hereunder as they accrue without notice and at the Lessee's costs and expenses;

(3) Repossess and without terminating the Lease hold the Item of Equipment until the Lessee shall have complied with all obligations under the Lease;

(4) Repossess with or without notice and sell, relet, use, hold or otherwise dispose of the Item of Equipment;

(5) With or without repossessing, declare all unpaid Rentals immediately due and payable;

(6) Repossess and terminate the Lease; and

(7) Require the Lessee at its expense to assemble the Equipment and make it available to the Lessor within 30 days at a place on Lessee's lines, to be designated by the Lessor, which is reasonably convenient to both parties.

In repossessing any of the Equipment or any part thereof pursuant to the foregoing provisions, the Lessor may enter upon any premises where such Equipment may then be at any time, wherever the same may be, with or without process of law and without being responsible for loss or damage. Lessee, in the Event of a Default hereunder and a decision by Lessor to repossess the Equipment, agrees that Lessee shall, as promptly as possible, but

in any event within thirty (30) days, collect all of the Equipment at a reasonable storage place East of the Missouri River on Lessee's lines for the Lessor and take all other actions required by subsection (f).

(c) Damages: The Lessor and the Lessee agree that the measure of damages is impossible to determine in the absence of prior agreement. Therefore, the parties agree that as damages for the loss of a bargain, and not as a penalty, in the case of an Event of Default, Lessor shall be entitled to:

(1) receive from the Lessee, immediately upon demand, as liquidated damages for loss of bargain and not as a penalty, the Stipulated Loss Value shown on Schedule "C" hereto, plus any Rentals then due and owing as of the next Rental Payment Date immediately succeeding the declaration of an Event of Default which has not been cured or waived;

(2) sell any or all of the Items of Equipment for which the Stipulated Loss Value has been paid by the Lessee to the Lessor and reimburse Lessee in the amount of Net Proceeds of Sale (defined below) up to the amount of the Stipulated Loss Value paid by Lessee, with the excess of such Net Proceeds of Sale over the Stipulated Loss Value being retained by Lessor. Net Proceeds of Sale shall mean the consideration received by the Lessor upon sale of an Item of Equipment less all expenses associated directly or indirectly with sale including but not limited to refurbishing, repair, advertising, freight or financing costs;

(3) at Lessor's option, permit the Lessee to use its best efforts to obtain an alternate lessee for the remaining Term of the Lease under this Lease. Rentals received by Lessor, net of Lessor's administrative or other costs, shall be turned over to the Lessee until the total of such rentals equals the amount of Stipulated Loss Value previously paid in (1) above by Lessee to the Lessor.

(d) Each and every power and remedy herein specifically given to the Lessor, shall be in addition to every other power and remedy specifically so given or now or hereafter existing at law or in equity, and each and every power or remedy may be exercised from time to time or simultaneously and so often and in such order as may be deemed expedient by the Lessor. All such powers and remedies shall be cumulative to the extent permitted by applicable law, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Lessor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. In the event that the Lessor shall bring any suit or action to enforce any of its rights hereunder, then in such suit or action the Lessor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

(e) The Lessee hereby appoints the Lessor the Lessee's irrevocable agent and attorney-in-fact to execute all documents

deemed necessary to release, terminate and void the Lessee's interest in the Equipment and to file said documents for recordation with appropriate agencies provided that an Event of Default has occurred and the Lessor in its discretion deems use of this agency necessary to effect any remedy the Lessor chooses to take.

(f) If the Lessor or any assignee of the Lessor, pursuant to this Section, shall terminate this Lease, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of delivering possession of the Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

(1) Forthwith place such Equipment in such reasonable storage place(s) on Lessee's lines East of the Missouri River as the Lessor may designate or, in the absence of such designation, as the Lessee may select;

(2) Permit the Lessor to store such Equipment in such reasonable storage place(s) on the Lessee's lines of railroad without charge for insurance, rent or storage until 120 days after notice from the Lessee that all of the Equipment has been placed in storage; and

(3) Transport the Equipment to any reasonable place on Lessee's lines, all as the Lessor may direct in writing.

17. Assignment by Lessee. The Lessee shall not transfer, assign, pledge or hypothecate this Lease, the Equipment or any part thereof or any interest therein, without the prior written consent of the Lessor except that, subject to the net worth

limitation below, Lessee may assign or transfer its interest in the Equipment or possession of the Equipment to any corporation (which shall have duly assumed in writing satisfactory to the Lessor the obligations hereunder of the Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all of the lines of railroad of the Lessee, provided that such assignees, successors or transferees will not, upon the effectiveness of such merger or consolidation or acquisition of properties, be in default under any provision of this Lease and that such merger or consolidation or acquisition of properties shall not alter in any way the Lessee's obligations to the Lessor hereunder which shall be and remain those of a principal and not a surety. Nothwithstanding the above, Lessor's written consent, not to be unreasonably withheld, shall be required if the surviving entity into which Lessee is to be merged, consolidated, or to which Lessee will transfer substantially all of its assets will not have a net worth after the merger, consolidation, or transfer, equal to or greater than that of the Lessee immediately prior to the merger, consolidation or transfer. The Lessee agrees to give the Lessor prior written notice of any such merger, consolidation or acquisition. Consent to any of the foregoing acts shall not be deemed to be consent to any subsequent similar act.

18. Assignment by Lessor. The Lessor, or any assignee of the Lessor, may at any time, without notice to or consent by the

Lessee, sell, assign, transfer, mortgage or otherwise encumber its interest under this Lease or in the Equipment, subject to the terms of this Lease and the rights of the Lessee hereunder, and, upon receipt of written notice of any such assignment, the Lessee shall recognize such assignment subject to the rights of the Lessee against the Lessor hereunder. No assignment or reassignment shall release the Lessor from its obligations to the Lessee under this Lease. The Lessor agrees to deliver to the Lessee a copy of each agreement evidencing any such sale, assignment, transfer, mortgage or other encumbrance, or the portion thereof which effects compliance with the provisions of this Section 18, as soon as practicable after the execution and delivery thereof, provided that the foregoing shall not be construed to require Lessor to deliver to Lessee a copy of any participation agreement between Lessor and a third party under which such third party acquires only the right to receive from Lessor, as collected, Rentals and other payments under the Lease and pursuant to which no other interest in the Equipment or the Lease is thereby assigned, sold or transferred. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's assigns, but only to the extent assigned.

19. Liens. Except as otherwise expressly permitted in this Lease, the Lessee shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance, security interest, right or claim of any kind ("Lien") on, or with respect to, any Item of Equipment, title thereto or any interest therein, except:

(i) the respective rights of the Lessor and the Lessee under the Lease;

(ii) Liens which result from claims against or acts of the Lessor not related to its interest in the Equipment;

(iii) Liens for taxes either not yet due or being contested in good faith and by appropriate proceedings so long as such proceedings do not involve any danger of the sale, forfeiture or loss of any Item or Equipment or any interest therein;

(iv) inchoate materialmen's, mechanics', workmen's, repairmen's employees' or other like Liens arising in the ordinary course of business and securing obligations which are not delinquent, or which are being contested by the Lessee in good faith and by appropriate proceedings so long as such proceedings do not involve any danger of the sale, forfeiture or loss of such Item of Equipment or any interest therein; and

(v) liens granted by Lessor to any assignee or security assignee of Lessor in connection with any financing obtained by Lessor in respect of its acquisition of the Equipment.

Nothing in this Section 19 shall be deemed to prohibit any lien attaching only to the leasehold interest of the Lessee under this Lease by reason of any future mortgage under which the Lessee is the mortgagor covering all or substantially all of the Lessee's railroad properties or the existence of any after acquired property clause in any existing mortgage to which the Lessee is the mortgagor covering all or substantially all of the Lessee's railroad properties.

The Lessee will promptly notify the Lessor in writing of the existence of any Lien not excepted above, if the same shall arise

at any time, and will promptly, at the Lessee's expense, cause any such Lien to be duly discharged, dismissed and removed or fully bonded as soon as possible, but in any event within thirty (30) days after the existence of the same shall have first become known to the Lessee unless the Lessee shall in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which will not affect or endanger title and interest of the Lessor in the Equipment.

20. Prohibition Against Setoff, Counterclaim, Etc. The Lessee's obligation to pay all amounts due hereunder shall be absolute and unconditional and shall not be affected by any circumstance whatever, including, without limitation (i) any setoff, counterclaim, defense, or other right which the Lessee may have against the Lessor, (ii) any defect in the title, condition, design, operation, or fitness for use of, or any damage to or loss or destruction of, the Equipment, or any interruption or cessation in the use or possession thereof by the Lessee except for any such interruption or cessation in such use or possession caused by the gross negligence or intentional misconduct of the Lessor for any reason whatsoever, or (iii) any insolvency, bankruptcy, reorganization or similar proceedings by or against the Lessee or the Lessor.

21. Representation, Warranties and Covenants of Lessee. Lessee represents, warrants and covenants: (i) that it is a duly organized corporation with necessary power and qualifications to perform this Lease, (ii) that this Lease has been duly authorized by all necessary corporate action on the part of the Lessee and will not contravene or breach any legal, organizational or con-

tractual regulation binding upon the Lessee, (iii) that this Lease constitutes valid, binding and enforceable obligations of the Lessee and is enforceable in accordance with its terms, (iv) except as reflected in the annual report of the Lessee to the Securities and Exchange Commission on Form 10-K for the fiscal year ended December 31, 1987 copies of which have been delivered to the Lessor, there are as of the date hereof (a) no actions at law or in equity pending which, if determined adversely, would result in any material adverse change in the Lessee's ability to carry out its obligations under this Lease; and (b) no proceedings of any kind or nature pending before a federal or state board or other administrative authority or agency which would result in any material adverse change in the Lessee's ability to carry out its obligations under this Lease, (v) that as of the date hereof no material adverse change in the Lessee's financial condition as represented in its 1987 Annual Report and submitted to the Lessor has occurred, all balance sheets and other audited financial data in the Lessee's 1987 Annual Report were complete and correct in all material respects, presented fairly the financial position of the Lessee on the dates for which and the results of its operations for the periods for which the same were furnished and have been prepared in conformity with generally accepted accounting principles applied on a consistent basis, (vi) prior to the delivery and acceptance of any Item of Equipment under this Lease, this Lease will have been duly filed with the Interstate Commerce Commission pursuant to Section 11303 of Title 49 of the United States Code (49 U.S.C. Section 11303) and no other filing, recording or deposit of any document in any

office in the United States is necessary to establish, perfect or preserve the Lessor's right, title and interest in the Equipment as against the Lessee and all third parties and (vii) Lessee shall promptly notify Lessor of any material change in any representation or warranty made by Lessee hereunder (other than those made in Section 28) throughout the term of this Lease and shall furthermore promptly notify Lessor of any Event of Default or event which with the passage of time or the giving of notice would become an Event of Default.

22. Warranties of Lessor. The Lessor warrants that during the term of this Lease, if no Event of Default has occurred, the Lessee's use of the Equipment shall not be interrupted by any act of the Lessor. The Lessor further warrants and represents that it is duly organized and validly existing under the laws of New Jersey, that this Lease has been duly authorized, executed and delivered by the Lessor and, assuming due authorization, execution and delivery hereof by the Lessee, constitutes the legal, valid and binding obligation of the Lessor, enforceable against the Lessor in accordance with its terms except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting the rights of creditors or lessors generally, and that the Lessor is not entering into this Lease or any other transaction contemplated hereby directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental

plan) with respect to which it is a party in interest within the meaning of the Employee Retirement Income Security Act of 1974. Lessor further warrants that, except to the extent Lessor is permitted to assign hereunder, throughout the term of this Lease it shall be the sole owner of the Equipment.

23. Attorneys' Fees. All fees and expenses, including legal fees incident to the preparation and execution of this Lease and the closings hereunder, shall be payable by the party incurring such fees and expenses; however, if Lessor requires use of outside counsel, Lessee will pay a maximum of $5,000 of outside counsel's fees.

24. Notices. All notices required or permitted under the terms and provisions hereof shall be in writing and addressed (i) if to the Lessee: Chicago and North Western Transportation Company, One North Western Center, 165 North Canal Street, Chicago, Illinois 60606, Attention: Assistant Vice President-Finance or Treasurer or at such other address as the Lessee shall from time to time designate in writing to the Lessor, or (ii) if to Lessor: The Prudential Insurance Company of America, c/o PruCapital Management, Inc., Three Gateway Center, 100 Mulberry Street, Newark, New Jersey 07102, Attention: Investment Administration Unit with a copy at the same address to Thomas M. LeBrun, Vice President (or at such other address as the Lessor shall from time to time designate in writing to the Lessee). All notices shall be deemed received three days after the postmark date on registered or certified mail or one day after the mailing date on express overnight deliveries.

25. Conditions Precedent. (a) The obligations of the Lessor to purchase and lease each Item of Equipment is subject to the fulfillment of the following conditions precedent with respect to each such Item of Equipment:

(1) The completion of all necessary regulatory approvals and filings on or before each Interim Lease Commencement Date, including (without limitation) the filings referred to in Item (vi) of Section 21 hereof;

(2) The representations and warranties of the Lessee set forth in Section 21 shall be true and correct in all material respects on and as of each Interim Lease Commencement Date;

(3) As of each Interim Lease Commencement Date no Event of Default or other event which with the giving of notice or the lapse of time, or both, would become an Event of Default shall have occurred and be continuing (see Exhibit "F");

(4) The Lessor shall have received for each Item of Equipment on or before the applicable Closing Date for each such Item of Equipment (i) a Certificate of Delivery and Acceptance of the Lessee in the form of Exhibit "A" dated as of the applicable Interim Lease Commencement Date for such Item of Equipment to the effect that the Lessee has satisfied or complied with all delivery and acceptance requirements set forth in this Lease to be satisfied or complied with on or prior to such Interim Lease Commencement Date and (ii) an Individual Leasing Record in the form of Exhibit "A-1";

(5) The Lessor shall have received an opinion, addressed to the Lessor, of the Lessee's Counsel dated as of the first Interim Lease Commencement Date for the Item(s) of Equipment leased hereunder on such Interim Lease Commencement Date (subject to the usual bankruptcy laws exceptions), to the effect set forth in Items (i) through (iv) both inclusive and (vi), of Section 21 and to the further effect, if any, set forth in Exhibit "D" hereof;

(6) The Lessor shall have received for each Item of Equipment on or before the applicable Closing Date for such Item of Equipment a Bill of Sale in the form of Exhibit "B" attached hereto from the Vendor of each such Item of Equipment conveying good and valid title thereto to the Lessor and an opinion of counsel in the form of Exhibit "C" attached hereto for the Vendor in support of such Bill of Sale.

(7) The Lessor shall have received a certificate or verification of an independent insurance broker or captive insurer or of an authorized officer of Lessee, dated on or before the first Interim Lease Commencement Date evidencing to the satisfaction of the Lessor compliance with the terms of Section 12;

(8) The Lessor shall have received on or before the first Interim Lease Commencement Date appropriate evidence satisfactory in form and content to Lessor, of authorization by Lessee of its execution, delivery and performance of this Lease, the purchase orders or purchase agreements to which the Lessee is a party and all other agreements entered into

by the Lessee in connection with the transaction contemplated hereby;

(9) The Lessor shall have received for the Equipment on or before the Interim Lease Commencement Date for such Item of Equipment a certificate of useful life and residual value signed by an authorized officer of the Lessee in the form of Exhibit "G" hereto.

(10) On or before the first Interim Lease Commencement Date, if requested by Lessor, the Lessor shall have received a tax opinion of tax counsel for the Lessor satisfactory to the Lessor.

26. Miscellaneous. This Lease shall in all respects be governed by and construed in accordance with the laws of the State of Illinois including all matters of construction, validity, effect and performance.

No delay or omission to exercise any right, power or remedy accruing to the Lessor upon any breach or default by the Lessee under this Lease shall impair any such right, power or remedy of the Lessor, nor shall any such delay or omission be construed as a waiver of any breach or default, or of any similar breach or default thereafter occurring; nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default; nor shall consent by the Lessor to any act of the Lessee be deemed to be consent to any subsequent similar act.

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability

without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

To the extent permitted by applicable law, the Lessee hereby waives any provision of law which renders any provision of this Lease prohibited or unenforceable in any respect. No term or provision of this Lease may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. This Lease shall constitute an agreement of lease, and nothing herein shall be construed as conveying to the Lessee any right, title or interest in any Item of Equipment except as a lessee only.

27. Recording, Registration and Filing. The Lessee shall, at its expense, accomplish all recordings, registrations and filings of this Lease, required by law to protect the Lessor's title and interests in the Equipment, and shall furnish the Lessor with evidence satisfactory to the Lessor of each such recording, registration and filing.

28. Tax Indemnity Assumptions, Representations and Warranties.

(a) Assumed Tax Benefits. The Lessor has entered into this Lease on the assumption that the Lessor shall be entitled to and shall realize the following tax benefits ("Assumed Tax Benefits") with respect to all units of Equipment:

(i) Depreciation deductions under Section 168 of the Code provided for property that is classified as seven (7) year property (hereinafter sometimes referred to as "Seven (7) Year Property") commencing in the year in which the Acceptance Date (as defined in the Certificate of Inspection and Acceptance for each such unit of Equipment) occurs and computed using (x) the 200 percent declining balance method, switching to the straight line method in the first year that such method will yield a larger allowance, (y) the applicable recovery period of seven (7) years, and (z) the half-year convention or the mid-quarter convention, whichever is applicable, all as set forth in Section 168 of the Code (the "Seven Year Depreciation Deductions");

(ii) The Lease (and the lease of Equipment hereunder) constitutes a lease for federal income tax purposes for the periods equal to the Base Lease Term;

(iii) The Lessor shall be treated as owner and lessor of the Equipment subject thereto and the Lessee will be considered as the lessee of such Equipment with no rights, title or interest in the Equipment except as lessee;

(iv) The Lessor will have a basis in each unit of Equipment under Section 1012 of the Code and related sections equal to the Cost of such unit of Equipment;

(v) No portion of the Seven Year Depreciation Deductions for a unit of Equipment shall be recaptured prior to the expiration of the Base Lease Term for such unit of Equipment;

(vi) The Lessor shall be subject to tax at not less than thirty-four percent (34%);

(vii) The Lessor will not be required to include in its taxable income for federal income tax purposes any amounts other than amounts required to be paid to Lessor hereunder and at the times so required to be paid; and

(viii) The Lessor will be entitled to amortize Transaction Expenses on a straight line basis over the Base Lease Term of the Equipment.

(b) Lessee Representations and Warranties. The Lessee hereby represents and warrants to the Lessor with respect to tax matters in connection herewith as follows:

(i) That Lessee shall characterize the relationship herein established as a lease and will treat it as such for all purposes and assuming such relationship herein established would be so determined by the Internal Revenue Service or any court of final jurisdiction under current law with respect to each unit of Equipment, Lessor will be entitled to the depreciation deductions provided by Section 168 of the Code and 100% of total Cost of each unit of Equipment will qualify to be depreciated over a seven (7) year recovery period under the depreciation method described in Section 168(b)(1) of the Code;

(ii) That the Lessee will not, by its acts or failure to act, cause any of the Assumed Tax Benefits to fail nor has the Lessee taken or will take any action which might be inconsistent with the representations and warranties herein;

(iii) Upon the Closing Date of each unit of Equipment the Lessee will not have made, or have any obligation to make, any investment in such unit of Equipment;

(iv) That the Lessee will do nothing to cause any items of income or Seven (7) Year Depreciation Deductions associated with any unit of Equipment to be treated as derived from or allocable to sources from without the United States;

(v) At the Acceptance Date (as defined in the Certificate of Inspection and Acceptance for each unit of Equipment), such unit of Equipment will require no improvements, modifications or additions (other than ancillary items of equipment of a kind that are customarily furnished by purchasers or lessees of property identical to such unit of Equipment) in order for such unit of Equipment to be rendered complete for its intended use by the Lessee;

(vi) The Cost of each unit of Equipment is equal to the fair market value of such unit of Equipment as of the date such unit of Equipment is accepted under a Certificate of Inspection and Acceptance.

(vii) The estimated useful life of each unit of Equipment is not less than 125% of the period of time that such Equipment is covered by the Base Lease Term plus any Interim Lease Term of Equipment leased hereunder;

(viii) The estimated fair market value of each unit of Equipment at the end of the Base Lease Term is at least equal to 20% of the Cost thereof, without regard to any increase or decrease due to inflation or deflation during any such Base Lease

Term (and after subtracting from such value any cost of the Lessor for removal and delivery of possession of such unit of Equipment to the Lessor), but in no event shall this representation be deemed a guaranty of such residual value; and

(ix) Each unit of Equipment will be useful or usable by Lessor or a third party at the end of the Base Lease Term for purposes other than continued leasing by or transfer to any member of the Lessee group (as defined in Revenue Procedure 75-21).

If (x) the Lessor shall lose, or shall not have, or shall lose the right to claim or shall suffer a disallowance of or shall be required to recapture all or any portion of the Assumed Tax Benefits due to any act, failure to act, or misrepresentation of the Lessee or (y) for Federal income tax purposes any item of income, gain, loss, deduction or credit with respect to any Item of Equipment is treated as derived from, or allocable to, sources outside the United States (whether or not any foreign income taxes imposed as a result thereof may be credited against Federal, state or local income taxes of the Lessor) (hereinafter (x) or (y) shall be referred to as a "Loss"), then with respect to each Loss, Lessee shall make payment to Lessor either in a discounted lump sum or as an adjustment to Rental as provided in the immediately following paragraph, of an amount which, after reduction for all taxes required to be paid by Lessor in respect of the receipt of such amount under any federal, state and local law (assuming for purposes of this calculation that Lessor pays income taxes on the receipt of such amounts at the maximum

statutory rate applicable to the Lessor) ("After-Tax Basis"), shall be sufficient to maintain the internal rate of return and periodic after-tax cash flow which Lessor expected to realize as a result of the transactions provided for in this Lease ("Net Return") based upon the full utilization by Lessor of the Assumed Tax Benefits, plus on an After-Tax Basis an amount equal to any interest, additions to tax or penalties imposed as a consequence of the loss of the Assumed Tax Benefits which gave rise to indemnification hereunder.

If the Lessor claims entitlement to payment under this Section 28, the Lessor shall provide Lessee with a written notice of such claim (a "Claim") which notice shall (A) state the amount of the Claim payable (i) in a lump sum and (ii) as an adjustment to Rental, (B) describe the basis for the Claim and confirm in writing to the Lessee that the assumptions, reasonableness and accuracy of computations employed in the applicable initial calculations of Rental and Stipulated Loss Value were used in calculating such discounted lump sum and adjustment and that such calculations were made in compliance with this Section 28 and (C) provide either sufficient evidence satisfactory to the Lessee of the accuracy and consistency of such calculations or, at the Lessee's request and expense, confirmation to such effect from a nationally recognized independent accounting firm selected by Lessor and acceptable to Lessee, provided that if the amount of the Claim, as calculated by such accounting firm is less than 90% of the Claim, as calculated by the Lessor, the cost of such confirmation shall be paid by Lessor. Such Rental Adjustment or

lump sum payment shall give effect to all deductions, deferred deductions or foreign tax credits and subsequent utilization of deductions or foreign tax credits to which Lessor may be entitled to under the Code and which are attributable to the transaction contemplated under this Lease. The lump sum amount shall be payable within forty-five (45) days of the date of the Claim and the adjustment to Rental shall commence on the first Rental Payment Date on or following the date which is forty-five (45) days after the date of the Claim; provided, however, that an adjustment to Rental shall be made in lieu of a lump sum payment should Lessee elect not to pay the lump sum amount within forty-five (45) days of the Claim. If the date for the payment of the tax or the date of the filing of the tax return, as the case may be, is after the last Rental Payment Date, Lessee shall pay the lump sum amount determined by Lessor, and Lessee shall be permitted to contest the tax as hereinafter provided. Any refund with respect thereto shall belong to Lessee.

If for any reason Lessor is required to include in its gross income for federal tax purposes ("Inclusion in Income") at any time with respect to any unit of Equipment (unless entitled to an equal deduction in the same taxable year) any part or all of the cost of (i) any repairs and maintenance of any unit of Equipment, (ii) any alterations, improvements or additions to any unit of Equipment, or (iii) any other expenditure by Lessee or any third party authorized by Lessee with respect to any unit of Equipment, then Lessee shall promptly pay to Lessor, upon written request, the sum of (x) the amount of any increase in Lessor's federal

income taxes resulting from the inclusion of such costs in the gross income of Lessor, (provided that such amounts shall be decreased by any savings realized by Lessor in connection with such taxes as a result of such costs), plus (y) the amount of any interest or penalties, including, without limitation, any additional tax due to the underpayment of estimated taxes assessed against Lessor in connection therewith, plus (z) the amount of any taxes required to be paid by Lessor in respect of the receipt of amounts specified in the foregoing clauses (x) and (y) and this clause (z).

The Lessee shall not be required to indemnify the Lessor for any Loss directly and primarily resulting from one or more of the following causes: (a) the failure of the Lessor to properly claim in a timely manner (including making all appropriate elections and filing all information returns required under the applicable income tax regulations) or to follow the proper procedure in claiming, the Assumed Tax Benefits (unless the Lessor shall have been advised by its tax counsel that in such tax counsel's opinion there is no reasonable basis for claiming any such credit or deduction), (b) the failure of the Lessor to have sufficient liability for income taxes or to have sufficient taxable income to benefit from the Assumed Tax Benefits after giving effect to all permitted tax loss carryforwards and carrybacks, (c) a transfer or disposition by the Lessor of an Item of Equipment or any interest therein or any interest in the Rentals derived therefrom or any interest in this Agreement (except a transfer or disposition after an Event of Loss or an Event of

Default), or a transfer or other disposition of an Item of Equipment or any interest therein or any interest in the Rentals derived therefrom or any interest in this Lease which results from bankruptcy or other proceedings for the relief of debtors in which the Lessor is the debtor, (d) an Event of Loss with respect to an Item of Equipment, if the Lessor shall have received the amounts stipulated in respect thereof pursuant to Section 13 hereof, (e) participation in the residual value of any Item of Equipment at the end of the Base Lease Term of this Lease by any party other than the Lessor, (f) a Loss due to changes included in any legislation which amends the Internal Revenue Code of 1986 and which is enacted after the delivery and acceptance of a unit of Equipment, (g) any defect in tax characteristics of the property ownership arrangements selected by the Lessor or existing for the Lessor and/or (h) any liability of the Lessor for any alternative minimum tax imposed by Sections 55 through 59 of the Internal Revenue Code of 1986 to which it is subject from time to time.

Upon receipt by the Lessor of a written notification from the Internal Revenue Service of any proposed assessment or other action which would result in a Loss for which an amount may be payable by the Lessee in accordance with this Section 28 (hereinafter called a "Disallowance"), the Lessor shall promptly notify the Lessee of such Disallowance after receipt of such written notification from the applicable taxing authority and shall contest such Disallowance in any reasonable and appropriate manner,

if so requested by the Lessee. The Lessor shall be under no obligation whatsoever to contest such Disallowance unless:

(a) the Lessee shall request the Lessor to contest such Disallowance within thirty (30) days after receipt by the Lessee of notice from the Lessor and within thirty (30) days thereafter an independent tax counsel selected by the Lessor and acceptable to the Lessee shall render a written opinion that the Lessor has a reasonable basis for contesting such Disallowance;

(b) the Lessee shall pay the Lessor on demand all reasonable costs and expenses, including, without limitation, legal fees and expenses, incurred by the Lessor in connection with contesting or determining to contest such Disallowance and, when due, all penalties and/or interest imposed in connection with such contest; and

(c) no Event of Default shall have occurred and be continuing.

The Lessor, at its sole option, may choose to forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service in respect of such Disallowance, but shall contest the Disallowance in a court of competent jurisdiction which court shall be selected by the Lessor at its sole option and, if requested by the Lessee, shall appeal any adverse determination; provided, however, that nothing contained in

this paragraph shall require the Lessor to contest any Disallowance if the Lessor shall waive the payment by the Lessee of any amount that might otherwise be payable by the Lessee under this Section 28 by way of indemnity in respect of such Disallowance.

At all stages of any contest of a Disallowance, the Lessor shall pursue the contest by any proceedings available under applicable law, regulations or court rules which in its sole discretion it determines to pursue, and shall determine in its sole discretion whether (a) to petition for a redetermination of the deficiency proposed to be assessed as a result of the Disallowance or (b) to pay the deficiency and institute an action in a court of competent jurisdiction for a refund of taxes paid, in which case the Lessee shall pay the amount of such deficiency by adjusting the Rentals in such a manner as to allow the Lessor, in its reasonable opinion, to maintain Lessor's Net Return. The Lessee shall provide counsel (selected by the Lessee) to conduct such contest, or to assist counsel of the Lessor in conducting such contest, as the Lessor in its sole discretion shall determine, it being agreed that the ultimate control of any such contest shall be in the sole discretion of the Lessor.

The Lessor shall not enter into a settlement or other compromise with respect to any Disallowance without the prior written consent of the Lessee, unless the Lessor shall waive its right to be indemnified with respect to such Disallowance under this Section 28; <u>provided</u>, <u>however</u>, that the Lessor shall not be

required to appeal or otherwise seek review of any adverse decision of a court of appeal but shall pursue any and all decisions remanded to a lower court.

The liability of the Lessee for any adjustments to Rental hereunder shall become fixed at the time Lessor makes payment of the tax attributable to the Loss, or if Lessor is not required to make payment of tax with respect to the Loss, the date on which the Lessor files its tax return for the taxable year in which such Loss occurs. Notwithstanding the foregoing, in the event that a tax contest is proceeding at the termination of this Lease, Lessee shall pay Lessor an amount which Lessee would be required to pay hereunder if such contest failed; Lessor shall, if such contest ultimately succeeds, refund any such amount at such later date.

For purposes of this Section 28, the term "Lessor" shall include the common parent and all other corporations included in the same affiliated group within the meaning of Section 1504 of the Code, of which Lessor is or may become a member. The foregoing indemnity shall not be affected by any termination of this Lease as a whole or in respect of any unit of Equipment leased hereunder.

29. General Assignment of Purchase Orders and/or Agreements. The Lessor and the Lessee shall enter into a Purchase Agreement Assignment dated as of the date hereof (herein called the "Assignment"), in substantially the form of Exhibit "E" hereto, pursuant to which the Lessee assigns to Lessor its rights

under various purchase orders and/or agreements to acquire the Equipment.

30. Lessor's Assignment of Rights Against Vendor. Upon the request of Lessee, Lessor shall, in a form to Lessee's reasonable satisfaction assign to Lessee all of its rights against the Vendor with respect to any representation or warranty made by the Vendor with respect to the Equipment.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their duly authorized officers on the day and year first written above.

LESSOR:

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, BY PRUCAPITAL MANAGEMENT, INC., ITS AGENT

[Corporate Seal]

ATTEST:

Assistant Secretary

By: Thomas M. LeBrun

Its: Vice President

LESSEE:

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

[Corporate Seal]

ATTEST:

Lisa M. Fanelli

Assistant Secretary

By: [illegible]

Its: Vice President Finance

L171-0 (0-57)

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

On this 13th day of January, 1989, before me personally appeared T. A. Tingleff, to me personally known who signed the foregoing instrument on this day and, being by me duly sworn, says that he is a Vice President of CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Faith P Delgado
Notary Public

[Notarial Seal]

My Commission expires: My Commission Expires Mar. 3, 1990

STATE OF NEW JERSEY)
) ss
COUNTY OF ESSEX)

On this 17th day of January, 1989, before me personally appeared Thomas L. LeBrun, to me personally known, who signed the foregoing instrument on this day and, being by me duly sworn says that he is a Vice President of PRUCAPITAL MANAGEMENT, INC., AS AGENT FOR THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Diane C. Smith
Notary Public

[Notarial Seal]

My Commission expires: DIANE C. SMITH
A NOTARY PUBLIC OF NEW JERSEY
My Commission Expires March 22, 1993

L171-0 (60.*)

SCHEDULE "A"

Equipment To Be Leased From
The Prudential Insurance Company of America

DESCRIPTION OF EQUIPMENT

Type	Model	Quantity	Estimated Cost For Each Unit (2)	Lessee's Identification Numbers (1)
Fully enclosed tri-level auto racks with extended height radial end doors	AB15153	50	36,775	526201 through 526250

Time of Delivery: December, 1988 - June, 1989

Place of Delivery: To be determined at time of delivery

Builder: Thrall Car Manufacturing Company

(1) There will be two sequential serial numbers on each rack.

(2) Cost excludes freight charges for delivery to Lessee. Such charges will be included in builder's invoice(s) rendered prior to each closing.

All proceeds of the foregoing.

The collateral is the subject of an Equipment Lease Agreement dated as of January 2, 1989 between Chicago and North Western Transportation Company and The Prudential Insurance Company of America.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, LESSOR

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, LESSEE

Equipment:	Tri-Level	Net Present Value[1]	85.36%
Lease Term:	11.75 years		
MACRS:	7 years		
Delivery Date:	09/30/89		
Funding Date:	09/30/89		
Lease Commencement Date:	10/01/89		

Payment Start Rent	Rent Amount[2]	Payments	Timing
01/01/90	0.0	3	Quarterly in Arrears
10/01/90	11.3680	1	Quarterly in Arrears
01/01/91	0.0	3	Quarterly in Arrears
10/01/91	11.3680	1	Quarterly in Arrears
01/01/92	0.0	3	Quarterly in Arrears
10/01/92	11.3680	1	Quarterly in Arrears
01/01/93	0.0	3	Quarterly in Arrears
10/01/93	11.3680	1	Quarterly in Arrears
01/01/94	0.0	1	Quarterly in Arrears
04/01/94	12.9469	1	Quarterly in Arrears
07/01/94	0.0	3	Quarterly in Arrears
04/01/95	13.8943	1	Quarterly in Arrears
07/01/95	0.0	3	Quarterly in Arrears
04/01/96	13.8943	1	Quarterly in Arrears
07/01/96	0.0	3	Quarterly in Arrears
04/01/97	13.8943	1	Quarterly in Arrears
07/01/97	0.0	3	Quarterly in Arrears
04/01/98	10.4207	1	Quarterly in Arrears
07/01/98	0.0	3	Quarterly in Arrears
04/01/99	13.8943	1	Quarterly in Arrears
07/01/99	0.0	3	Quarterly in Arrears
04/01/00	13.8943	1	Quarterly in Arrears
07/01/00	0.0	3	Quarterly in Arrears
04/01/01	12.3743	1	Quarterly in Arrears
07/01/01	1.5200	1	Quarterly in Arrears
	Total Payments	47	

1 Net Present value of Base Term plus Interim Term Rentals discounted at 10% compounded Quarterly to October 1, 1989.

2 Rent amounts are expressed as a percent of Equipment Cost.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, LESSOR

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, LESSEE

(Schedule of Stipulated Loss Values -
11.75 Year Tri-Level Racks)

The Stipulated Loss Value of each Item of Equipment shall be the percentage of Lessor's Cost of such Item of Equipment set forth opposite the applicable Rental Payment Date:

Rental Payment Date	Stipulated Loss Value	Rental Payment Date	Stipulated Loss Value
10/01/89	103.4540	10/01/95	80.6086
01/01/90	107.1279	01/01/96	81.9679
04/01/90	109.6797	04/01/96	69.4642
07/01/90	112.2320	07/01/96	70.5461
10/01/90	103.4337	10/01/96	71.6650
01/01/91	105.7266	01/01/97	72.8216
04/01/91	108.0375	04/01/97	60.1189
07/01/91	110.3637	07/01/97	61.0127
10/01/91	101.3494	10/01/97	61.9492
01/01/92	103.4365	01/01/98	62.9292
04/01/92	105.5492	04/01/98	53.5276
07/01/92	107.6914	07/01/98	54.3296
10/01/92	98.4997	10/01/98	55.1658
01/01/93	100.4163	01/01/99	56.0368
04/01/93	102.3638	04/01/99	43.0452
07/01/93	104.3502	07/01/99	43.6458
10/01/93	95.0072	10/01/99	44.2841
01/01/94	96.7769	01/01/00	44.9607
04/01/94	85.6338	04/01/00	31.7770
07/01/94	87.1448	07/01/00	32.1842
10/01/94	88.6895	10/01/00	32.6259
01/01/95	90.2685	01/01/01	33.1025
04/01/95	77.9865	04/01/01	21.2353
07/01/95	79.2816	07/01/01	20.0000

Rentals are payable quarterly in arrears and therefore the scheduled Rentals will be payable at time of payment of Stipulated Loss Values. The Cost of Equipment for which the Stipulated Loss Value has been previously paid shall be deducted from the Cost of Equipment to which the Rentals are applied on a Rental Payment Date.

EXHIBIT "A"

CERTIFICATE OF INSPECTION AND ACCEPTANCE

under

EQUIPMENT LEASE dated as of January 2, 1989 (the Lease) between THE PRUDENTIAL INSURANCE COMPANY OF AMERICA (the Lessor), and Chicago and North Western Transportation Company, as lessee (the Lessee). All terms used herein shall have the same meanings as are ascribed to them in the Lease.

The Lessee hereby certifies that each Item of Equipment set forth and described in Attachment A hereto (which Attachment includes the amount of the Lessor's Cost of each such Item) has been delivered to the location indicated in Attachment A for each such Item, tested and inspected by Lessee, found to be in good order and accepted as an Item of Equipment under the Lease, each on the date ("Acceptance Date") indicated in Attachment A for such Item.

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY,
as Lessee

By:_____

Title:_____

Date:_____

ATTACHMENT A

QUANTITY	EQUIPMENT DESCRIPTION	ACCEPTANCE DATE	RAILROAD SYSTEM #	PURCHASE PRICE
			TOTAL	$

L171-0 (67.*)

INDIVIDUAL LEASING RECORD

ILR No.: [ ] Interim [ ] Final [ ] TRAC [ ] FMV | Effective Date of Lease:

[ ] New [ ] Used | Vendor: | Purchase Order No.:

Make or Manufacturer of Equipment: | Model: | Model Year:

Serial No.:

Type of Equipment or Other Details:

Location of Equipment: City: County: State:

[ ] New ILR [ ] Replacement ILR [ ] Revised ILR | Date Of Original ILR or Last Revision:

Acquisition Cost:	(1) Equipment:	(2) Body:	(3) Other Charges:	Acquisition Cost: (1+2+3)

Lease Term in Months:	See Attached Rental Payment Number:	See Attached Rental Factor:	See Attached Rental Figures:
Equipment Group:	_____ to _____	%	$
	_____ to _____	%	$

Rent: Commencing the first day of _____, 19_____ equals the acquisition cost multiplied by the rental factor. Such rental amount is subject to periodic adjustments if so provided in the Leasing Agreement.

Lease term for unit expires on last day of _____, 19_____

Class of Recovery Property (ACRS)
_____ 3 Yr. Property
_____ 5 Yr. Property

Class of Recovery Property
_____ 5 Yr. Property 200% Declining Balance/Straight Line
7 Yr. Property Other/Specify

The undersigned lessor hereby leases to the undersigned lessee, and the lessee acknowledges delivery to it in good condition of, the Equipment with related equipment, described in the above Individual Leasing Record. The lessee agrees to pay the rent set forth above. The covenants, terms and conditions of this lease are those appearing in the Leasing Agreement between the undersigned Lessor and Lessee, dated as amended, which covenants, terms and conditions are hereby incorporated by reference.

The Prudential Insurance Company of America
by Prudential Interfunding Corp., its Agent

By _____
Authorized Signature

_____, Lessee

By _____
Authorized Signature

EXHIBIT "A-1"

EXHIBIT "B"

BILL OF SALE

_____, a corporation, (hereinafter called the Seller) in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations the receipt of all of which by it is hereby acknowledged, has bargained, sold, conveyed, transferred and delivered, and by these presents does hereby bargain, sell, grant, convey, transfer and deliver unto THE PRUDENTIAL INSURANCE COMPANY OF AMERICA (hereinafter called the Purchaser), the following unit(s) of Equipment:

(SEE ATTACHED ATTACHMENT A)

TO HAVE AND TO HOLD the same unto the said Purchaser, its successors or assigns forever;

THE SELLER HEREBY WARRANTS to the Purchaser, its successors and assigns, that at the time of delivery of each unit of the Equipment to the Purchaser, as aforesaid, each such unit was new and unused Equipment, the Seller has legal title thereto, and good and lawful right to sell the same, and that title to said unit was then free of all claims, liens, encumbrances and security interests of any nature, and the Seller hereby further warrants that upon such delivery and payment by the Purchaser of the purchase price for such unit, the Purchaser will acquire legal title thereto, free of all claims, liens, encumbrances and security interests of any nature, and the Seller covenants that it will warrant and defend such title against all claims and demands whatsoever;

IN WITNESS WHEREOF, the Seller has caused this Bill of Sale to be executed in its name by its Vice President-Finance, thereunto duly authorized, and its corporate seal to be hereunto affixed and to be attested by its _____, this _____ day of _____, 19___.

By_____
(Signature)

CORPORATE SEAL

Attest

_____

L171-0 (68.*)

EXHIBIT "C"

Date_____

Attention:

Gentlemen:

As counsel for _____ (the "Seller"), I am familiar with the sale to you, pursuant to the Bill of Sale dated as of _____ (the "Bill of Sale") from the Seller to you the following unit(s) of equipment (the "Equipment"):

I am of the opinion that:

1. Seller is a corporation duly organized and existing in good standing under the laws of the state of _____.

2. The Bill of Sale has been duly authorized, executed and delivered by the Seller, is not in conflict with the charter or by-laws of the Seller, any court or administrative decree binding upon the Seller or any agreement binding upon the Seller of which I have knowledge, and constitutes a valid, legal and binding instrument of the Seller enforceable in accordance with its terms; and

3. Such Bill of Sale is valid and effective to transfer, and does transfer, good title to the Equipment herein described to the Purchaser free and clear of all claims, liens, and encumbrances of any nature.

_____
Attorney for

L171-0 (69.*)

EXHIBIT "D"

Date_____

Attn:

Gentlemen:

As counsel for Chicago and North Western Transportation Company, a Delaware corporation (the Lessee) and North Western Leasing Company, a Delaware corporation (NWL), I am familiar with the Equipment Lease Agreement dated as of January 2, 1989 (the Lease) between Prudential Insurance Company of America (the Lessor) and the Lessee and the other documents and instruments entered into by the Lessee in connection with the transactions contemplated by the Lease, including the General Assignment of Purchase Agreement(s) dated as of January 2, 1989 (the General Assignment of Purchase Agreement(s)) between the Lessee and the Lessor and the Bill of Sale from Vendor to the Lessor covering certain Items of Equipment (the "Bill of Sale"); and I have examined such corporate and other documents and records and such questions of law as I have considered necessary or appropriate for purposes of this opinion. The terms used herein, unless otherwise defined, are those used in the Lease. On the basis of such examination, I advise you that in my opinion:

(a) The Lessee is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware, is duly qualified to do business in each jurisdiction where its ownership or lease of property or the conduct of its business require such qualification, and has full corporate power and authority to hold property under lease and to enter into and perform its obligations under the Lease and the other documents and instruments entered into by the Lessee in connection with the transaction contemplated thereby.

(b) The execution, delivery and performance by the Lessee of the Lease and all other agreements entered into by the Lessee in connection with the transactions contemplated by the Lease have been duly authorized by all necessary corporate action on

the part of the Lessee, do not contravene any law or governmental rule, regulation or order applicable to the Lessee, do not and will not contravene any provisions of, or constitute a default under, any indenture, mortgage, contract or other instrument to which the Lessee is a party or by which it is bound or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the Items of Equipment (as defined in the Lease) (except for the rights and interests of Lessor therein and except that such liens may attach to the rights and interests of the Lessee under the Lease in and to the Equipment), have been duly executed and delivered by the Lessee and, assuming the due authorization, execution and delivery thereof by each other party thereto, constitute the legal, valid and binding agreement of the Lessee, enforceable in accordance with their terms (subject, as to enforcement of remedies, to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally).

(c) No consent or approval of, giving of notice to, registration with, or taking of any other action in respect of, any state, federal or other governmental authority or agency is required with respect to the execution, delivery and performance by the Lessee of the agreements referred to in (a) and (b) above and Lessor will not by reason of the execution, delivery and performance of the Lease and the purchase of the Equipment become a railroad as defined in the Interstate Commerce Act.

(d) There are no actions, suits or proceedings at law or in equity pending or, to my knowledge, threatened against or affecting the Lessee in any court or before any arbitrator or governmental commission, board or authority which, if adversely determined, will have a material adverse effect on the ability of the Lessee to perform its obligations under any of the agreements referred to in (a) above, except as set forth in the Lessee's Annual Report to the Securities and Exchange Commission on Form 10K for the fiscal year ended December 31, 1987.

(e) The General Assignment of Purchase Agreement(s) is effective to convey to the Lessor the rights and claims purported to be conveyed thereby, and is effective to retain in the Lessee such rights and duties as are purported to be retained thereunder.

(f) The Lease has been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 11303(a) of Title 49, United States Code and an appropriate Uniform Commercial Code financing statement covering the Equipment has been filed with the Secretary of State of the State

of Illinois and no other filing, recording or deposit of any document in any office of the United States is necessary to establish, perfect or preserve the Lessor's right, title and interest in the Equipment as against the Lessee and all third parties.

Very truly yours,

EXHIBIT "E"

GENERAL ASSIGNMENT of PURCHASE AGREEMENT(S)

THIS GENERAL ASSIGNMENT OF PURCHASE AGREEMENT(S) dated as of January 2, 1989 between Chicago and North Western Transportation Company (the "Assignor") and The Prudential Insurance Company of America (the "Assignee"),

W I T N E S S E T H :

In consideration of the mutual covenants herein contained, the Assignee and the Assignor agree as follows:

1. The Assignor does hereby sell, assign, transfer and set over unto the Assignee all of the Assignor's right, title and interest in, to and under the Purchase Agreement(s) which the Assignor, directly or through an agent, has heretofore or may hereafter enter into with any manufacturer with respect to any equipment which has or may become an Item of Equipment (as such term is defined in an Equipment Lease Agreement dated as of January 2, 1989, between the Assignee, as lessor, and the Assignor, as lessee, which Equipment Lease Agreement is herein referred to as the "Lease"), including, without limitation, the right to purchase and take title of each such Item of Equipment pursuant to the applicable Purchase Order.

Notwithstanding the foregoing, so long as the Assignee shall not have declared the Lease to be in default or until redelivery to the Assignee of an Item of Equipment in accordance with the Lease, the Assignee authorizes the Assignor, to the exclusion of the Assignee, to exercise in its name all rights and powers of the buyer under each Purchase Order (including, without limitation, the right to amend or terminate any such Purchase Order), except that the Assignor may not exercise any right to purchase or take title to an Item of Equipment.

2. It is expressly agreed that, anything herein contained to the contrary notwithstanding:

(a) The exercise by the Assignee of any of the rights assigned hereunder shall not release the Assignor from any of its duties or obligations to the manufacturer or seller under each such Purchase Order except to the extent that such exercise by the Assignee shall constitute performance of such duties or obligations; and

(b) The Assignee shall not have or hereafter acquire any obligation or liability under any such Purchase Order by reason of, or arising out of, this Assignment or be obligated to perform any of the obligations or duties of the

Assignor under any such Purchase Order or to make any payment (other than to make the payments with respect to each Item of Equipment to the extent and upon the terms and conditions set forth in the Lease) or to make any inquiry as to the sufficiency of any payment received by any of them or to present or file any claim or to take any other action to collect or enforce any claim for any payment assigned hereunder.

3. The Assignor agrees that at any time and from time to time, upon the written request of the Assignee, the Assignor will promptly and duly execute and deliver or cause to be executed and delivered on its behalf any and all such further instruments and documents and take such further action as the Assignee may reasonably request in order to obtain the full benefits of this Assignment and of the rights and powers herein granted.

4. This Assignment shall be governed by, and for all purposes construed in accordance with, the laws of the State of Illinois.

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

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY,
as Assignor

By_____
T. A. Tingleff

Title: Vice President - Finance

as Assignee

By_____

Title:_____

EXHIBIT "F"

CERTIFICATE

I, T. A. Tingleff, Vice President-Finance of CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY (the Lessee) DO HEREBY CERTIFY AS FOLLOWS:

No Event of Default (as defined in the Equipment Lease Agreement dated as of January 2, 1989 or other event which with the giving of notice or the lapse of time, or both, would become an Event of Default, has occurred.

The representations and warranties of the Lessee set forth in Section 21 of the Lease are true and correct in all material respects on and as of the date hereof.

_____
Vice President - Finance

Dated:

L171-0 (75.*)

EXHIBIT "G"

Date_____

ATTN:

Gentlemen:

I have ___ years experience with the Chicago and North Western Transportation Company. Presently, I am the Vice President - Equipment Management of the Chicago and North Western Transportation Company. My duties have involved and currently involve the determination of the useful lives and values of railroad equipment. I am familiar with the Equipment Lease Agreement dated as of January 2, 1989, pursuant to which _____ _____ (Lessor) will lease to Chicago and North Western Transportation Company various Equipment included in SCHEDULE "A". Additionally, I am familiar with the Equipment and its specifications.

I assume that the Equipment will be maintained in good operating condition, ordinary wear and tear excepted, and that the market for used equipment of this nature at the lease termination will reflect no unusual conditions of supply and demand.

Based upon my experience in the industry and my review of the specifications for the Equipment, I hereby certify that, in my opinion, each Item of Equipment will have a fair market value at the end of the original term of the Lease (such fair market value being determined without including in such value any increase or decrease for inflation or deflation during such original Lease term and determined after subtracting from such value the cost, if any, for removal and delivery of possession to Lessor at the end of such term) equal to at least twenty percent (20%) of the original cost for such Item, and each Item is estimated to have a remaining useful life at the end of the original term of the Lease equal to at least twenty percent (20%) of its originally estimated useful life.

Very truly yours,

ATTACHMENT A