

ORIGINAL  
550

LAW OFFICES  
**ALVORD AND ALVORD**

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ELLSWORTH C. ALVORD (1964)

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AREA CODE 202  
393-2266

RECORDATION NO. 12426

NOV 20 1980 - 1 20 PM

November 20, 1980 INTERSTATE COMMERCE COMMISSION

TELEX  
440348 CDAA UI

Q-325A033  
No. 7  
Date 11-20-80  
Fee \$ 50.00  
ICC Washington, D. C.

Agatha L. Mergenovich, Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Madam:

Enclosed for recordation under the provisions of 49 U.S.C. §11303(a) are 1) seven original copies of an Equipment Lease dated as of November 18, 1980; and 2) five original copies of a Collateral Assignment dated as of November 18, 1980 ("Documents").

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

LESSOR/ASSIGNEE: C I Transportation Leasing Corporation  
231 South LaSalle Street  
Chicago, Illinois 60693

LESSEE/ASSIGNOR: Brae Corporation  
Three Embarcadero Center  
San Francisco, California 94111

A general description of the railroad equipment covered by the Documents is:

One hundred (100) 70-ton 50'6" boxcars, AAR Mechanical Designation XP, bearing reporting marks and numbers POVA 35001 through POVA 35100, both inclusive.

Please return the copies of the Documents not needed for recordation purposes of Cary J. Malkin, Esq., Mayer, Brown & Platt, 231 South LaSalle Street, Chicago, Illinois 60604 or to the bearer hereof.

*C. J. Malkin*

Nov 20 1 07 PM '80  
FILE BRANCH

Agatha L. Mergenovich, Secretary  
November 20, 1980  
Page Two

Also enclosed is a check in the amount of \$100.00 payable to the order to the Interstate Commerce Commission covering the required fees.

Very truly yours,

ALVORD AND ALVORD  
Agent for CI Transportation  
Leasing Corporation

By Charles T. Kappler

Charles T. Kappler

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

11/10/80

OFFICE OF THE SECRETARY

**Cary J. Malkin, Esq.**  
**Mayer, Brown & Platt**  
**231 South LaSalle Street**  
**Chicago, Illinois 60604**

Dear

**Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **11/20/80** at **1:20pm**, and assigned re-  
recording number(s).

**12426, 12427, 12428 & 12428-A**

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

12426

RECORDATION NO. .... Filed 1425

NOV 20 1980 -1 20 PM

INTERSTATE COMMERCE COMMISSION

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EQUIPMENT LEASE

Dated as of November 18, 1980

Between

CI TRANSPORTATION LEASING CORPORATION,

LESSOR

and

BRAE CORPORATION,

LESSEE

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100 70-Ton 50'6" Pullman  
General Purpose Box Cars -  
AAR Mechanical Designation XP

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Attachments to Equipment Lease:

Schedule A	- Description of Equipment
Schedule B	- Certificate of Acceptance Under Equipment Lease
Schedule C	- Schedule of Casualty Value
Schedule D	- Schedule of Insurance
Schedule E	- Warranties and Representations of the Lessee

BRAE CORPORATION

EQUIPMENT LEASE

THIS EQUIPMENT LEASE dated as of November 18, 1980 between CI TRANSPORTATION LEASING CORPORATION, a Delaware corporation (the "Lessor"), and BRAE CORPORATION, a Delaware corporation (the "Lessee");

W I T N E S S E T H:

That for and in consideration of the premises and of the rental to be paid and the covenants hereinafter mentioned the parties hereby agree as follows:

SECTION 1 LEASE AND DELIVERY OF EQUIPMENT.

1.1 Intent to Lease and Hire. The Lessor is acquiring certain equipment (collectively the "Equipment" and individually "Item of Equipment") described in Schedule A attached hereto and made a part hereof and, upon delivery of each Item of Equipment by PULLMAN STANDARD DIVISION OF PULLMAN INCORPORATED (the "Manufacturer") listed in Schedule A, the Lessee shall lease and let each Item of Equipment from the Lessor for the rental and on and subject to the terms and conditions herein set forth.

1.2 Delivery and Acceptance of Items. The Lessor will cause each Item of Equipment to be tendered to the Lessee at the place of delivery set forth in Schedule A. All Items of Equipment shall be tendered to the Lessee for acceptance on the same date and the date of acceptance of all Items of Equipment accepted by the Lessee shall be the "Lease Commencement Date". Upon such tender, the Lessee will cause an inspector designated and authorized by the Lessee to inspect the same, and, if such Item of Equipment is found to be in good order, to accept delivery of such Item of Equipment and to execute and deliver to the Lessor and the Manufacturer a Certificate of Acceptance in the form attached hereto as Schedule B (the "Certificate of Acceptance") with respect to such Item of Equipment; provided, however, that the Lessee shall not accept and the Lessor shall have no obligation to lease any Item of Equipment delivered after the Outside Delivery Date therefor set forth in Schedule A to this Lease.

1.3 Lessee's Satisfaction with Equipment; Conformance with Specifications and Requirements. The Lessee's execution and delivery to the Lessor of a Certificate of Acceptance with respect to each Item of Equipment shall conclusively establish that such Item of Equipment is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect with

respect to design, manufacture, condition or in any other respect, and that such Item of Equipment is in good order and condition and appears to conform to the Specifications applicable thereto and to all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and to all standards recommended on the date of execution and delivery of this Lease by the Association of American Railroads (the "A.A.R.") as being applicable to new railroad equipment of the character of the Equipment. By execution and delivery of such Certificate of Acceptance, the Lessee represents that it has no knowledge of any such defect.

## SECTION 2 RENTALS AND PAYMENT DATES.

2.1 Rentals for Equipment. The Lessee agrees to pay the Lessor, on the dates provided in Section 2.2 hereof, as the rental for each Item of Equipment leased hereunder, thirty-six (36) consecutive semi-annual installments of rental payable in arrears (the "Rental"), each in the amount of 5.99947% of the Total Cost of such Item (as set forth in Schedule A hereto).

2.2 Rental Payment Dates. The installments of Rental for each Item of Equipment shall be due and payable on each semi-annual anniversary of the Lease Commencement Date commencing with the first such anniversary following the Lease Commencement Date and continuing at semi-annual intervals thereafter with the final such installment payable eighteen (18) years following the Lease Commencement Date. If any of the rent payment dates is not a business day, the rent payment otherwise payable on such date shall be payable on the next succeeding business day. For purposes of this Lease, the term "business day" means calendar days, excluding Saturdays, Sundays and holidays on which banks in the State of Illinois are authorized or required to close.

2.3 Place of Rent Payment. The Lessor instructs the Lessee to make all payments provided for in this Lease at the principal office of the Lessor, 231 South LaSalle Street, Chicago, Illinois 60693. Without limiting the foregoing, the Lessee agrees that it will make all payments of Rental and Casualty Value due hereunder by wire transfer at the opening of business of banks in San Francisco, California on the due date of such payment in Federal or otherwise immediately available funds to the Lessor's Account Number 72-23323 at Continental Illinois National Bank and Trust Company of Chicago, 231 South La Salle Street, Chicago, Illinois 60693, with notice of payment to Ida Renaud at the Lessor's principal office.

2.4 Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent or reduction

thereof (except as expressly provided herein), including, but not limited to, abatements or reductions due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise or against any assignee of the Lessor pursuant to Section 16 hereof, nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss or destruction of all or any of the Equipment from any cause whatsoever, the taking or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of the Lessee's use of the Equipment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of the right, power or authority of the Lessor to enter into this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until, pursuant to Section 13 hereof, the Equipment has been stored by the Lessee for the Lessor for the full period therein provided or returned to the possession of the Lessor.

### SECTION 3 TERM OF THE LEASE.

The term of this Lease as to each Item of Equipment shall begin on the date of the delivery to and acceptance by the Lessee of such Item of Equipment and shall terminate on the eighteenth anniversary of the Lease Commencement Date in respect of such Item, subject to the provisions of Sections 11 and 18 hereof.

### SECTION 4 OWNERSHIP AND MARKING OF EQUIPMENT.

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

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

"OWNED BY A LESSOR AND SUBJECT TO AN EQUIPMENT LEASE  
FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 11303"

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

4.3 Prohibition Against Certain Designations. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or any sublessee of the Lessee on railroad equipment used by the Lessee or such sublessee, as appropriate, of the same or a similar type for convenience of identification of the right of the Lessee or such sublessee to use the Equipment hereunder or under any sublease permitted by Section 17 hereof.

SECTION 5 DISCLAIMER OF WARRANTIES.

THE LESSOR LEASES THE EQUIPMENT AS-IS WITHOUT WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT, INCLUDING, WITHOUT LIMITATION, THEIR VALUE, CONDITION, DESIGN OR OPERATION, (B) THE LESSOR'S TITLE THERETO, OR (C) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease so long as no Event of Default (as defined in Section 14.1 hereof) shall have occurred and be continuing, to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against any manufacturers or contractors in respect thereof.

SECTION 6 LESSEE'S INDEMNITY.

6.1 Scope of Indemnity. The Lessee shall defend, indemnify and save harmless the Lessor, any lender or lenders (individually a "Lender" and collectively the "Lenders") and any security trustee ("Security Trustee") for any Lender or Lenders, as further defined in Section 16 hereof, and their respective successors, agents and assigns from and against:

- (a) any and all loss or damage of or to the Equipment, usual wear and tear excepted, and
- (b) subject to any differing provision of Section 10 hereof with respect to the matters covered therein, any claim, cause of action, damages, liability, cost or expense (including, without limitation, counsel fees and costs in connection therewith) which may be incurred in any manner by or for the account of any of them (i) relating to the Equipment or any part thereof, including, without limitation, the purchase, delivery, installation, ownership, leasing, return, sale or disposition of the Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessor or by the Lessee), (ii) by reason or as the result of any act or omission of the Lessee for itself or as agent or attorney-in-fact for the Lessor under the Operative Agreements (as hereinafter defined), (iii) as a result of claims for patent infringements, or (iv) as a result of claims for negligence or strict liability in tort relating to the Equipment. The term "Operative Agreements" shall mean: (i) this Lease, (ii) the Purchase Agreement (as defined in the Purchase Agreement Assignment hereinafter referred to), (iii) that certain Purchase Agreement Assignment, dated as of the date hereof (as from time to time thereafter amended, the "Purchase Agreement Assignment"), between the Lessor and the Lessee, and (iv) that certain Collateral Assignment, dated as of the date hereof (as from time to time thereafter amended, "the Collateral Assignment").

Lessor shall give Lessee and Lessee shall give Lessor notice of any event or condition which requires indemnification by Lessee hereunder, or any allegation of such event or condition, promptly upon obtaining knowledge thereof. Lessee shall pay all amounts due hereunder promptly on notice thereof from Lessor; provided, however, that the Lessee shall not be

required to pay such amount so long as it shall, in good faith and by appropriate proceedings, contest the validity as against parties other than the Lessor, any Lender or the Security Trustee of any event or condition which requires indemnification by the Lessee hereunder in any reasonable manner which will not affect or endanger the title and interests of the Lessor, any Lender or the Security Trustee to the Equipment or any indemnification due the Lessor hereunder and if adequate reserves therefor have been established and are being maintained in accordance with generally accepted accounting principles.

6.2 Continuation of Indemnities and Assumptions. The indemnities and assumptions of liability in this Section 6 contained shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more Items of Equipment, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumptions of liability shall not apply in respect of any matters referred to in subsection (a) or clause (i) or (ii) or (iv) of subsection (b) of Section 6.1 hereof occurring after the termination of this Lease, except for any such matters occurring after the termination arising in connection with the Lessee's assembling, delivering, storing or transporting of the Equipment as provided in Section 13 or 15, as the case may be; and provided, further, that such indemnities and assumptions of liability shall not apply in respect of the matters referred to in clause (iii) of subsection (b) of Section 6.1 hereof occurring after the termination of this Lease for claims arising out of modifications made after the termination of this Lease to the Items of Equipment by or at the direction of anyone other than the Lessee. The Lessee shall be entitled to control, and shall assume full responsibility for, the defense of such claim or liability, and may select such counsel as it deems appropriate in connection with such matter; provided that, if Lessor shall reasonably determine, upon the advice of counsel, that it is in the best interest of the Lessor to appoint another counsel, then the Lessee agrees to the appointment of such alternative counsel as the Lessor shall select and to pay the reasonable fees and expenses thereof. The indemnities and assumptions of liabilities set forth in this Section 6 do not constitute a guaranty of a residual value in the Equipment.

#### SECTION 7 RULES, LAWS AND REGULATIONS.

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including, without limitation, the rules of the United States Department of Transportation, the Interstate Commerce Commission and, if and to the extent permitted thereby, the current Interchange Rules or supplements thereto of the Mechanical Division, A.A.R.) as

the same may be in effect from time to time with respect to the use, maintenance and operation of each Item of Equipment subject to this Lease. In case any equipment or appliance is reasonably interpreted as being required to be installed on such Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees, subject to the provisions of Section 11.2, to make such changes, additions and replacements at its own expense; provided, however, that Lessee may, in good faith and by appropriate legal proceedings, contest the validity or application of any such law, regulation, requirement or rule in any reasonable manner which does not in the reasonable opinion of the Lessor adversely affect the property rights, or interests of the Lessor in the Equipment or hereunder.

#### SECTION 8 USE AND MAINTENANCE OF EQUIPMENT.

The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange (if and to the extent permitted by the Interchange Rules or supplements thereto of the A.A.R.). Except as required by the provisions of Section 7 hereof, and except as otherwise permitted by the provisions of this Section 8, the Lessee shall not modify any Item of Equipment without the prior written authority and approval of the Lessor. Any parts installed or replacements made by the Lessee upon any Item of Equipment pursuant to Section 7 hereof or pursuant to its obligation to maintain and keep the Equipment in good order, condition and repair under this Section 8 shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor without cost or expense to the Lessor. The Lessee shall make no other additions or improvements to any Item of Equipment unless the same are readily removable without causing material damage to such Item of Equipment. If the Lessee shall at its cost cause such readily removable additions or improvements to be made to any Item of Equipment, the Lessee agrees that it will, prior to the return of such Item of Equipment to the Lessor hereunder, remove the same at its own expense without causing material damage to such Item of Equipment. Title to any such readily removable additions or improvements shall remain with the Lessee.

#### SECTION 9 LIENS ON THE EQUIPMENT.

The Lessee shall pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien or a charge upon the Equipment, except for liens

of any Lender or the Security Trustee under the Security Agreement and for liens in connection with charges for taxes and of mechanics (or other similar liens with respect to the maintenance of the Equipment) not yet due, and any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor to the Equipment and if adequate reserves therefor have been established and are being maintained in accordance with generally accepted accounting principles. The Lessee's obligations under this Section 9 shall survive the termination of this Lease with respect to matters arising prior to or in connection with the termination of this Lease. The Lessor shall not permit to exist any liens against it or its interest in the Operative Agreements, any Security Agreement and the Equipment which are unrelated to the transactions contemplated by the Operative Agreements and any Security Agreement.

#### SECTION 10 FILING, PAYMENT OF FEES AND TAXES.

10.1 Filing. The Lessee will, at its sole expense, cause this Lease and any security agreement and/or assignment, if any, executed by the Lessor with respect to any Item of Equipment or this Lease to be duly filed, recorded or deposited with the Interstate Commerce Commission in accordance with Section 11303 of the Interstate Commerce Act and in such other places within or without the United States as the Lessor may reasonably request for the protection of its title or the security interest of the Lenders and the Security Trustee under any such security agreement and/or assignment and will furnish the Lessor and the Security Trustee with proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, re-register or rerecord whenever required) any and all further instruments (including, without limitation, financing and continuation statements or similar notices thereof) required by law or reasonably requested by the Lessor or any Security Trustee for the purpose of protecting the Lessor's title to, or any Security Trustee's security interest in, the Equipment and this Lease or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will upon the written request of the Lessor or any Security Trustee deliver to the Lessor and the Security Trustee proof of such filings and an opinion of the Lessee's counsel that such action has been properly taken. The Lessee will pay all costs, charges and expenses incident to any such filing, re-filing, recording, and re-recording or depositing and

redepositing of any such instruments or incident to the taking of such action.

10.2 Taxes. (a) General Indemnity. Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay and to indemnify and hold the Lessor, the Equipment (together with (i) all accessories, equipment, parts and appurtenances appertaining or attached to any of the Equipment, whether now owned or hereafter acquired, except such thereof as remain the property of the Lessee hereunder, (ii) all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any and all of said Equipment, except such thereof as remain the property of the Lessee hereunder, and (iii) all the rights, titles, interests, claims and demands of the Lessor in, to and under this Lease (including all extensions of the term hereof), rents, Casualty Value, insurance proceeds, condemnation awards and other payments now or hereafter payable or receivable by the Lessor, income and profits arising from this Lease or the Equipment), any Lender and any Security Trustee (hereinafter referred to individually as a "Tax Indemnitee") harmless on an after tax basis from and against all license and registration fees and all taxes now or hereafter imposed by law, including, without limitation, income, gross receipts, leasing, leasing use, franchise, sales, use, personal property (tangible or intangible), levies, imposts, duties, charges or withholdings of any nature whatsoever together with any penalties, fines (except to the extent that such penalty or fine is solely attributable to an act or omission by such Tax Indemnitee and not to an act or omission by the Lessee) or interest thereon (collectively, "taxes, fees or other charges") imposed against any Tax Indemnitee, the Lessee, any Item of Equipment or any part thereof by any Federal, state or local government or taxing authority, or by any foreign government or any subdivision or taxing authority thereof, having jurisdiction, (i) upon or with respect to an Item of Equipment or any part thereof, (ii) upon or with respect to the purchase, ownership, delivery, installation, lease, possession, use, operation, return, sale or other disposition of an Item of Equipment, (iii) upon or with respect to payments of rent and receipts arising therefrom, and (iv) upon or with respect to the Operative Agreements.

The provisions of this Section 10.2(a) shall not apply to the following taxes payable by the Lessor: (A) Federal income taxes imposed by the Internal Revenue Code of 1954, as amended (the "Code"), or (B) the aggregate of the following taxes up to the amount of any such taxes which would be payable in the state or locality in which the Lessor has its principal place of business without apportionment to any other state and assuming sole usage of the Equipment in such state or locality: all state or local income taxes and, to the extent imposed in

substitution for state or local income taxes which otherwise would be payable by the Lessor, franchise taxes measured solely by net income based on such receipts, gross receipts taxes [other than gross receipts taxes in the nature of sales, use or rental taxes], and value added taxes; provided, however, that the Lessee agrees, anything to the contrary above notwithstanding, but subject to the exceptions set forth above, to pay (without duplication) any such taxes, fees or other charges on or measured by any sums payable under any of the Operative Agreements or the net income therefrom which the Tax Indemnitee can reasonably establish are in substitution for or relieve the Lessee from any tax which the Lessee would otherwise be obligated to pay under the terms of this Section 10.2. In the event that any taxes, fees or other charges accrue or become payable or are levied or assessed during the continuance of this Lease, or are levied or assessed after the expiration of this Lease but are attributable to the period of time during which this Lease is in existence, the Lessee's obligation pursuant to this Section 10.2 to pay or reimburse such taxes, fees or other charges shall continue until all such taxes, fees or other charges are paid or reimbursed by the Lessee. To the extent that any taxes hereinabove referred to in this Section 10.2 are included in the Total Cost of Equipment for any Item, the Lessee shall not be obligated under this Section 10.2 for indemnification with respect to such taxes.

(b) Tax Returns. In case any return, statement or report is required to be made with respect to any taxes, fees or other charges imposed on or borne or indemnified by the Lessee under this Section 10.2, the Lessee shall:

- (i) to the extent required or permitted by law, make and file in its own name such return, statement or report in such manner as will show the ownership of the Items of Equipment in the Lessor; and
- (ii) in the case of any other such return, statement or report required to be made in the name of a Tax Indemnitee, use its best efforts to advise the Lessor and such Tax Indemnitee of such fact and provide all necessary information sufficient to permit such return, statement or report to be properly made with respect thereto.

The Lessee shall hold each Tax Indemnitee harmless from and against any liabilities, obligations, losses, damages, penalties, claims, actions, suits and costs arising out of any insufficiency or inaccuracy in any such return, statement, report or information to the extent any such insufficiency or inaccuracy

is attributable to the Lessee.

(c) Time and Manner of Indemnity Payments; Contest Rights. Any payment or indemnity payable by the Lessee pursuant to this Section 10.2 (except Section 10.2(d) hereof) shall be payable at such time as the taxes, fees or other charges giving rise to such payment or indemnity become payable, or, in the case of any tax, fee or other charge collected by withholding, at the time such withholding is required. In the case of any taxes, fees or other charges required or permitted to be paid directly by the Lessee, the Lessee shall make payment thereof to the appropriate taxing or other governmental jurisdiction. In the case of any taxes, fees or other charges paid directly by a Tax Indemnitee and indemnity payments for which the Tax Indemnitee is to be reimbursed under this Section 10.2, the Lessee shall make payment to the Tax Indemnitee entitled thereto promptly upon receipt of notice from such Tax Indemnitee setting forth the basis for the amount of such reimbursement and satisfactory evidence that the taxes, fees or other charges have been paid by the Tax Indemnitee. If any tax paid by withholding or on an estimated basis by a Tax Indemnitee is later increased or decreased on a final return, any payment previously made on account of such tax under this Section 10.2 shall be appropriately adjusted upward or downward.

Notwithstanding the foregoing, the Lessee shall be under no obligation to pay any tax, fee or other charge so long as such tax, fee or other charge remains unpaid and the Lessee is contesting in its own name and in good faith and by appropriate legal or administrative proceedings such tax, fee or other charge, or the Lessor is required to contest such imposition as provided herein, and the nonpayment thereof, does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of any Tax Indemnitee. The Lessee agrees to give the Lessor notice of such contest brought in the Lessee's name within 30 days after institution thereof. The Lessor agrees: (i) upon receipt of actual knowledge thereof, to promptly notify the Lessee of any claim with respect to which any payment or indemnity by the Lessee maybe required pursuant to this Section 10.2, (ii) not to make payment with respect to such claim for at least 30 days (or a shorter period of time where the failure to pay such claim would, in the reasonable judgment of the Lessor, impair the right, title and interest of the Lessor to the Equipment) after the giving of such notice, and (iii) to provide such information as may be reasonably requested by the Lessee in furtherance of any contest. In the event the Lessee (i) is prohibited by law from contesting a tax, fee or other charge in its own name or (ii) is unable to contest a tax, fee or other charge in its own name due to lack of necessary information, provided that the Lessee has made a reasonable attempt to obtain such necessary information and

is unable to attain such information, the Lessor shall, upon request and at the expense of the Lessee, take all legal and other appropriate action reasonably requested by the Lessee to contest such imposition in the case of a tax, fee or other charge. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have (A) provided to the Lessor an opinion satisfactory to the Lessor of independent tax counsel to the effect that a meritorious basis exists for contesting such imposition, and (B) indemnified the Lessor for all liabilities and expenses which may be entailed therein. Further, the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action taken by the Lessor or the Lessee under this Section 10.2. The Lessee shall be entitled to any refunds received by the Lessor or the Lessee in respect of any imposition paid by the Lessee, provided no Event of Default or other event (herein called a "Default") which after notice or lapse of time, or both, would constitute an Event of Default shall have occurred and be continuing.

(d) Federal Tax Attributes, Indemnification Agreement.

It is the intent of the Lessor and the Lessee that this Lease will be recognized as a lease for all Federal, state, and local income tax purposes, that this Lease does not convey to the Lessee any right, title or interest in or to the Items of Equipment except as lessee and that for Federal income tax purposes the Lessor will be treated as the owner of the Items of Equipment and entitled to such deductions, credits and attributes as are provided by the Code with respect to such ownership. To that end, the Lessee intends to enter into an Income Tax Indemnification Agreement dated as of November 18, 1980 (the "Income Tax Indemnification Agreement") between the Lessor and the Lessee (which Income Tax Indemnification Agreement is hereby incorporated herein and made a part hereof) pursuant to which the Lessee will agree to indemnify the Lessor against loss of the benefit of certain such tax attributes, as more fully set forth in such Income Tax Indemnification Agreement, in accordance with the terms and conditions thereof.

For purposes of this Section 10.2, the term "Lessor" shall include any member of an affiliated group of which the Lessor is, or may become, a member if consolidated, joint or combined returns are filed for such affiliated group for Federal, state or local income tax purposes.

The Lessee hereby agrees that all payments made by the Lessee pursuant to this Section 10.2 or the Income Tax Indemnification Agreement shall be deemed to be payments of additional rent for the Equipment.

SECTION 11 INSURANCE; PAYMENT FOR CASUALTY OCCURRENCE.

11.1 Insurance. The Lessee will at all times while this Lease is in effect, at its own expense, cause to be carried and maintained property insurance in respect of the Equipment at the time subject hereto, and public liability insurance, in amounts (with customary deductibles) and against risks customarily insured against by companies engaged in leasing transportation equipment in respect of similar equipment; and, in any event, with respect to property insurance, coverage shall be in an amount not less than the Casualty Value of the Equipment (it being understood that the Lessor's property insurance coverage per occurrence is \$5,000,000), and with respect to public liability insurance, coverage shall be in an amount not less than \$10,000,000 in the aggregate for any one year and not less than \$10,000,000 per occurrence, and all such insurance shall provide coverage against risks comparable to those risks insured against by the Lessee in respect of similar equipment owned by it. The Lessee currently maintains the insurance coverage described in Schedule D attached hereto. The policies of insurance required under this Section 11.1 shall be valid and enforceable policies issued by insurers of recognized responsibility comparable to the Lessee's present insurers. The benefits of all property insurance will be adjusted with the Lessee, the Lessor and the Security Trustee, as their interests may appear, and the Lessee will deliver certificates of insurance evidencing any property insurance effected or in force in accordance with the provisions of this paragraph. With respect to all public liability insurance, the Lessee shall cause each policy to cover the respective interests of the Lessor, the Lenders and the Security Trustee for claims arising from the ownership, operation, maintenance or use of the Equipment and to name the Lessor, the Lenders and the Security Trustee as additional insureds.

On or before the Lease Commencement Date, and thereafter not less than 10 days prior to the expiration dates of any expiring policies theretofore furnished under this Section 11.1, originals of the policies and satisfactory evidence of the payment of premiums thereon shall be delivered by the Lessee to the Lessor and the Security Trustee, except that the Lessor and the Security Trustee shall accept certificates of insurance from a recognized insurance broker of national standing if such certificates evidence the insurance required by this Section. Such policies may be blanket policies covering other equipment not covered by this Lease, provided that the aforementioned certificates shall indicate that Equipment leased hereunder is included therein and covered thereby to the full extent of amounts herein required. All such policies shall contain an agreement by the insurers that: (i) such policies shall not

be cancelled without at least 30 days' prior written notice (or such other maximum prior written notice period less than 30 days as is common insurance industry practice at the time) to the Lessor, the Lenders and the Security Trustee, and (ii) such policies shall insure the Lessor, the Lenders and the Security Trustee regardless of any breach or violation of any warranties, declarations or conditions contained in such policies by Lessee or any other person.

Any net insurance proceeds (excluding public liability insurance) resulting from insurance carried by the Lessee or condemnation payments actually received by the Lessor in respect of the Equipment suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this Section 11. If the Lessor or the Lessee shall receive any such net insurance proceeds or condemnation payments after the Lessee shall have made a Casualty Value payment pursuant to this Section 11 without deduction for such net insurance proceeds or such condemnation payments, the Lessor shall pay such net insurance proceeds or condemnation payments to the Lessee, or the Lessee may retain such proceeds or payments, as appropriate; provided, however, that if an Event of Default or Default shall have occurred and be continuing, any insurance proceeds received by the Lessor may be retained by the Lessor and applied to discharge the liabilities of the Lessee under Section 11.3 and the balance of such net insurance proceeds or condemnation payments shall remain the property of the Lessor. All net insurance proceeds (excluding public liability insurance) received by the Lessor or the Lessee with respect to an Item not suffering a Casualty Occurrence shall be applied in payment of the cost of repairing the damage to such Item; and any balance remaining after the completion of such repairs shall be paid to, or retained by, the Lessee unless an Event of Default or Default shall have occurred and be continuing, in which case the amount otherwise payable to the Lessee may be retained by the Lessor and applied to discharge the liabilities of the Lessee under this Lease.

11.2 Casualty Occurrence and Duty of Lessee to Notify Lessor. In the event that: (i) any Item of Equipment shall be in a condition for a period of nine consecutive months which would require its inclusion for such entire nine month period in bad order reports (or any reports made in substitution therefor) to be made to the A.A.R., or (ii) the Board of Directors of the Lessee in good faith makes a written determination at any time that the making of any changes or additions required by any governmental rule or regulation, which changes are also required to be made by the Lessee pursuant to Sections 7 and 8 hereof, are uneconomic in light of the use of equipment of the type of the Equipment in normal railroad

interchange service, or (iii) any Item of Equipment shall be or become lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged or damaged beyond economical repair during the term of this Lease, including any renewal term hereunder, or thereafter while the Item of Equipment is in the possession of the Lessee pursuant to Section 13 or 15 hereof, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise during the term of this Lease, including any renewal terms hereunder (any such occurrence, except for any requisition which by its terms is for an indefinite period or is for a stated period which does not exceed the term of this Lease, being herein called a "Casualty Occurrence"), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence) inform the Lessor and the Security Trustee in regard thereto and shall pay the Casualty Value (as defined in Section 11.6 hereof) of such Item in accordance with the terms hereof.

11.3 Payment for Casualty Occurrence. In the event of a Casualty Occurrence with respect to any Item of Equipment of which the Lessee has knowledge, the Lessee, on the next succeeding Rental payment date, shall pay to the Lessor a sum equal to the Casualty Value of such Item of Equipment as of the date of such payment. The installment of Rental in respect of the Item or Items for which the Casualty Value is then being paid which would be otherwise due on such date of payment of the Casualty Value need not be paid if such Casualty Value is so paid.

Notwithstanding the foregoing, if the Lessee obtains knowledge of a Casualty Occurrence after the Rental payment date next succeeding such Casualty Occurrence, the Lessee shall be obligated to pay, and within thirty days shall pay, the Casualty Value which would have been paid on such Rental payment date. If the Lessee has paid Rent for such Rental payment date, or any subsequent Rental payment date, with respect to such Item which has suffered a Casualty Occurrence, the Lessee shall be entitled to a credit equal to such Rental payment or payments against the Casualty Value to be paid pursuant to this paragraph.

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

11.5 Disposition of Equipment. Provided no Default or Event of Default shall have occurred and be continuing or if, notwithstanding either such event, the Lessor shall have so directed, the Lessee shall, as agent for the Lessor, dispose

of such Item or Items of Equipment having suffered a Casualty Occurrence as soon as it is able to do so in a commercially reasonable manner in its then existing condition and location, without representation or warranty, expressed or implied. As to each separate Item of Equipment so disposed of and for which all rent and Casualty Value have been paid pursuant hereto, the Lessee may, provided no Default or Event of Default shall have occurred and be continuing, retain all amounts arising from such disposition (except for amounts arising from such disposition which are greater than the sum of Casualty Value of such Item plus costs and expenses incurred by the Lessee in connection with such disposition, which excess amounts shall be remitted to the Lessor by the Lessee). Neither the Lessee nor any "affiliate" (as that term is hereinafter defined) of the Lessee shall be permitted to purchase any Item of Equipment with respect to which this Lease has been terminated pursuant to Section 11.3 unless such Item has no substantial value and is to be scrapped or dismantled for the purpose of salvaging useable parts or the hulk, in which event the Lessee may purchase any such parts or the hulk. Any sale or other disposition pursuant to this Section 11.5 must be effective to fully divest the Lessor of all of the Lessor's right, title and interest in and to, and all obligations of the Lessor with respect to, such Item or Items. It is understood and agreed that the Lessor shall not be liable to the Lessee for any costs or expenses incurred by the Lessee in connection with the sale or other disposition of any Item of Equipment.

For purposes of this Section 11.5, the term "affiliate" shall mean: (a) any subsidiary of the Lessee or any corporation or other person reported in the published financial statements of the Lessee on an equity in net assets basis in accordance with generally accepted accounting principles, or (b) any "related person" within the meaning of Section 318 of the Code.

11.6 Casualty Value. The Casualty Value of each Item of Equipment shall be an amount determined as of the date the Casualty Value is required to be paid as provided in this Section 11 (and not the date of the Casualty Occurrence) equal to that percentage of the Total Cost of such Item (as set forth in Schedule A hereto) set forth in the Schedule of Casualty Value attached hereto as Schedule C, opposite such date of payment.

11.7 Risk of Loss. The Lessee shall bear the risk of loss and, except as hereinabove in this Section 11 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Item of Equipment from and after the date hereof and continuing throughout the term hereof and during any storage period provided in Sections 13 and 15 hereof until: (a) payment of the Casualty Value and any Rental due prior to the date of payment of such Casualty

Value in respect of such Item of Equipment has been made, and (b) the title to such Item or the salvage thereof and all risk of loss and liabilities incident to ownership have been transferred to the purchaser of such Item or the salvage thereof.

11.8 Eminent Domain. In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period, or for a stated period which does not exceed the original term of this Lease, in respect of such Item, the Lessee's obligation to pay rent shall continue for the duration of the requisitioning or taking of such Item, it being understood, however, that if the term of this Lease expires prior to the end of the requisition or taking of such Item, a Casualty Occurrence with respect to such Item shall have occurred on the last day of the term of the Lease. The Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession of such Item to an amount equal to the rent paid or payable hereunder for such period, and the balance, if any, shall be payable to and retained by the Lessor as its sole property; provided, however, that if the Lessee pays Casualty Value in connection with a Casualty Occurrence which is a requisition or taking by a governmental authority for an indefinite period and continuing on the last day of this Lease and no Default or Event of Default has occurred and is continuing hereunder, the Lessee shall be entitled to receive and retain for its own account, and the Lessor shall promptly deliver to the Lessee, all sums paid by such governmental authority after the end of the term of this Lease up to the amount of the Casualty Value so paid.

## SECTION 12 ANNUAL REPORTS.

12.1 Duty of Lessee to Furnish. On or before June 30 in each year, commencing with the year 1982, the Lessee will furnish to the Lessor and its assigns and to the Security Trustee an accurate statement, as of the preceding March 31, (a) showing the amount, description and numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Lessor or the Security Trustee may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced.

12.2 Lessor's Inspection Rights. The Lessor and any assignee of the Lessor pursuant to Section 16 hereof each shall have the right, at its sole cost, liability and expense, by its authorized representative, to inspect the Equipment and the Lessee's records, at such times as shall be reasonably necessary to confirm to the Lessor or, as the case may be, such assignee, the existence and proper maintenance of the Equipment and compliance by the Lessee with the terms of the Operative Agreements; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any assignee of the Lessor, the rights of inspection granted under this sentence.

12.3 Financial Reports. The Lessee will furnish the Lessor, within 90 days after each fiscal year of the Lessee, a copy of the annual audit report of the Lessee and its subsidiaries prepared on a consolidated basis and in conformity with generally accepted accounting principles applied on a basis consistent with the audited consolidated financial statement of the Lessee and its subsidiaries as at the end of the prior fiscal year (except as set forth therein), duly certified by independent certified public accountants of nationally recognized standing selected by the Lessee. The Lessee will also furnish the Lessor, within 45 days after each quarter (except the last quarter) of each fiscal year of the Lessee, a copy of an unaudited financial statement of the Lessee and its subsidiaries prepared in the same manner as the audit report referred to in the foregoing sentence, signed by a proper accounting officer of the Lessee and consisting of at least a balance sheet as at the close of such quarter and statements of earnings for such quarter and for the period from the beginning of such fiscal year to the close of such quarter. The foregoing reports may be in the form contained in the report of the Lessee on forms 10K and 10Q delivered by the Lessee to the Securities and Exchange Commission.

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

Upon the expiration of the term of this Lease with respect to any Item of Equipment, the Lessee will, at its own cost and expense, deliver possession of such Item of Equipment to the Lessor upon such storage tracks within a 1000-mile radius of Chicago, Illinois as the Lessor may reasonably designate, or in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Item of Equipment on such tracks for a period not exceeding 180 days from the date the last Item of Equipment is delivered to storage tracks pursuant to this Section 13. The Lessor will use its best efforts to completely remove the Equipment from storage as soon as possible

within the 180 day period. The Lessee covenants that, at the time any Item of Equipment is returned to the Lessor in the manner above provided, it will then be in compliance with all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and all standards recommended by the A.A.R. as being applicable to railroad equipment of the character of the Equipment. All movement and storage of each such Item is to be at the risk and expense of the Lessee. During such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Item, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, store and transport the Equipment.

#### SECTION 14 DEFAULT.

14.1 Events of Default. Any of the following events shall constitute an Event of Default ("Event of Default") hereunder:

- (a) Default shall be made in the payment of any part of the rental or other sums provided in Section 2 or 11 hereof and such default shall continue for five business days; or
- (b) The Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or the unauthorized possession of any Item of Equipment under this Lease; or
- (c) Default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in any other of the Operative Agreements or in the Income Tax Indemnification Agreement and such default shall continue for 30 days after written notice from the Lessor to the Lessee, specifying the default and demanding the same to be remedied; or

- (d) Any representation or warranty made by the Lessee or any other person or entity (other than the Lessor) herein or in any other of the Operative Agreements or in the Income Tax Indemnification Agreement or in any statement or certificate furnished to the Lessor or its assigns pursuant to or in connection with this Lease or any of the other Operative Agreements or the Income Tax Indemnification Agreement is untrue in any material respect as of the date of issuance or making thereof; or
- (e) The Lessee becomes insolvent or bankrupt or admits in writing its inability to pay its debts as they mature or generally is not able to pay its debts as they become due, or makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a trustee, receiver or other custodian for the Lessee or for the major part of its property; or a trustee, receiver or other custodian is appointed for the Lessee or for the major part of its property and is not discharged within sixty (60) days after such appointment; or
- (f) Any other case or proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustments or 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 duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees, receiver or receivers or debtor in possession or other custodian appointed for the Lessee or for the property of the Lessee in connection with any such proceeding in such manner that such obligations shall have the same status and priority as obligations incurred by such a trustee or trustees or receiver or receivers or other custodian which are entitled to the first priority for expenses of administration, within thirty (30) days after such appointment, if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier; or

- (g) An event of default shall occur under (i) any loan agreement or other arrangement pursuant to which the Lessee, at the time of such event of default, has indebtedness outstanding in an aggregate amount of \$1,000,000 or more or pursuant to which the Lessee has the right to borrow (whether or not any amount has been borrowed) an aggregate of \$1,000,000 or more or (ii) any lease or lease intended as security pursuant to which the Lessee has the right to lease or purchase an asset or assets the aggregate fair market value of which on the day the lease was executed was \$1,000,000 or more (such loan agreement, other arrangement or lease being hereinafter called "Other Agreement") and any grace period permitted by such Other Agreement with respect to such event of default shall have expired, it being understood that, subject to the provisions of the next succeeding sentence, a waiver of such default by the lender or lessor under such Other Agreement shall constitute a waiver of such default under this Lease without the approval of the Lessor. A waiver by the lender or the lessor of an event of default in respect of the payment of money under any such Other Agreement shall not constitute a waiver of such default under this Lease.

14.2 Remedies. If any Event of Default has occurred and is continuing, the Lessor, at its option, may:

- (a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, including reasonable attorneys' fees; or
- (b) By notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Equipment may be located and take possession of all or any of such Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Equipment for any purpose whatever, but the Lessor, shall nevertheless, have a right to recover from the Lessee any and all

amounts which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such accrued number of days in such full rental period and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Item of Equipment, which represents the excess of the present worth, at the time of such termination, of all rentals for such Item which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over the then present worth of the then Fair Rental Value of such Item for such period, such present worth to be computed in each case on a basis of a 8% per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, or (y) an amount equal to the excess, if any, of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the Fair Market Value thereof at such time; and (ii) if not otherwise reimbursed by the Lessee pursuant hereto, any damages and expenses, including reasonable attorneys' fees, which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental.

For purposes of this Section 14.2, Fair Rental Value and Fair Market Value for any Item of Equipment shall be determined in the manner contemplated by the appraisal arrangements specified in Section 18.2; provided, however, that any rental in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Rental Value of such Item and any sale in a commercially reasonable manner (net of costs and expenses incurred by the Lessor or its agents in connection therewith) of any Item of Equipment prior to any such determination shall conclusively establish the Fair Market Value of such Item.

14.3 Cumulative Remedies. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter

in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims of any right to assert any offset against the rent payments due hereunder, and agrees to make the rent payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf in connection with the lease of the Equipment.

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

#### SECTION 15 RETURN OF EQUIPMENT UPON DEFAULT.

15.1 Lessee's Duty to Return. If the Lessor or any assignee of the Lessor pursuant to Section 16 hereof shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

- (a) Forthwith place each such Item of Equipment upon such storage tracks within a 1000-mile radius of Chicago, Illinois as the Lessor may designate or, in the absence of such designation, as the Lessee may select with the approval of the Lessor;
- (b) Provide storage at the risk of the Lessee for each such Item of Equipment on such tracks, without charge for insurance, rent or storage for a period equal to the lesser of two years after the date such Item is placed in storage or until such Equipment has been sold, leased or otherwise disposed of by the Lessor; and
- (c) Transport any Items of Equipment to any place of interchange on the lines of a railroad within a 100-mile radius of such storage tracks, all as the Lessor may reasonably direct upon not less than 10 days' written notice to the Lessee.

During any such storage period the Lessee shall maintain the Items of Equipment in the manner required by Sections 7 and 8 hereof and shall maintain the insurance required by Section 11.1 hereof during such period. The Lessee covenants that, at the time any Item of Equipment is returned to the Lessor in the manner above provided, it will then be in compliance

with all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and, if and to the extent permitted thereby, all standards recommended by the A.A.R. applicable to railroad equipment of the character of the Equipment. All amounts earned in respect of the Equipment after the date of termination of this Lease shall belong to the Lessor or in the event this Lease has been assigned pursuant to Section 16 hereof, to such assignee, and, if received by the Lessee, shall be promptly turned over to the Lessor, or in the case of such assignment, to such assignee. In the event any Item of Equipment is not assembled, delivered and stored as hereinabove provided within 45 days after the termination of this Lease, the Lessee shall, in addition, pay to the Lessor or, in the case of such assignment, to such assignee for each day thereafter an amount equal to the amount, if any, by which the higher of (i) \$15.88, or (ii) the Fair Rental Value (determined in the manner provided in Section 18 hereof) for such Item of Equipment for each such day exceeds the amount, if any, received by the Lessor or such assignee (either directly or from the Lessee) for such day for such Item pursuant to the preceding sentence.

15.2 Specific Performance. The assembling, delivery, storage and transporting of the Equipment as hereinabove provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Equipment.

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

#### SECTION 16 ASSIGNMENTS BY LESSOR.

The Lessee and the Lessor hereby confirm that the Lessor may, at its option, execute and deliver to a Lender or Lenders or a Security Trustee a security agreement (herein called the "Security Agreement") which will assign and grant a security interest to such Lender or Lenders or Security Trustee in, to and under, the Equipment, this Lease and the other Operative Agreements and certain of the rentals and other amounts payable hereunder and thereunder, all as to be more explicitly set forth in the Security Agreement. The Lessor hereby agrees that

promptly after the execution and delivery of the Security Agreement, the Lessor will deliver an executed copy of the Security Agreement to the Lessee. The Lessee hereby agrees that the sums payable by the Lessee hereunder which will be assigned to such Lender or Lenders or Security Trustee under the Security Agreement shall be paid to or upon the written order of such Lender or Lenders or Security Trustee; provided that until receipt of any such written order the Lessee may make all such payments in accordance with the provisions of Section 2.3 hereof. Without limiting the foregoing, the Lessee further acknowledges and agrees that, so long as any indebtedness secured by the Security Agreement remains unpaid, except as otherwise expressly provided herein, (a) the rights of such Lender or Lenders or Security Trustee in and to the sums payable under this Lease which are assigned to such Lender or Lenders or Security Trustee under the Security Agreement shall not be subject to any abatement whatsoever, and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever, whether by reason of failure of or defect in the Lessor's title, or any interruption from whatsoever cause in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that the Lessee shall be unconditionally and absolutely obligated to pay such Lender or Lenders or Security Trustee all of the rents and other amounts payable hereunder which are the subject matter of the assignment, and (b) except as otherwise provided in the Security Agreement, such Lender or Lenders or Security Trustee shall, if an Event of Default or a Default shall have occurred and be continuing, have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of such Lender or Lenders or Security Trustee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor. The Lessor may borrow a portion of the Total Cost of the Equipment from an institutional investor or investors, in which case such institutional investor or investors shall be referred to in this Lease as a "Lender" or "Lenders". The Security Agreement hereinabove referred to may be between the Lessor and a trustee for the Lender or Lenders, in which case such trustee shall be referred to in this Lease as a "Security Trustee."

It is understood and agreed that the provisions of this Section 16 are not intended to and shall not obligate the Lessee to pay any costs and out-of-pocket expenses incurred by the Lessor, any Lenders or the Security Trustee in connection with the negotiation, preparation and execution of the Security

Agreement. Additionally, the Lessee is not obligated by the provisions of this Section 16 to pay any brokers' or finders' fees or expenses in connection with the negotiation, preparation and execution of the Security Agreement. The Lessor further agrees that it will pay the reasonable costs and out-of-pocket expenses of the Lessee (including reasonable attorneys fees and out-of-pocket expenses) incurred by the Lessee in connection with the negotiation, preparation and execution of the Security Agreement (and any agreements incidental thereto).

It is understood and agreed that the right, title and interest of such Lender or Lenders or Security Trustee in, to and under this Lease and the rents and other sums due and to become due hereunder shall by the express terms granting and conveying the same be subject to the interest of the Lessee in and to the Equipment.

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

17.1 Lessee's Rights to the Equipment. 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, but, without the prior written consent of the Lessor and the Lender or Lenders or the Security Trustee, if any, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment. The Lessee shall not, without the prior written consent of the Lessor and the Lender or Lenders or the Security Trustee, if any, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment, except to the extent permitted by the provisions of Section 17.2 hereof.

17.2 Use and Possession; Permitted Assignments and Subleases. So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the use and possession of the Equipment; provided, however, that nothing contained in this Lease shall be deemed to prohibit the use of the Equipment by others in the usual interchange of traffic and that the Lessee will not (except to the extent permitted by the provisions of Section 17.3 hereof) assign or permit the assignment of any Item of Equipment to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee agrees that it will not, without the prior written consent of the Lessor and the Lender or Lenders or the Security Trustee, if any, assign this Lease or any of its rights hereunder. The Lessee shall have the right to sublease the Equipment or any Items thereof to any railroad or corporation organized under the laws of the United States of America or any state thereof or the District of Columbia, provided that such sublease (i) shall not provide that the

Equipment will be operated and maintained in a manner contrary to the terms hereof, and (ii) shall be collaterally assigned to the Lessor upon terms substantially the same as those contained in the Collateral Assignment. No such assignment or sublease shall relieve the Lessee of any liability or obligations hereunder, all of which shall be and remain those of a principal and not a surety. Any such permitted sublease and the rights and interest of any sublessee thereunder shall in all events be expressly subject and subordinate to this Lease and the rights and interest of the Lessor and its successors and assigns hereunder and such permitted sublease shall in all cases be for a term expiring not later than one day less than the end of the then current term of this Lease. Without limiting the foregoing, the Lessee covenants that unless the Lessor has otherwise expressly consented in writing it shall cause any sublease to be terminated in such manner that the term thereof shall end not later than one day less than the end of the term of this Lease. The Lessee shall, promptly upon entering into any such permitted sublease, furnish to the Lessor a written statement setting forth the amount, description and numbers of the Items of Equipment being subleased as permitted hereunder and attaching a copy of such sublease agreement.

17.3 Canadian Use. Notwithstanding the provisions of Section 17.2, not more than 15% of the Items of Equipment then subject to the Lease may be located or used in Canada on a temporary basis at any one time.

17.4 Merger, Consolidation or Acquisition of the Lessee. Nothing in this Section 17 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation organized under the laws of the United States or any state thereof or the District of Columbia (which shall have duly assumed in writing all of the obligations hereunder of the Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired all or substantially all of the assets 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. The Lessee agrees to give the Lessor and the Lender or Lenders or the Security Trustee written notice of any such proposed merger, consolidation or acquisition simultaneously with the giving of notice thereof to its shareholders.

## SECTION 18 RENEWAL AND PURCHASE

18.1 Initial Election. Provided that this Lease has not been earlier terminated and no Event of Default or Default shall have occurred and be continuing hereunder, the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the end of the original or, subject to the limitations in 18.2, any extended term hereof in respect of all Items of Equipment then leased hereunder, notify the Lessor whether or not the Lessee irrevocably elects to extend the term of this Lease in respect of such Items pursuant to Section 18.2 of this Lease.

18.2 Renewal. Any extension of the term of this Lease pursuant to Section 18.1 hereof shall be in respect of all, but not less than all, of the Items of Equipment for which the lease term is then expiring, shall be for a period of two (2) years commencing on the scheduled expiration of the original or any renewal term of this Lease, and shall be subject to the terms and conditions herein contained for the original term of this Lease; provided that the Rental payable for and during any such renewal term shall be an amount equal to the Fair Rental Value (as hereinafter defined) of such Items of Equipment. The Lessee may extend the terms of this Lease for one or more successive renewal terms up to a total of five such renewal terms, each such extension to be upon the terms set forth in the foregoing sentence.

The Fair Rental Value of an Item of Equipment shall be determined on the basis of, and shall be equal in amount to, the value which would be obtained in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease, which value shall not reflect the value of any additions or improvements which can be readily removed from an Item of Equipment without material damage to such item. If 90 days after receipt by the Lessor of the notice of the Lessee's election to exercise any renewal option, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value of the Item or Items in question, such value shall be determined in accordance with the forgoing definition by a qualified independent Appraiser. The term "Appraiser" shall mean two independent appraisers (neither of whom shall be an employee of the Manufacturer), one chosen by the Lessor and one chosen by the Lessee, or, if such appraisers cannot agree on the amount of such value within 60 days prior to the date of commencement of the applicable renewal term, then the term "Appraiser" shall mean an appraiser chosen by the American Arbitration Association. The appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee.

Upon receipt of notice of such determination, the Lessor and the Lessee each shall have the option to not enter into such renewal; however, in the event that neither exercises its option not to enter into the renewal, then the Appraiser's determination of such Fair Rental Value shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fees of the Appraiser shall be borne one-half each by the Lessor and the Lessee.

18.3 Right of First Refusal. If the Lessor intends to sell any Item or Items of Equipment at or within 180 days following the expiration of the original or any extended term of this Lease and has received from any person other than an affiliate a bona fide purchase offer acceptable to the Lessor, the Lessor shall give the Lessee prompt written notice of such offer. Such notice shall set forth in reasonable detail the price, terms and conditions of such offer. The Lessee shall, within ten business days after receipt of the Lessor's notice of such offer, notify the Lessor in writing whether or not the Lessee intends to exercise its right of first refusal pursuant to this Section 18.3 with respect to such offer. In the event that the Lessee elects to exercise such right, it shall complete the purchase all Item or Items of Equipment specified in such notice within 30 days after notifying the Lessor of such intent.

The purchase shall be completed at the price and upon the terms and conditions specified in the bona fide third party offer and the notice thereof to the Lessee. In the event that the Lessee elects not to, or fails to, exercise its right of first refusal within the appropriate ten business day period, the Lessor may complete the sale of the Item or Items of Equipment to the original third party offeror or any other party at the price and upon the terms and conditions set forth in the Lessor's notice to the Lessee, free and clear of any rights of the Lessee. Any sale, or proposed sale, of Equipment by the Lessor of other Items of Equipment or at a price or upon terms or conditions materially different than those set forth in the Lessor's notice to the Lessee shall constitute a new proposal, giving rise to the Lessee's right of first refusal pursuant to this Section 18.3.

Upon payment of the purchase price by the Lessee or its designee of any Item, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without recourse, representation or warranties of any kind) for such item as will transfer to the Lessee such title to such Item as the Lessor derived from the Manufacturer, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

18.4 Delivery of Equipment. Any Items of Equipment as to which this Lease has not been renewed as provided in Section 18.2 hereof or which the Lessee has not purchased as provided in Section 18.3 hereof shall be returned to the Lessor at the end of the original term or the then current renewal term, as the case may be, in accordance with Section 13 hereof.

SECTION 19 REPRESENTATIONS OF THE LESSEE.

The Lessee warrants and represents to the Lessor that the warranties and representations set forth in Schedule E hereto are true and correct on and as of the date hereof.

SECTION 20 REPRESENTATIONS OF THE LESSOR.

The Lessor represents and warrants to the Lessee that:

- (i) it has full right, power and authority to enter into and perform the Operative Agreements and the Income Tax Indemnification Agreement;
- (ii) the Operative Agreements and the Income Tax Indemnification Agreement do not, nor will the performance of its obligations thereunder, violate the provisions of its certificate of incorporation, or any by-law, indenture, mortgage, loan or credit agreement or other instrument to which it is a party or by which it may be bound;
- (iii) the Operative Agreements and the Income Tax Indemnification Agreement have been duly executed and delivered by, and assuming the due execution and delivery thereof by the other parties thereto, constitute the legal, valid and binding contracts of the Lessor enforceable in accordance with their respective terms;
- (iv) no consent, approval or authorization of, or filing, registration or qualification with, any governmental authority is necessary in connection with its execution or performance of the Operative Agreements and the Income Tax Indemnification Agreement, or, to the extent any approval, consent or other action is necessary, the same has been obtained and is in full force and effect; and
- (v) The Lessor is not entering into this transaction with the present intention of distributing or reselling its interest in the Operative

Agreements or the Equipment or any part of either thereof in a manner which would bring such distribution or sale within the provisions of Section 5 of the Securities Act of 1933, as amended; and the Lessor will not distribute or resell any part of its interest in the Operative Agreements or the Equipment in a manner which would bring such distribution or sale within the provisions of Section 5 of the Securities Act of 1933, as amended, it being understood that the foregoing does not prejudice the right of the Lessor to sell or otherwise dispose of all or part of such interest or constitute an acknowledgement or agreement by any party hereto that such interest, or any similar security, constitutes a "Security" within the meaning of Section 2(1) of the Securities Act of 1933, as amended, or within the meaning of any state law regulating the offer, issuance or sale of securities.

SECTION 21 FINANCIAL COVENANTS OF THE LESSEE.

21.1 Limitation on Consolidated Senior Funded Debt. The Lessee agrees that it will not, and will not permit any Restricted Subsidiary to, incur any additional Consolidated Senior Funded Debt after the date of execution and delivery hereof except to extend, renew or refund an equal principal amount of its then outstanding Senior Funded Debt if:

- (i) After giving effect thereto, Consolidated Senior Funded Debt would exceed 450% of the Consolidated Borrowing Base; or
- (ii) During the preceding four fiscal quarters, Consolidated Earnings Available for Interest Coverage has been less than 1.25 times Consolidated Interest Expense.

21.2 Limitation on Consolidated Subordinated Debt. The Lessee agrees that it will not, and will not permit any Restricted Subsidiary to, incur Consolidated Subordinated Debt in excess of 50% of Consolidated Stockholders' Equity.

21.3 Restrictions on Dividends. The Lessee agrees that it will not, and will not permit any Restricted Subsidiary to, declare or pay cash dividends or set aside any funds therefor (except for dividends from Restricted Subsidiaries to the Lessee or other Restricted Subsidiaries), purchase any class of stock net of sales of stock, make optional prepayments on Subordinated

Debt, or make Restricted Investments in excess of (i) \$6,000,000, plus (ii) 50% of Consolidated Net Income subsequent to March 31, 1980 (or minus 100% in case of loss), plus (iii) proceeds from the sale of capital stock or the sale of convertible debt and the conversion of the debt into equity subsequent to March 31, 1980. Dividends on outstanding preferred stock shall not be limited but shall be included in calculating the amount available for the foregoing restricted payments.

21.4 Line of Business. The Lessee agrees that it will not, and will not permit any Restricted Subsidiary to, acquire a line of business other than one relating to transportation or leasing or other similar services, unless such business is closely related to the business being carried on by the Lessee and its Restricted Subsidiaries.

21.5 Termination of Covenants. The Lessor agrees that the covenants of the Lessee set forth in Sections 21.1, 21.2, 21.3 and 21.4 shall terminate on March 31, 1984 if the annual audit financial report of the Lessee for the fiscal year ending March 31, 1984 or any prior fiscal year shows that the Lessee has annual revenues of at least \$72,000,000 and Consolidated Net Income of at least \$13,200,000.

21.6 Definitions. The following definitions shall apply in determining compliance with the foregoing covenants by the Lessee:

Capitalized Leases:

Any lease of real or personal property under which the Lessee or a Restricted Subsidiary is the lessee which, in accordance with generally accepted accounting principles in effect as of the date hereof, should be capitalized on the Consolidated balance sheet of the Lessee.

Consolidated:

Shall, when used with reference to any financial information pertaining to (or in any defined term or statement pertaining to the financial condition of) the Lessee and its Restricted Subsidiaries, mean the accounts of the Lessee and its Restricted Subsidiaries, prepared on a consolidated basis and in accordance with generally accepted accounting principles.

Capitalized Lease Rentals: Aggregate annual lease payments of the Lessee and its Restricted Subsidiaries under Capitalized Leases which, in accordance with generally accepted accounting principles at the date of execution and delivery hereof, should appear on the Consolidated balance sheet of the Lessee.

Consolidated Borrowing Base: Consolidated Stockholders' Equity plus Consolidated Subordinated Debt.

Consolidated Earnings Available for Interest Coverage: The sum of (a) Consolidated pretax income for the preceding four fiscal quarters and (b) Consolidated Interest Expense.

Consolidated Funded Debt: Shall mean and include:

- (i) Any obligation for borrowed money or other debt obligation of the Lessee or its Restricted Subsidiaries which matures by its terms in more than twelve months from the date of creation which, in accordance with generally accepted accounting principles, would be classified as a liability (excluding reserves) and also any obligation for borrowed money or other debt obligation payable within one year but which by its terms is renewable;
- (ii) All guarantees or endorsements, direct or indirect, of any indebtedness or obligations for borrowed money or other debt obligations of others and of performance of obligations of parties other than affiliates of the Lessee and its Subsidiaries;
- (iii) Any take-or-pay or similar obligation where the maximum amount of the obligation is readily determinable; and
- (iv) Capitalized Leases.

Consolidated Interest  
Expense:

The interest paid or accrued and unpaid on all Consolidated Funded Debt, including amortization of debt discount plus one-third of rentals paid or accrued and unpaid under each Capitalized or Non-capitalized Lease during the preceding four fiscal quarters.

Consolidated Net Income:

The amount of net income (or loss) of the Lessee and its Restricted Subsidiaries properly allocable to such periods, excluding any portion thereof applicable to any minority interest, if any, in others (except for minority interests described in the proviso to the definition of Restricted Investments), all determined in accordance with generally accepted accounting principles.

Consolidated Senior Debt:

All Consolidated Funded Debt which is not Consolidated Subordinated Debt.

Consolidated Senior Funded  
Debt:

All Consolidated Funded Debt which is also Consolidated Senior Debt.

Consolidated Stockholders'  
Equity:

The sum of the par value (or value stated on the books of the Lessee) of the issued capital stock of all classes of the Lessee and the amount of its surplus, whether capital or earned, less the amount of any Restricted Investments.

Consolidated Subordinated  
Debt:

All Consolidated Funded Debt which is subordinated and junior in right of payment to all other Consolidated Funded Debt, except for other similarly subordinated debt.

Restricted Subsidiary:

Any Subsidiary that has been designated by the Board of Directors as a Restricted

Subsidiary. At the date of execution and delivery hereof Brae Rail Venture Corporation, a California corporation, and Braecar, Inc., a California corporation, are Restricted Subsidiaries. The Lessee covenants and agrees that it will not designate any Restricted Subsidiary as an Unrestricted Subsidiary unless after giving effect to such designation: (i) such Subsidiary shall not own capital stock or debt of any other Restricted Subsidiary, and (ii) there shall exist no Default or Event of Default.

Restricted Investments:

Shall mean and include (a) any investment by the Lessee and its Restricted Subsidiaries in any property of any other person, firm or corporation, (b) any purchase of any stock or other securities or evidences of indebtedness by the Lessee and its Restricted Subsidiaries to any other person, firm or corporation, and (c) any capital contributions, loans or advances (including the amount by which the fair market value exceeds the cost basis of any property sold or transferred) by the Lessee and its Restricted Subsidiaries to any other person, firm or corporation; provided, however, that the following shall not be Restricted Investments:

(1) (A) investments in an aggregate amount not exceeding \$13,125,000 at any one time outstanding in RAILEASE Inc, a Delaware corporation organized pursuant to the Project Agreement dated February 12, 1980 between PACCAR Inc., a Delaware corporation ("PACCAR"), and Brae Rail Venture Corporation, a California corporation, which is a wholly-

owned Subsidiary of the Lessee, which is owned 90% by PACCAR and 10% by the Lessee and will carry on no business other than owning and leasing up to 9,800 railcars and activities related thereto; and (B) investments in an aggregate amount not exceeding \$2,820,000 at any time in a trust in which the Lessee or a Subsidiary has a 15% beneficial interest and Ford Motor Credit Company has an 85% beneficial interest and which trust will carry on no business other than owning and leasing approximately 1200 railcars with an aggregate original cost of approximately \$47,000,000 and activities related thereto, it being understood, however, that in all cases with respect to the foregoing clauses (A) and (B) the Lessee shall, at the time such investment is originally made, have undertaken the actual management of the railcars owned by the corporation or trust in which the Lessee has made such investment, whether by management contract, information arrangement or otherwise; and

(2) investments consisting of (A) certificates of deposit of commercial banks or trust companies incorporated under the laws of the United States of America or any state thereof maturing within one year of investment therein, (B) open market commercial paper maturing within 270 days after the date of investment therein, (C) bonds, notes, or other direct obligations of the United States of America or obligations for which the full faith and credit of the United States of America are pledged, maturing within one year after the date of investment therein, and (D) purchases from any commercial bank or trust

company described in clause (A) above of obligations described in clause (C) above of any maturity pursuant to repurchase agreements obligating such bank or trust company to repurchase such obligation not later than 90 days after the purchase of such obligation.

Subsidiary:

Any corporation organized under the laws of any State of the United States of America, Canada, or any province of Canada, which conducts the major portion of its business in the United States or Canada and 80 per cent of the stock of every class of which, except directors' qualifying shares, shall be owned by the Lessee either directly or through Subsidiaries.

Unrestricted Subsidiary:

A Subsidiary which is not a Restricted Subsidiary.

SECTION 22 INTEREST ON OVERDUE RENTALS AND AMOUNTS PAID BY LESSOR.

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the additional obligation on the part of the Lessee to pay also an amount equal to 16% per annum (or the lawful rate, whichever is less) on the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid. All interest payable under this Section or otherwise shall be calculated for the actual number of days elapsed on the basis of a year consisting of 360 days.

SECTION 23 MISCELLANEOUS.

23.1 Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first class, postage prepaid, addressed as follows:

If to the Lessor:

CI Transportation Leasing Corporation  
231 South LaSalle Street  
Chicago, Illinois 60693

If to the Lessee: Brae Corporation  
Three Embarcadero Center  
San Francisco, California 94111  
Attention: Vice President-Finance

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

23.2 Right of Lessor to Perform. If the Lessee shall fail to comply with any of its covenants herein contained, the Lessor may, but shall not be obligated to, make advances to perform the same and to take all such action as in the Lessor's opinion may be necessary to obtain such performance. All payments so made by the Lessor and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by the Lessee to the Lessor upon demand as additional rent hereunder, with interest at the rate of 16% per annum.

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

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

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

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

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized and the corporate seals to be hereto affixed

as of the day and year first above written.

CI TRANSPORTATION LEASING CORPORATION

[CORPORATE SEAL]

ATTEST:

Arthur M. Haller  
Assistant Secretary

By

[Signature]  
Vice President

BRAE CORPORATION

[CORPORATE SEAL]

ATTEST:

Michael T. Everett  
Assistant Secretary

By

Lawrence W. Biscoe  
Vice President

STATE OF ILLINOIS            )  
                                  )  SS  
COUNTY OF COOK             )

On this 19th day of November, 1980, before me personally appeared DAN T. SURATT, to me personally known, who being by me duly sworn, says that he is a Vice President of CI TRANSPORTATION LEASING CORPORATION, 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.

Kathryn A. Hermola  
Notary Public

[NOTARIAL SEAL]

My commission expires: **My Commission Expires December 28th, 1982**

STATE OF ILLINOIS            )  
                                  )  SS  
COUNTY OF COOK             )

On this 19th day of November, 1980, before me personally appeared LAWRENCE W. BRISCOE, to me personally known, who being by me duly sworn, says that he is a Vice President of BRAE CORPORATION, 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.

Kathryn A. Hermola  
Notary Public

[NOTARIAL SEAL]

My commission expires: **My Commission Expires December 28th, 1982**

DESCRIPTION OF ITEMS OF EQUIPMENT

DESCRIPTION AND MARK AND NUMBER OF ITEMS OF EQUIPMENT:	70-Ton 50'6" Box Cars AAR Mechanical Designation XP, bearing numbers POVA 35001 through 35100, both inclusive
Manufacturer	Pullman Standard Division of Pullman Incorporated
PURCHASE PRICE OF EQUIPMENT:	\$47,653.05 per Item
TOTAL COST OF EQUIPMENT:	\$4,765,305
PLACE OF DELIVERY:	Bessemer, Alabama
OUTSIDE DELIVERY DATE:	December 15, 1980

SCHEDULE A  
(to Equipment Lease)

CERTIFICATE OF ACCEPTANCE  
UNDER EQUIPMENT LEASE AND UNDER THE  
PURCHASE AGREEMENT ASSIGNMENT

TO: CI TRANSPORTATION LEASING CORPORATION  
231 South LaSalle Street  
Chicago, Illinois 60693

PULLMAN INCORPORATED  
(Pullman Standard Division)  
200 South Michigan Avenue  
Chicago, Illinois 60604

I, a duly appointed and authorized representative of BRAE CORPORATION (the "Lessee") under the Equipment Lease dated as of November 18, 1980 between the Lessor and the Lessee and under the Purchase Agreement Assignment, dated as of November 18, 1980, between the Lessor and the Lessee, do hereby certify that I have caused to be inspected, received, approved and accepted delivery under the Lease and under the Purchase Agreement Assignment of the following Items of Equipment:

TYPE OF EQUIPMENT:	70-Ton 50'6" Box Cars AAR mechanical designation XP
MANUFACTURER	Pullman Standard Division of Pullman Incorporated
PLACE ACCEPTED:	Bessemer, Alabama
DATE ACCEPTED:	
NUMBER OF UNITS:	100
MARKED AND NUMBERED:	POVA 35001 through 35100, both inclusive

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

"OWNED BY A LESSOR AND SUBJECT TO AN EQUIPMENT LEASE  
FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 11303".  
SCHEDULE B  
(to Equipment Lease)

The execution of this Certificate will in no way relieve or decrease the responsibility of Brae Corporation or Pullman Incorporated (Pullman Standard Division) for any warranties it has made with respect to the Equipment.

Dated: \_\_\_\_\_, 1980.

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Inspector and Authorized Representative  
of Brae Corporation

BRAE CORPORATION

SCHEDULE OF CASUALTY VALUE

\*The Casualty Value for an Item of Equipment payable on the Lease Commencement Date in respect of such Item or any rental payment date thereafter shall mean an amount equal to the percent of the Total Cost of such Item set forth opposite such date in the following schedule:

<u>Lease Commencement Date or Number of Rental Payment Date on which Casualty Value is Paid</u>	<u>Percentage of Total Cost Payable as Casualty Value</u>
Lease Commencement Date	
1	109.674089
2	111.215568
3	112.504098
4	113.536690
5	114.328437
6	114.879493
7	108.574831
8	108.785049
9	108.814795
10	108.629729
11	101.596628
12	100.977352
13	100.129735
14	99.093642
15	91.217995
16	89.784123
17	88.132073
18	86.321266
19	84.298763
20	82.133826
21	79.764738
22	77.270640
23	74.581081
24	71.785153
25	68.802792
26	65.722525
27	62.454178
28	59.079992
29	55.504620
30	51.809212
31	47.897772
32	43.850754
33	39.571445
34	35.139546
35	30.485191

SCHEDULE C  
(to Equipment Lease)

36  
Thereafter

25.997924  
20.000000

\*Casualty Value does not include any amounts for which any Tax Indemnitee (as defined in Section 10.2 of the Lease) may be entitled to indemnification under Sections 6 and/or 10.2 (for reasons other than a Casualty Occurrence) of the Lease.

INSURANCE COVERAGE

Railcar Rolling Stock Physical Damage Insurance

The policy provides comprehensive coverage of physical loss up to the railcar replacement cost (or 108% of replacement cost for specifically listed, leased rolling stock) with a \$5,000,000 limitation per occurrence. The policy does not insure against:

- a) loss or damage caused by warlike actions or by any weapon of war employing atomic fission;
- b) loss or damage resulting from mechanical breakdown or structural failure;
- c) wear and tear; and
- d) loss or damage resulting from latent defect.

Broad Form Comprehensive General Liability Insurance

Coverages:	<u>Limits of Liability</u>	
	<u>Per Occurrence</u>	<u>Aggregate</u>
Bodily Injury Liability	\$10,000,000	\$10,000,000
Property Damage Liability	10,000,000	10,000,000

SCHEDULE D  
(to Equipment Lease)

WARRANTIES AND REPRESENTATIONS  
OF  
BRAE CORPORATION

1. Corporate Organization and Authority. Each of the Lessee and each of its Restricted Subsidiaries is a corporation duly organized, legally existing and in good standing under the laws of the State of its incorporation and each has all requisite power and authority and all necessary material licenses and permits to own and operate its properties and to carry on its business as now conducted and as presently proposed to be conducted; and the Lessee has duly qualified and is authorized to do business and is in good standing as a foreign corporation in each jurisdiction where the failure to so qualify would have a material adverse affect on the business or the financial condition of the Lessee.

2. Agreements Valid and Binding. The Lessee has full right, power and authority to enter into and perform the Operative Agreements, the Sublease (as defined in the Collateral Assignment) and the Income Tax Indemnification Agreement; the execution and delivery of the Operative Agreements, the Sublease and the Income Tax Indemnification Agreement by the officers executing and delivering the same have been duly authorized by the Lessee; and the Operative Agreements, the Sublease and the Income Tax Indemnification Agreement have been duly executed and delivered and, assuming the due authorization, execution and delivery thereof by the other parties thereto, constitute the legal, valid and binding contracts of the Lessee enforceable in accordance with their respective terms.

3. No Violation. The execution and performance of the Operative Agreements, the Sublease and the Income Tax Indemnification Agreement by the Lessee do not and will not violate any provisions of any presently existing law or any presently existing order of any court or governmental authority or agency and do not and will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, the Certificate of Incorporation or By-Laws of the Lessee or any presently existing indenture or other agreement or instrument to which the Lessee is a party or by which it may be bound or result in the imposition of any liens or encumbrances on the Equipment (other than pursuant to the Operative Agreements and the Sublease).

4. Governmental Approvals. No approval, consent or withholding of objection on the part of any governmental body or agency, Federal, state or local, is necessary in connection with the execution and delivery by the Lessee of the Operative Agreements, the Sublease and the Income Tax Indemnification Agreement or compliance by the Lessee with any of the provisions of any of said instruments.

SCHEDULE E  
(to Equipment Lease)

5. Pending Litigation. There are no actions at law or in equity pending or, to the knowledge of the Lessee, threatened, which might result in any material adverse change in the Lessee's ability to carry out its obligations under the Operative Agreements, the Sublease and the Income Tax Indemnification Agreement; and there are no proceedings pending or, to the knowledge of the Lessee, threatened, against the Lessee by any Federal or state board or other administrative authority or agency which might result in any material adverse change in the Lessee's ability to carry out its obligations under the Operative Agreements, the Sublease or the Income Tax Indemnification Agreement.

6. No Existing Defaults under the Lease, etc. No Default or Event of Default has occurred and is continuing. The Lessee is not in default in the payment of principal or interest on any indebtedness for borrowed money and is not in default under any instrument or instruments or agreements under and subject to which any indebtedness for borrowed money has been issued and no event has occurred and is continuing under the provisions of any such instrument or agreement which with the lapse of time or the giving of notice, or both, would constitute an event of default thereunder.

7. Financial Statements. (a) The consolidated balance sheet of the Lessee and its Subsidiaries as of March 31, 1980 and the consolidated statements of income and shareholders' equity and changes in financial position for the fiscal year ended on said date accompanied by a report thereon containing an opinion unqualified as to scope limitations imposed by the Lessee and otherwise without qualification by Arthur Andersen & Co., and the unaudited consolidated statements contained in the report of the Lessee on form 10Q for the quarter ended September 30, 1980, have been prepared in accordance with generally accepted accounting principles consistently applied, except as therein noted, present fairly the financial position of the Lessee and its Subsidiaries as of such dates and the results of their operations and changes in their financial position for the periods then ended.

(b) Since September 30, 1980, there has been no change in the financial condition or operations of the Lessee and its Subsidiaries as shown on the balance sheet and income statement for the period ending as of such date, except changes in the ordinary course of business, none of which individually or in the aggregate has been materially adverse.

8. Title. No mortgage, deed of trust or other lien of any nature whatsoever (except the Sublease) which now covers

or affects any property or interest therein of the Lessee, now attaches to the Equipment or in any manner affects or will affect adversely the right, title and interest of the Lessor therein.

9. Insurance. The Equipment is covered by the insurance required by Section 11 of the Lease.