RECORDATION NO. 12449 Filed 1425

NOV 28 1980 -2 25 PM

November 25, 1980

INTERSTATE COMMERCE COMMISSION

12449 A

RECORDATION NO. Filed 1425

Interstate Commerce Commission
Washington,
D. C.

NOV 28 1980 -2 25 PM

INTERSTATE COMMERCE COMMISSION

Dear Sir or Madam:

Enclosed for recordation under the provisions of 49 USC 11303(a) are the original and six counterpart copies of the following documents:

(1) Conditional Sale Agreement, dated as of October 1, 1980, between FMC Corporation (Vendor), and Exchange National Bank of Chicago, as trustee (Purchaser); Agreement and Assignment, dated as of October 1, 1980, between FMC Corporation (Assignor), and La Salle National Bank (Assignee).

(2) Railroad Equipment Lease, dated as of October 1, 1980, between Exchange National Bank of Chicago, as trustee (Lessor), and Chicago and North Western Transportation Company (Lessee); Assignment of Lease and Agreement, dated as of October 1, 1980, between Exchange National Bank of Chicago (Assignor), and La Salle National Bank (Assignee).

(3) Conditional Sale Agreement, dated as of October 2, 1980, between FMC Corporation (Vendor), and Exchange National Bank of Chicago, as trustee (Purchaser); Agreement and Assignment, dated as of October 2, 1980, between FMC Corporation (Assignor), and La Salle National Bank (Assignee).

(4) Railroad Equipment Lease, dated as of October 2, 1980, between Exchange National Bank of Chicago, as trustee (Lessor), and Chicago and North Western Transportation Company (Lessee); Assignment of Lease and Agreement, dated as of October 2, 1980, between Exchange National Bank of Chicago (Assignor), and La Salle National Bank (Assignee).

A general description of the railroad equipment covered by the enclosed documents is set forth in Schedule A attached to this letter and made a part hereof.

The undersigned is the Lessor mentioned in the enclosed documents, and has knowledge of the matters set forth therein.

0-333A013
Date Nov. 28 1980
Fee $240
ICC Washington, D. C.

12449 B

RECORDATION NO. Filed 1425

NOV 28 1980 -2 25 PM

INTERSTATE COMMERCE COMMISSION

12449 C

RECORDATION NO. Filed 1425

NOV 28 1980 -2 25 PM

INTERSTATE COMMERCE COMMISSION

Please return the original and six copies of the enclosed documents to Matthew A. Gabel, Csaplar and Bok, 235 Montgomery Street, Suite 450, San Francisco, California, 94104.

Also enclosed is a check in the amount of $240. covering the required recording fee.

Very truly yours,

EXCHANGE NATIONAL BANK OF
CHICAGO, as trustee

By _____

Its Vice President
Lessor as aforesaid

Enclosures

RECORDATION NO. 12449/B Filed 1425

NOV 28 1980 -2 25 PM

INTERSTATE COMMERCE COMMISSION

RAILROAD EQUIPMENT LEASE

between

EXCHANGE NATIONAL BANK OF CHICAGO,
as Trustee,
f/b/o
MERCANTILE TRUST COMPANY
NATIONAL ASSOCIATION
Lessor

and

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY,
Lessee

Dated as of October 1, 1980

RAILROAD EQUIPMENT LEASE

RAILROAD EQUIPMENT LEASE, dated as of October <>, 1980 (this Lease), between EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association, having an address at 130 South La Salle Street, Chicago, Illinois 60603, and acting not in its individual capacity but solely as trustee (Lessor) under that certain Trust Agreement, dated as of the date hereof (together with all amendments and supplements thereto called the Trust Agreement), for the benefit of MERCANTILE TRUST COMPANY NATIONAL ASSOCIATION, a national banking association (Owner), having an address at 8th & Locust Streets, 10th Floor, St. Louis, Missouri 63166, as lessor, and CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation (Lessee), having an address at 400 West Madison Street, Chicago, Illinois 60606, as lessee.

Preliminary Statement

By that certain Conditional Sale Agreement, dated as of the date hereof (the Purchase Agreement), between FMC Corporation, a Delaware corporation (the Builder), and Lessor, Builder has agreed to manufacture and sell to Lessor the units of railroad equipment described in Schedule A hereto (the Scheduled Units). Lessee desires to lease, upon the terms and conditions set forth in this Lease, so many of such units of railroad equipment as are delivered to and accepted by Lessor and settled for under the Purchase Agreement. In connection with the sale and leasing of such units and by that certain Agreement and Assignment, dated as of the date hereof (the Purchase Assignment), between the Builder and the Agent hereinafter referred to, the Builder is assigning its interest in the Purchase Agreement to La Salle National Bank, a national bank acting as agent for an institutional investor (the Investor) under that certain Participation Agreement, dated as of October 1, 1980 (the Participation Agreement), among such bank, Lessor, Lessee, Owner, the Investor and another party (such bank and its successors and assigns as such agent are collectively called the Agent). As security for the performance of Lessor's obligations under the Purchase Agreement, Lessor intends to assign certain of its rights in this Lease to the Agent by an Assignment of Lease and Agreement, dated as of the date hereof (the Lease Assignment), to which Lessee will consent by a Lessee's Consent and Agreement, dated as of the date hereof (the Consent).

* The Trustor or the Additional Trustor, as the case may be.

NOW, THEREFORE, in consideration of the premises and the covenants hereinafter set forth to be performed by Lessee and Lessor, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, upon the following terms and conditions, such of the Scheduled Units which are delivered to and accepted by Lessor and Lessee in accordance with the Purchase Agreement and this Lease (each of such units upon such delivery and acceptance is called a Unit, and all of the Units are called the Units and are collectively called the Equipment):

1. Net Lease. (a) This Lease is a net lease and Lessee shall not be entitled to any abatement, recoupment or reduction of rental or additional rental, or any setoff against rental or additional rental, including any abatement, setoff, reduction or recoupment due or alleged to be due by reason of any past, present or future claims or counterclaims of Lessee against Lessor, Owner, the Builder, the Agent or any other person, except as expressly provided in Sections 3(b) and 3(f). Lessee's obligations hereunder, including its obligations to pay all rentals, additional rentals and other amounts hereunder, shall be absolute and unconditional; and, except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the respective obligations of Lessor or Lessee be otherwise affected, by reason of (i) any latent or patent defect in, or damage to, or loss of possession or use or destruction of, any Unit from whatever cause, (ii) any lien, encumbrance or right of others with respect to any Unit, (iii) the prohibition of or other restriction against Lessee's use of any Unit, (iv) the interference with such use by any person, (v) the invalidity, unenforceability or lack of due authorization of this Lease, (vi) any insolvency of, or any bankruptcy, reorganization or similar proceeding against, Lessee or (vii) any other cause whether similar or dissimilar to the foregoing, whether arising under this Lease, any other Document (as defined in the Participation Agreement) or otherwise, any present or future law to the contrary notwithstanding. Lessor and Lessee intend that the rentals and other amounts payable by Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to an express provision of this Lease. To the extent permitted by law, Lessee hereby waives any right which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease with respect to

any Unit except in accordance with the express terms hereof. Each rental or other payment made by Lessee hereunder shall be final and Lessee shall not seek to recover any part of such payment from Lessor for any reason.

(b) In Section 3(b) of this Lease, Lessor has undertaken to make certain payments to Lessee and to provide Lessee with certain information, such payments being undertaken by Lessor to reflect events occurring after the date of the execution and delivery hereof. Lessee hereby agrees that (i) any right of Lessee to receive payments from, or the performance of agreements by, Lessor hereunder or under any other agreement contemplated herein or in the Participation Agreement may neither be the basis for any abatement, recoupment, reduction or setoff with respect to any rental or other sum payable to the Agent by reason of this Lease or any other Documents (as defined in the Participation Agreement) (except for the abatement or reduction of the rental or Rental Factors (as hereinafter defined) and Casualty Values or Casualty Value Percentages (as hereinafter defined) expressly provided for in Section 3(f) or 3(g)), nor the basis for Lessee's failure to perform any of its obligations hereunder or under any such other agreement; and (ii) any claim of Lessee against Lessor arising hereunder or under any such other agreement shall be subordinate to any claim of the AGENT AGAINST Lessor that is then due under any Documents. JMB

2. Delivery and Acceptance of Units. Lessor hereby appoints Lessee its agent for inspection and acceptance of the Scheduled Units pursuant to the Purchase Agreement. Each tender for delivery of a Scheduled Unit to Lessor under the Purchase Agreement shall be deemed to be tender of delivery to Lessee under this Lease at the point or points within the United States of America at which such Scheduled Unit is tendered for delivery to Lessor under the Purchase Agreement. Upon such tender, Lessee will cause its representative, on behalf of Lessor and Lessee, to inspect the same; and, if such Scheduled Unit is found to be acceptable, to accept delivery of such Scheduled Unit and execute and deliver to Lessor a certificate of inspection and acceptance (an Acceptance Certificate) substantially in the form attached hereto as Schedule B. Thereupon, such Unit shall be deemed to have been delivered to and accepted by Lessee hereunder and shall be subject to the terms and conditions of this Lease, except that any Unit excluded from the Purchase Agreement pursuant to Article 3.2 or 4.1 thereof shall be deemed to have not been delivered to and accepted by Lessor or Lessee for any purpose

hereunder (the date of acceptance of each Unit specified in an Acceptance Certificate is called an Acceptance Date). Upon the acceptance of all Units to be subject to this Lease, Lessor and Lessee will enter into an amendment to this Lease setting forth the specific identifying numbers of the Units.

3. Rentals. (a) Lessee shall pay to Lessor, as rental for each Unit, not more than 1 interim rental payment and 40 consecutive semiannual rental payments, in each case in arrears. The interim rental payment is payable on February 1, 1981 (the Basic Rent Commencement Date), with respect to Units accepted before such date. The 40 semiannual rental payments are payable on August 1 and February 1 in each year, commencing August 1, 1981, and ending on February 1, 2001 (each date on which a rental payment is payable is called a Rental Payment Date). The interim rental payment due on the Basic Rent Commencement Date for any Unit shall be in an amount equal to the product of (a) the number of actual days elapsed from and including the Closing Date (as defined in Article 4.2 of the Purchase Agreement) for such Unit to, but not including, the Basic Rent Commencement Date, and (b) 0.0375% (the Interim Rental Factor) of the Purchase Price (as defined in Article 4.1 of the Purchase Agreement) of such Unit. The next 20 semiannual rental payments for any Unit shall each be in an amount equal to 4.689342% of the Purchase Price of such Unit; and the subsequent 20 semiannual rental payments for any Unit shall each be in an amount equal to 5.731417% of the Purchase Price of such Unit (the percentages set forth in this sentence are called the Rental Factors). Notwithstanding the first clause of the preceding sentence, the semiannual rental payment due on August 1, 1981, for any Unit settled for after January 31, 1981, shall be reduced by 0.0375% of the Purchase Price thereof for each day after January 31, 1981, to but not including the settlement date therefor.

(b) If any of the following events shall occur, i.e.: (A) if any amendment to the Internal Revenue Code of 1954, as amended (the Code), which shall affect the Federal tax benefits available to Owner with respect to any Unit shall be enacted with an effective date (and shall become effective) on or prior to the Acceptance Date of such Unit, or is legislated (and shall become effective) by the Congress in session on the date of the execution and delivery hereof with an effective date retroactive to such Acceptance Date, or (B) if any change in the Federal tax benefits available to Owner with respect to such Unit shall result from a regulation, a published adminis-

trative interpretation or decision or a judicial decision issued or made after the execution and delivery hereof with respect to the Code and the rules, regulations, interpretations or decisions thereunder, which regulation, interpretation or decision is both published and effective prior to the first Acceptance Date that shall occur for any Unit hereunder and, in the case of a judicial decision, shall become final; then, subject to the limitation in Section 3(g), (A) the Rental Factors and the Casualty Value percentages set forth in Schedule C hereto (the Casualty Value Percentages) will be adjusted upward or downward for such Unit as provided below; and (B) if such amendment, regulation, interpretation or decision shall result in Owner being entitled to an increase in the amount of the investment tax credit referred to in clause (i) of Section 17(a), Lessor shall pay to Lessee, within 120 days after such amendment, regulation, interpretation or decision shall have become effective and, if a judicial decision, final, a cash rebate in an amount equal to the amount of such increase. Any adjustment of a Rental Factor (which may result in rentals of even or uneven amounts) or a Casualty Value Percentage required by the first sentence of this paragraph (b) shall be effective as of the first Rental Payment Date following the event giving rise to such adjustment, and shall be made in such manner as will result, in Owner's reasonable judgment after consultation with Lessee, in preserving for Owner the after-tax rate of return that would have been realized by Owner had such event not occurred based on the rates of Federal, state and local taxes on, or measured by, net income, and on the assumptions and methods of calculation utilized by Owner in originally evaluating the transaction described in this Lease and the Participation Agreement, but without regard to any effect that may be had on Owner's net dollar earnings (such required after-tax rate of return being called the Return Requirement). Lessor shall furnish to Lessee and the Agent, prior to the effective date of (i) any adjustment of a Rental Factor or a Casualty Value Percentage or (ii) any cash rebate, a notice setting forth in reasonable detail the computations and methods used in computing such adjustment or rebate. If the aggregate amount of the rental reductions resulting from the Rental Factor adjustments described above over the remainder of the original term of this Lease shall, by reason of Section

3(g), be less than the aggregate amount of the rental reductions to which Lessee otherwise would be entitled, then Lessee shall also be entitled to be paid by Lessor during the remainder of the original term of this Lease (and, if necessary to enable Lessee to receive the maximum permissible rental reductions and cash rebates, during any renewal term) one or more cash rebates in the maximum amount which, together with the rental reductions received, would satisfy the requirements of clause (ii) of Section 3(g) and the Return Requirement, taking into account the time each rental reduction or cash rebate was delayed on account of the requirements of clause (i) or (ii) of Section 3(g). If Lessee would be entitled to a rental reduction or a cash rebate pursuant to this paragraph but for the requirements of Revenue Procedure 75-21, 1975-1 Cum. Bull. 715 (Rev. Proc. 75-21) (except Section 5.01 thereof) in effect on the applicable Rental Payment Date and such requirements subsequently shall be superseded or amended to permit, or otherwise interpreted to permit, all or part of such rental reductions or cash rebates, then Lessee shall be entitled to the maximum rental reductions or cash rebates, or both, during the original and any renewal term of this Lease that are permissible under Rev. Proc. 75-21 (except Section 5.01 thereof), effective as of the first Rental Payment Date following the date of such amendment, and that will satisfy the Return Requirement, taking into account the time each rental reduction or cash rebate was delayed on account of the requirements of Rev. Proc. 75-21. The present value of any unused rental reduction (the Present Value), which value shall be determined using a discount rate of 13 1/2%, shall be deducted from any Casualty Occurrence payment made pursuant to Section 8 after the Rental Factor adjustment that results in such reduction, and any such reduction the Present Value of which has not been deducted from such Casualty Occurrence payments shall be applied to reduce any future rental increase, subject to each case to Section 3(g).

(c) In addition to the rentals set forth above, Lessee shall pay to Lessor, on each date on which Lessor is required to make a payment described below (without regard to any limitation of the obligation of Lessor set forth therein), as additional rental, an amount which, after deduction of any taxes payable in respect of such amount, will be equal to the amount required by Lessor to make the payment provided for (i) in Paragraph 2(c) of the Participation Agreement, or (ii) in Paragraph 10 of the Participation Agreement to the extent that the remaining cash and proceeds of the Investments (as

defined therein) available to Lessor as specified in said Paragraph 10 are insufficient to enable Lessor to make such payment, as the case may be. Lessor shall apply such additional rentals to the making of such payments.

(d) If any Rental Payment Date is not a business day, the rental payment otherwise payable on such date shall be payable on the last business day preceding such date. The term "business day" means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in St. Louis, Missouri, Chicago, Illinois, or New York, New York, are authorized or obligated to remain closed.

(e) Lessor irrevocably instructs Lessee to make all the payments provided for in this Lease, including the payments provided for in Sections 3 and 8 but excluding all payments not assigned to the Agent pursuant to the Assignment, at the principal office of the Agent, for the account of Lessor in care of the Agent, with instructions to the Agent first to apply such payments to satisfy the obligations of Lessor under the Purchase Agreement and the Participation Agreement, and second, so long as no event of default or Default under the Purchase Agreement shall have occurred and be continuing, to pay any balance promptly to Lessor at such place as Lessor shall specify in writing (the term "Default" when used in conjunction with the term "Event of Default" or "event of default" shall mean an event which, but for the making of a demand, the lapse of time or both, would constitute such an Event of Default or event of default). Lessee shall make each payment contemplated by this paragraph in immediately available funds to the Agent by 11.00 a.m., Chicago time, on the date such payment is due.

(f) Notwithstanding any other provision hereof, to the extent that, prior to the termination of this Lease, Lessee shall be denied possession or use of a Unit because of the exercise of any right or remedy of the Agent under the Purchase Agreement upon the occurrence of a default under the Purchase Agreement which shall not result from an Event of Default under this Lease, Lessee shall have no obligation to make any rental payment for such Unit with regard to the period of its loss of such possession or use of such Unit.

(g) Any provision hereof to the contrary notwithstanding: (i) the rentals and Casualty Values payable hereunder with respect to any Unit shall never be less than those amounts required to enable Lessor to satisfy its obligations to pay or prepay with respect to such Unit the portion of the

Indebtedness (as defined in the Purchase Agreement) allocable thereto and interest thereon, regardless of any limitation of liability set forth in the Purchase Agreement; and (ii) such rentals and Casualty Values shall never be less than those amounts required to enable Owner to satisfy the requirements set forth in Rev. Proc. 75-21 (except Section 5.01 thereof), as such requirements may be modified or adjusted as of the applicable Rental Payment Date whether by statute, regulation, revenue ruling, revenue procedure or otherwise, it being agreed that any cash rebate referred to in Section 3(b) shall be treated for the purposes of this clause (ii) as a reduction of the total rentals payable hereunder and that such cash rebate will never reduce rentals or Casualty Values below those amounts required to enable Owner to satisfy the requirements set forth in Rev. Proc. 75-21 (except Section 5.01 thereof) as such requirements may be modified or adjusted as of the date of such cash rebate, whether by statute, regulation, revenue ruling, revenue procedure or otherwise.

4. Term of Lease; Nondisturbance. (a) The term of this Lease as to each Unit shall begin on the Acceptance Date of such Unit and, subject to the provisions of Sections 8, 11 and 14, shall terminate on the final Rental Payment Date occurring with respect to such Unit. The obligations of Lessee hereunder (including but not limited to, the obligations under Sections 3, 6, 7, 8, 10, 12, 15 and 17) shall survive the expiration or termination of the term of this Lease and the full payment of all amounts payable under this Lease.

(b) Notwithstanding anything to the contrary contained herein and except as provided in the following sentence: (i) all rights and obligations of Lessee under this Lease and in and to the Units are subject to the rights of the Agent under the Purchase Agreement; and (ii) if an event of default should occur under the Purchase Agreement, the Agent may terminate this Lease or rescind its termination of this Lease, all as provided therein. So long as (i) no Event of Default shall exist hereunder and (ii) Lessee shall be complying with the provisions of the Consent, however, this Lease may not be terminated, and Lessee shall be entitled to exercise its rights hereunder, including its rights of possession, use and assignment provided by Section 13.

5. Identification Marks. (a) Lessee will cause each Unit to be kept numbered with a different identification number of the group of identification numbers set forth in Schedule A hereto, and will keep and maintain plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement Filed with the Interstate Commerce Commission," with appropriate changes thereof as from time to time may be required by law, in the opinion of the Agent and Lessor, in order to protect Lessor's and the Agent's title to and interest in each Unit and the rights of Lessor under this Lease and the rights of the Agent under the Purchase Agreement. Lessee will not place any Unit in operation or exercise any control or dominion over the same until such words shall have been so marked, and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Agent and Lessor and duly filed and deposited by Lessee in all public offices where this Lease and the Purchase Agreement shall have been filed and deposited, and all required publications, if any, made; and (ii) Lessee shall have furnished the Agent and Lessor with an opinion of counsel to the effect that such statement has been so filed, deposited and published, that such filing, deposit and publishing will protect the Agent's and Lessor's rights in such Units and that no other filing, deposit, publishing or other giving of notice with or to any Federal, state or local government or agency thereof is necessary to protect the rights of the Agent and Lessor in such Unit in any state of the United States of America or the District of Columbia.

(b) Except as provided in Section 5(a), Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership, except that any Unit may be lettered with the name, initials or other insignia customarily used by Lessee or its affiliates.

6. Taxes. (a) All payments to be made by Lessee hereunder will be free of expense to Lessor (in both its individual and fiduciary capacities), its assignees (including the Agent and the Investor) and Owner from collection or other charges and will be free of expense to Lessor (in both its individual and fiduciary capacities), its assignees (including the Agent and

the Investor), and Owner with respect to the amount of any Impositions, all of which Lessee assumes and agrees to pay on demand in addition to the other payments to be made by Lessee hereunder. The term "Impositions" means all Federal, state, local or foreign taxes, license fees, assessments and documentary stamps taxes, and any charges, fines or penalties in connection therewith, now or hereafter levied or imposed upon or in connection with or measured by any Unit or this Lease or any rentals or other sums payable hereunder, or any sale, ownership, rental, possession, use, shipment, delivery, non-delivery, rejection, transfer of title, return or other disposition of the Equipment or any interest therein, under the terms hereof or the Purchase Agreement (other than a transfer or disposition of any Unit or interest therein by Lessor or Owner or of Lessor's or Owner's interest in this Lease or the rentals or other sums payable hereunder other than to the Agent prior to the occurrence of an Event of Default, whether such transfer or disposition is voluntary or involuntary, or following the return of any Unit in accordance with Section 15), except: (i) any tax of the United States of America imposed on or measured by net income or excess profits (other than the net income or excess profits of Lessee), or any value added or gross receipts tax imposed in lieu of such tax; (ii) in the case of Lessor or Owner, the aggregate of all state or local taxes imposed on or measured by the net income of Owner or Lessor based on any rentals or other sums payable under this Lease, or any value added or gross receipts tax in lieu of any such tax, up to the amount of any such tax which would be payable to the state and city in which Owner or Lessor, as the case may be, has its principal place of business without apportionment to any other state or city, and, in the case of any other party, all state or local taxes imposed on or measured by net income, or any value added or gross receipts tax in lieu of any such tax; (iii) any state franchise tax which is not based on or measured by net income; (iv) any taxes of a state or political subdivision thereof computed other than on net income and imposed in substitution for any tax referred to in clause (ii) or (iii) above; and (v) any foreign income tax to the extent that the recipient of any payments made hereunder shall receive credit therefor against its United States Federal income tax liability; but including such of the foregoing as are levied or imposed in substitution for, or relieve Lessee from the payment of, such taxes, fees, assessments, charges, fines or penalties which it would otherwise be obligated to pay or

reimburse as provided in this Section 6(a). Notwithstanding the foregoing, Owner shall have no right to receive any payment from Lessee in the nature of an indemnity payment with respect to an Imposition to the extent that Owner shall have recourse to Lessor for the amount of such payment under the Trust Agreement or otherwise. Lessee will also pay promptly all Impositions which may be imposed upon any Unit or for the use or operation thereof or upon the receipts or earnings arising therefrom or upon Lessor by reason of its ownership thereof or Owner by reason of its interest therein, and will keep at all times all and every part of such Unit free and clear of all Impositions which might in any way affect the title of Lessor or the interest of Owner or Lessor or result in a lien upon any such Unit; Lessee, however, shall be under no obligation to pay any Imposition of any kind so long as such Imposition remains unpaid and Lessee shall be contesting such Imposition in its own name and by appropriate legal or administrative proceedings, or Lessor, Owner, Agent or Investor, as the case may be, shall be required to contest such Impositions as provided in this Section 6, and the nonpayment thereof, in the reasonable opinion of such party, shall not adversely affect the title, property or rights of Lessor or Owner hereunder or Lessor or the Agent under the Purchase Agreement. Lessee shall give such party notice of such contest brought in Lessee's name within 30 days after institution thereof, and such party will provide such information as may be reasonably requested by Lessee in furtherance of such contest. If any Imposition shall have been charged or levied against such party directly and paid by such party, Lessee shall pay such party on presentation of an invoice therefor, if such party shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for such party) or if Lessee shall have approved the payment thereof, and such party agrees to give Lessee written notice in a timely manner after it first obtains knowledge of the making of such charge or levy, and agrees to take such other action as may reasonably be requested by Lessee for the purpose of contesting payment or obtaining refund of all or a portion of such Imposition, as hereinafter provided in this Section 6.

(b) If any return, statement or report with respect to Impositions relating to a Unit is required to be made, Lessee will make such return, statement or report in such manner as to show the interests of Lessor, Owner and the Agent in such Unit to their satisfaction; if such interest may not be so shown, Lessee will notify Lessor, Owner and the Agent thereof and prepare

and deliver such return, statement or report to Lessor, Owner and the Agent within a reasonable period of time prior to the time the same is to be filed and in such manner as shall be satisfactory to Lessor, Owner and the Agent.

(c) The liability of Lessee for the payment or reimbursement of any Imposition pursuant to this Section 6 shall survive the expiration or termination of this Lease and the return of the Units as provided in Section 12 or 15 with respect to all Impositions existing prior to such expiration or termination and return or relating to such period; and such liability shall continue until all such Impositions are paid or reimbursed by Lessee, notwithstanding the expiration or termination of this Lease.

(d) If a claim shall be made against Lessor (in its individual or fiduciary capacity), Owner, Agent, the Investor or their respective successors, assigns, agents and servants (each of Lessor, Owner, the Agent and the Investor, together with its successors, assigns, agents and servants, being called an Indemnified Party) for the payment of what could be an Imposition, such Indemnified Party shall notify Lessee in a timely manner. If reasonably requested by Lessee in writing and so long as Lessee is prohibited or impaired from doing so in its own name, such Indemnified Party, upon receipt of an indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of Lessee, shall contest in good faith the validity, applicability or amount of such Imposition by (i) resisting payment thereof if legally permissible, (ii) not paying the same except under protest, if protest is necessary and proper, or (iii) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or any thereof. If such Indemnified Party shall obtain a refund of all or any part of such Imposition previously reimbursed by Lessee in connection with any such contest or an amount representing interest thereon applicable to the amount paid by Lessee and the period of such payment, such Indemnified Party shall pay to Lessee the amount of such refund or interest net of expenses, but only if no Event of Default or Default shall have occurred and be continuing.

(e) Lessee, whenever reasonably requested by such Indemnified Party, shall submit to such Indemnified Party copies of the returns, statements, reports, billings and remittances referred to above, or furnish other evidence satisfactory to such party of Lessee's performance of its duties

under this Section 6. Lessee shall also furnish promptly upon request such data as such party reasonably may require to permit such party's compliance with the requirements of taxing jurisdictions, including data available to Lessee relating to use of any Unit outside the continental United States.

(f) The amount which Lessee shall be required to pay with respect to any Imposition which shall be subject to indemnification under Section 6(a) or 6(d) shall be an amount sufficient to restore such Indemnified Party to the same net after-tax rate of return, after considering the effect of such payment on its United States Federal income taxes and income taxes or franchise taxes of any state or political subdivision thereof based on net income, that such Indemnified Party would have been in had such Imposition not been imposed.

(g) The foregoing indemnities by Lessee shall not constitute a guarantee by Lessee or any subsidiary or affiliated corporation of Lessee of the payment of any instalments of principal or interest payable under the Indebtedness, or a guarantee of any residual value of the Units following the expiration of the term hereof as such term may or may not be extended.

7. Maintenance; Insurance. (a) Lessee, at its own expense, will maintain and service each Unit (including any parts installed on or replacements made to any Unit and considered an Addition [as defined in Section 10]) so that each Unit will remain (i) in as good an operating condition as when delivered (ordinary wear and tear excepted), (ii) in compliance with all applicable laws and regulations and (iii) at a level of maintenance comparable to that of all other owned or leased equipment of the same character in Lessee's fleet.

(b) At all times after delivery and acceptance of each Unit and prior to the return of the Equipment to Lessor, Lessee, at its own expense, will cause to be carried and maintained (and shall furnish to Lessor, Owner and the Agent an insurer's certificate or Lessee's independent insurance broker's verification evidencing) property insurance and public liability insurance in respect of the Equipment then subject to any provision hereof, in amounts (subject to customary deductibles) and against risks customarily insured against by railroad companies in respect of similar equipment and, in any event, comparable in amounts and against risks customarily insured against by Lessee from time to time in respect of similar equipment owned by it. Any policies of insurance carried in accordance with this section shall

name Lessor, Owner and the Agent as additional insureds as their respective interests may appear and shall provide for 30 days prior written notice to Lessor, Owner and the Agent of any material change or cancellation. If Lessor shall receive any property insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, Lessor, subject to Lessee's having made payment of the Casualty Value in respect of such Unit and provided that no Event of Default or Default shall have occured and be continuing, shall pay such proceeds or condemnation payments to Lessee up to an amount equal to the Casualty Value paid by Lessee with respect to a Unit; any balance of such proceeds or condemnation payments shall remain the property of Lessor. If no Event of Default or Default shall have occurred and be continuing, all insurance proceeds and condemnation payments received by Lessor from Lessee's property insurance coverage or from a governmental authority, as the case may be, in respect of any Unit suffering damage or requisition, that shall not constitute a Casualty Occurrence shall be paid to Lessee, in the case of damage upon proof satisfactory to Lessor that such damage has been fully repaired so as to comply with Section 7(a).

8. Casualty Occurrence. (a) If prior to the return of any Unit in the manner set forth in Section 15 such Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged from any cause whatever, permanently returned to the Builder pursuant to any patent indemnity provision of the Purchase Agreement or taken or requisitioned by condemnation or otherwise by the United States of America for a stated or indefinite period that shall exceed the then remaining term of this Lease (or, if such taking, requisition or condemnation shall occur during the extended term, for a stated or indefinite period which shall exceed the then remaining extended term) or by any other government or governmental entity resulting in loss of possession by Lessee for a period of 90 consecutive days (any such occurrence being called a Casualty Occurrence), Lessee shall give prompt (but in any event within 30 days after such Casualty Occurrence) notice thereof to Lessor, Owner and the Agent. On the first Rental Payment Date after such notice (the Casualty Payment Date), Lessee shall pay to Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on the Casualty Payment Date plus a sum equal to the Casualty Value of such Unit as of the Casualty Payment Date, minus, subject to Section 3(g)(i), the Present Value of any unused rental reduction as described in

Section 3(b). Upon the making of such payment by Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or permanent return to the Builder of such Unit) Lessor shall be entitled to recover possession of such Unit.

(b) The term "Casualty Value" with respect to any Unit shall mean as of any Rental Payment Date an amount equal to that percentage of the Purchase Price of such Unit set forth in Schedule C hereto opposite such date; provided, however, that if the Casualty Value for any Unit as of such payment date as determined pursuant to Schedule C shall reflect an amount representing investment credit recapture to Owner that is greater or lesser than the actual amount of investment credit recapture incurred by Owner as a result of the Casualty Occurrence to such Unit, the Casualty Value for such Unit as so determined shall be appropriately decreased, subject to clause (i) of Section 3(g), or increased so as to reflect the actual amount of investment credit recapture incurred by Owner as a result of the Casualty Occurrence to such Unit.

(c) Whenever any Unit shall suffer a Casualty Occurrence after the final payment of rental in respect thereof is due pursuant to Section 3 and before (i) such Unit shall have been returned in the manner provided in Section 15, and (ii) the storage period therein provided with respect to such Unit shall have expired, Lessee shall give prompt (as provided above) notice to Lessor with respect thereto and pay to Lessor an amount equal to the Casualty Value of such Unit, which shall, except as otherwise provided in Section 14, be an amount equal to 20% of the Purchase Price of such Unit. Upon the making of any payment by Lessee in respect Casualty Occurrence of any Unit (except in the case of the loss, theft or complete destruction of such Unit or return to the Builder of such Unit), Lessor shall be entitled to recover possession of such Unit.

(d) In the event of the requisition (other than a requisition which constitutes a Casualty Occurrence) for use by the United States of America or by any other government or governmental entity (hereinafter severally called the Government) of any Unit during the term of this Lease or any renewal thereof, Lessee's obligations (including, without limitation, the obligation to pay rental) under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that, if such

Unit shall be returned by the Government at any time after the end of the original term of this Lease or any extended term, Lessee shall be obligated to return such Unit to Lessor pursuant to Section 12 or 15, as the case may be, promptly upon such return by the Government rather than at the end of the original term of this Lease or any extended term, but Lessee shall in all other respects comply with Section 12 or 15 as the case may be, with respect to such Unit. All payments received by Lessor or Lessee from the Government for the use of such Unit during the original term of this Lease or any extended term shall be paid over to, or retained by, Lessee, provided that no Event of Default or Default shall have occurred and be continuing; and all payments received by Lessor or Lessee from the Government for the use of such Unit after the original term of this Lease and any extended term shall have expired shall be paid over to, or retained by, Lessor.

(e) Lessor hereby appoints Lessee its agent to dispose of any Unit or component thereof suffering a Casualty Occurrence at the best price obtainable on an "as is, where is" basis; and Lessee shall notify Lessor and Owner prior to any such sale. Provided that Lessee shall have previously paid the Casualty Value to Lessor and that no Event of Default or Default shall have occurred and be continuing, Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit plus Lessee's out-of-pocket expenses in connection with such sale. Lessee shall pay any excess to Lessor. Lessee shall be entitled to credit against the Casualty Value payment in respect of any Unit permanently returned to the Builder pursuant to any patent indemnity provision of the Purchase Agreement in an amount equal to any net patent indemnity payment in respect of such Unit made by the Builder to Lessor under the Purchase Agreement. Lessee will pay all costs and expenses in connection with the sale of any Unit pursuant to a Casualty Occurrence.

(f) Except as hereinabove in this Section 8 provided, Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by Lessee hereunder.

(g) If, in its reasonable judgment, Lessee shall determine in good faith from time to time that any Unit shall have become no longer economical for Lessee to retain by reason of a change in economic circumstances, Lessee shall have the right, on at least 180 days' prior written notice to Lessor,

to terminate this Lease with respect to such Unit as of any succeeding Rental Payment Date specified in such notice (the Termination Date), provided that (i) each holder of Indebtedness, if outstanding, shall have consented to such termination, (ii) no Default or Event of Default shall have occurred and be continuing (other than with respect to such Unit as a consequence of a default under Section 7(a) or 10(b)), and (iii) on the Termination Date such Unit shall be in the same condition (except for noncompliance with Section 7(a) or Section 10(b), as the case may be) as if redelivered pursuant to Section 15. During the period from such termination notice until the fifth business day preceeding the Termination Date, Lessee shall use its best efforts, and Lessor may assist if it so chooses, to obtain bids for the purchase of such Unit. Lessee, at least five business days prior to such Termination Date, shall certify to Lessor the amount of each such bid and the name and address of the party submitting such bid. On the Termination Date, Lessor may elect to sell such Unit for cash to the bidder who shall have submitted the highest bid prior to the Termination Date. The total sale price realized at any such sale shall be retained by Lessor; and on the Termination Date, Lessee shall pay to Lessor (i) the excess, if any, of the Casualty Value for such Unit computed as of such date over the sale price of such Unit after the deduction of all expenses incurred by Lessor in connection with the sale, and (ii) the rental payment for such Unit due on the Termination Date. Lessor, however, by written notice to the Lessee given prior to the Termination Date, may elect to retain such Unit, in which case (i) Lessee shall not be obligated to pay the Casualty Value of such Unit to Lessor, and (ii) Lessee shall deliver such Unit to Lessor in accordance with Section 15 (except as aforesaid as to the condition of such Unit).

9. Reports and Inspection. (a) On or before April 30 in each year, commencing with the calendar year 1981, Lessee will furnish to Lessor, the Agent and Owner (A) an accurate statement (i) setting forth as at the preceding December 31 the amount, description and identifying numbers of all Units then leased hereunder and covered by the Purchase Agreement, the amount, description and identifying numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as Lessor and the Agent may

reasonably request; and (ii) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by Section 5 and by the Purchase Agreement have been preserved or replaced; and (B) a certification or verification of insurance coverage from Lessee's independent broker stating the amounts of insurance in effect with respect to the Equipment pursuant to Section 7 and the amount of deductible. Lessor and Owner, each at its sole cost and expense, shall have the right, by their agents, to inspect the Units and Lessee's records with respect thereto at such reasonable times as Lessor or Owner may request during the continuance of this Lease, but Lessor or Owner shall have no obligation to do so. Lessee shall promptly notify Lessor, Owner and the Agent of any material changes or any proposed material changes of which Lessee has knowledge in its insurance coverage in effect with respect to the Equipment pursuant to Section 7.

(b) Lessee shall promptly notify Lessor, Owner and the Agent of any occurrence of an Event of Default or Default, specifying such Event of Default or Default and the nature and status thereof.

10. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification; Additions. (a) NEITHER LESSOR NOR OWNER MAKES, HAS MADE NOR SHALL BE DEEMED TO HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO LESSEE HEREUNDER, AND NEITHER LESSOR NOR OWNER MAKES ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR AS TO LESSEE'S RIGHTS TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF LESSOR OR OWNER), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY SUCH COMPONENT, EITHER UPON DELIVERY THEREOF TO LESSEE OR OTHERWISE, AND NEITHER LESSOR NOR OWNER SHALL BE LIABLE (EXCEPT AS TO ACTS OF LESSOR OR OWNER) FOR ANY CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH SUCH REPRESENTATIONS AND WARRANTIES. CONSEQUENTIAL DAMAGES SHALL INCLUDE BUT NOT BE LIMITED TO (1) LOSS OF USE, INCOME OR PROFIT, (2) LOSS SUSTAINED AS THE RESULT OF INJURY OR DEATH TO ANY PERSON OR (3) LOSS OF OR DAMAGE TO PROPERTY (INCLUDING PROPERTY HANDLED OR TRANSPORTED IN THE UNITS), all such risks, as among Owner, Lessor and Lessee, being borne by Lessee. Lessor hereby irrevocably appoints and constitutes Lessee its

agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of Lessor or Lessee, as their interests may appear, at Lessee's sole cost and expense, whatever claims and rights Lessor may have against the Builder under Items 3 and 4 of the Schedule A to the Purchase Agreement; except that if at any time an Event of Default shall have occurred and be continuing, Lessor may assert and enforce, at Lessee's sole cost and expense, such claims and rights. Lessor shall have no responsibility or liability to Lessee or any other person with respect to the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Unit or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Unit or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, subleasing, servicing, maintenance, repair, improvement or replacement of any Unit. Lessee's delivery of an Acceptance Certificate shall be conclusive evidence as between Lessee and Lessor that the Units described therein are satisfactory to Lessee in the foregoing respects. Lessee will not assert any claim of any nature whatsoever against Lessor based on any of the foregoing matters.

(b) Lessee, for the benefit of Lessor and the Agent, at all times shall comply in all respects (including with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which operations involving the Units may extend, with the interchange rules established by the Association of American Railroads (the Interchange Rules), if applicable, and with all lawful rules and regulations of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws, rules and regulations affect the title, operation or use of the Units (all such laws, rules and regulations to such extent being hereinafter called the Applicable Laws). If, prior to the expiration of the original or the extended term of this Lease, the Applicable Laws shall require any alteration, replacement, addition or modification of or to any part on any Unit, Lessee will conform such Unit therewith at its own expense; but Lessee, at its own expense, may contest the validity or applicaton of any Applicable Law in any reasonable

manner which shall not, in the opinion of Lessor, Owner or the Agent, adversely affect the property or rights of Lessor, Owner or the Agent under this Lease or under the Purchase Agreement. Lessee, at its own cost and expense, may furnish other alterations, replacements, additions or modifications to any Unit, including any special devices, assemblies or racks at any time attached or affixed to any Unit, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interchange Rules, the United States Department of Transportation, the Interstate Commerce Commission or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Unit (collectively called the Additions) as Lessee may deem desirable in the proper conduct of its business so long as such Additions shall not be inconsistent with the continuing operation of such Unit, shall not diminish the value, utility or condition of such Unit below the value, utility and condition thereof immediately prior to the making of such Additions (assuming such Unit was then in the condition required to be maintained by the terms of this Lease), and shall not render such Unit ineligible for interchange service under the Interchange Rules. Title to all Parts (as hereinafter defined) incorporated in or installed as part of the Units, without further act, shall vest in Lessor and be subject to a valid first lien and prior perfected security interest under the Purchase Agreement if: (i) such Part is in replacement of or in substitution for, and not in addition to, any Part originally incorporated in or installed as part of a Unit at the time of the acceptance thereof hereunder or any Part in replacement of, or in substitution for, any such original Part; (ii) such Part is required to be incorporated in or installed as part of a Unit pursuant to the provisions of the first paragraph of Section 7 or the terms of the first sentence of this paragraph; or (iii) such Part cannot be readily removed from the Unit to which it relates without material damage to such Unit and without diminishing or impairing the value or utility which such Unit would have had at such time had such alteration, replacement, modification or addition not occurred. In all other cases, if no Event of Default or Default shall have occurred and be continuing, title to Parts incorporated in or installed as parts of the Units as a result of such alterations, replacements, modifications and additions shall vest in Lessee and may be removed by Lessee at any time during the term of this Lease and prior to the renewal thereof and prior

to the return of the Units to Lessor pursuant to Section 15. The term "Part" shall include any appliance, part, instrument, accessory, furnishing or other equipment of any nature which may from time to time be incorporated in or installed as part of any Unit.

(c) Lessee agrees to pay, and to indemnify, protect and hold harmless each Indemnified Party from and against, all claims, causes of action, losses, damages, liabilities, expenses (including fees and expenses of attorneys) and costs (including claims, causes of action, losses, damages, liabilities, expenses and costs, both for strict liability in tort, and for negligence, either active or passive, which shall not have occurred because of a wrongful act of such Indemnified Party) incurred in any manner by or for the account of any of them (i) relating to any Unit, including the construction, purchase, delivery, acceptance, rejection, ownership, sale, leasing, return or storage of any Unit or as a result of the use, maintenance, repair, replacement, operation or condition thereof (whether defects are latent or discoverable by Lessee or any Indemnified Party), (ii) by reason or as the result of any act of omission (whether negligent or otherwise) of Lessee, for itself or as agent or attorney-in-fact for Lessor hereunder, or any act or omission of Lessor or (iii) as a result of claims for patent, trademark or copy-right infringements (collectively called the Indemnified Matters). Notwithstanding the foregoing, Owner shall have no right to receive any payment from Lessee in the nature of an indemnity payment with respect to an Indemnified Matter to the extent that Owner shall have recourse to Lessor for the amount of such payment under the Trust Agreement or otherwise. The amount Lessee shall be required to pay with respect to any Indemnified Matter shall include a payment to the Indemnified Party sufficient to restore such party to the same position, after considering the effect of such payment on its United States Federal income taxes and state and local income taxes or franchise taxes based on net income, that such Indemnified Party would have been in had the Indemnified Matter not been incurred. Lessee shall be obligated under this Section 10, irrespective of whether any Indemnified Party shall also be indemnified with respect to the same matter under any other agreement by any other person; and the Indemnified Party seeking to enforce its indemnification hereunder may proceed directly against Lessee under this Section 10 without first resorting to any such other rights of indemnification.

(d) Lessee further agrees to indemnify, protect and hold harmless each Indemnified Party, as a third-party beneficiary hereof, from and against all liabilities, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against such Indemnified Party because of the use in or about the construction or operation of any Unit of any article or material which is specified by Lessee and not manufactured by the Builder or of any design, system, process, formula or combination which specified by Lessee and not developed or purported to be developed by the Builder, in each case which shall infringe or is claimed to infringe on any patent or other right. Lessee will give notice to the Builder of any claim known to Lessee from which liability may be charged against the Builder with respect to the foregoing.

(e) Lessee shall not be released from its obligations hereunder in the event of any damage to, or the destruction or loss of, any or all of the Units.

(f) Lessee shall prepare and deliver to Lessor, within a reasonable time prior to the required filing date (or, to the extent permissible, file on behalf of Lessor or Owner), all reports (other than tax returns, except as otherwise provided in Section 6) to be filed by Lessor or Owner with any Federal, state or other regulatory authority by reason of the ownership by Lessor or the Owner of the Units, or the leasing thereof to Lessee.

(g) None of the indemnities in this Section 10 shall be deemed to create any rights of subrogation, from or under any Indemnified Party, in any insurer or third party against Lessee or Lessor therefor, whether because of any claim paid or defense provided for the benefit thereof or otherwise. The foregoing indemnities by Lessee shall not constitute a guarantee by Lessee of the payment of any instalment of principal or interest payable under the Purchase Agreement or a guarantee of the residual value of the Units. The indemnities contained in this Section 10 shall survive the expiration or termination of this Lease and the return of the Units as provided in Section 12 or 15 with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and return, and are expressly made for the benefit of, and shall be enforceable by, each Indemnified Party.

(h) Upon the payment in full to any Indemnified Party of any indemnity as contained in this Section 10 by Lessee, and if no Event of Default or Default shall have occurred and be continuing, (i) Lessee shall be

subrogated to any right of such Indemnified Party (except against another Indemnified Party) in respect of the matter against which indemnity has been given; and (ii) any payments received by such Indemnified Party from any person (except Lessee) as a result of any matter with respect to which such Indemnified Party has been indemnified by Lessee pursuant to this Section 10 shall be paid over to Lessee to the extent necessary to reimburse Lessee for indemnification payments previously made in respect of such matter.

11. Default. (a) If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

(i) default shall be made by Lessee in the payment of any amount provided for in Section 3, 8 or 14, and such default shall continue for seven business days;

(ii) Lessee shall make or permit any unauthorized assignment or transfer of this Lease or any interest herein, or of the right to possession of any Unit, and Lessee, for more than 30 days after demand in writing by Lessor, shall fail to secure a reassignment or retransfer to Lessee of such Lease, interest or right;

(iii) default shall be made in the observance or performance of any other covenant, condition or agreement of Lessee contained herein or in the Consent or the Participation Agreement, and such default shall continue for 30 days after written notice to Lessee specifying the default and demanding that the same be remedied;

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

(v) any other proceeding shall be commenced by or against Lessee for any relief which shall include, or might result in, any modification of obligations of Lessee hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of Lessee hereunder or under the Consent), 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 obligations of Lessee under this Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for Lessee, or for the property of Lessee, in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced;

then, in any such case, Lessor, at its option, may:

(I) proceed by appropriate court action or actions either at law or in equity to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, including net after-tax losses of Federal and state income tax benefits to which Lessor would otherwise be entitled under this Lease; or

(II) by notice in writing to Lessee terminate this Lease, whereupon all rights of Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but Lessee shall remain liable as herein provided; and thereupon subject to compliance with all mandatory requirements of law, Lessor, by its agents, may enter upon the premises of Lessee or other premises where any of the Units may be and take possession of all or any such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to Lessee for

such action or inaction or for any proceeds arising therefrom; but Lessor nevertheless shall have a right to recover from Lessee all amounts which under the terms of this Lease may be then due or 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, the numerator of which is such number of days and the denominator of which is the total number of days in such full rental period) and also to recover forthwith from Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts which Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to (A) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 9% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, plus (B) to the extent not paid pursuant to any other section of this Lease an amount which, after deduction of all taxes required to be paid by Lessor in respect of the receipt thereof under the laws of any Federal, state or local government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall, in the reasonable opinion of Lessor, be equal to all or such portion of the investment credit, referred to in clause (i) of Section 17(a), lost, not claimed, not available for claim, disallowed or recaptured by or from Lessor as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by Lessee in Section 17 or any other provision of this Lease or the sale or other disposition of Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as shall cause Lessor's net return under

this Lease to be equal to the net return that would have been available to Lessor if it had been entitled to utilization of all or such portion of the deductions with respect to depreciation and interest, referred to in clauses (ii) and (iii) of Section 17(a), respectively, which were lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by Lessee in Section 17 or in any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to Lessor by Lessee, the termination of this Lease, Lessee's loss of the right to use such Unit, any action or inaction by Lessee or the sale or other disposition of Lessor's interest in such Unit after the occurrence of an Event of Default, plus such sum as will pay or reimburse Lessor for any interest, penalties or additions to tax incurred in connection with such loss, failure to claim, inability to claim, disallowance or recapture; or (y) an amount equal to the excess, if any, of the Casualty Value as of the Rental Payment Date on or next preceding the date of termination over the amount Lessor reasonably shall estimate to be the sales value of such Unit at such time; provided, however, that if Lessor shall have sold any Unit, Lessor, in lieu of collecting any amounts payable to Lessor by Lessee pursuant to the preceding clauses (x) or (y) of this part (II) with respect to such Unit, may, if it shall so elect, demand that Lessee pay Lessor, and Lessee shall pay to Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit as of the Rental Payment Date on or next preceding the date of termination over the net proceeds of such sale.

In addition, Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies, and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit and in connection with any suit to enforce the Lessor's rights hereunder.

(b) The remedies in this Lease provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. Lessee hereby waives any mandatory requirements of law, now or herafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver shall not, at the time in question, be prohibited by law. Lessee hereby waives all existing or future claims to any offset against the rentals due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by Lessee or on its behalf. Lessee hereby waives all claims against Lessor and the Agent and their agent or agents for damages of whatever nature in connection with any retaking of any Unit in any reasonable manner. Lessor and Lessee agree that Lessor shall be entitled to all rights (such rights being fundamental to the willingness of Lessor to enter into this Lease) provided for in 11 U.S.C. Section 1168 or any comparable provision of any amendment thereto, or of any other bankruptcy act, so that Lessor shall have the right to take possession of the Equipment upon an Event of Default under this Lease regardless of whether Lessee is in reorganization, subject to the provisions of 11 U.S.C. Section 1168 or any such comparable provision.

(c) No failure by Lessor to exercise, and no delay by Lessor in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege by Lessor preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

(d) If Lessee shall fail to perform or comply with any agreement, covenant or condition contained in this Lease and such nonperformance or noncompliance would, with the lapse of time, the making of a demand or the failure to take action, result in an Event of Default under clause (i) or (ii) of Section 11(a), Lessor, upon notice to Lessee, may (but shall not be required to), perform or comply with such agreement, covenant or condition and the amount of the reasonable costs and expenses of Lessor incurred in connection with such performance or compliance, together with interest on such amounts at the rate of 14-1/2% per annum, or if such rate is not legally enforceable then at the highest legally enforceable rate, shall be payable to

Lessor by Lessee upon demand. No such performance or compliance by Lessor shall be deemed a waiver of the rights and remedies of Lessor against Lessee hereunder or be deemed to cure a default by Lessee hereunder.

Section 12. Return of Units upon Default. (a) If this Lease shall terminate pursuant to Section 11, Lessee shall forthwith deliver possession of the Units to Lessor. Except as hereinafter provided, each Unit so delivered shall be in the condition required by Section 7(a). For the purpose of delivering possession, Lessee shall:

(i) forthwith and in the usual manner (including, but not by way of limitation, by giving prompt telegraphic or written notice to the Association of American Railroads and each railroad to which any Unit has been interchanged or which may have possession thereof to return such Unit) place such Unit upon such storage tracks of Lessee or any of its affiliates as Lessor reasonably may designate;

(ii) permit Lessor to store such Units on such tracks at the risk of Lessee; such storage shall be without charge for insurance (which Lessee shall maintain in conformity with Section 7), rent or storage until such Units have been sold, leased or otherwise disposed of by Lessor but in no event later than the later of (x) 30 days after the payment in full of all Indebtedness and other sums due under the Purchase Agreement and (y) a storage period of 120 days following notification by Lessee to Lessor that 75% of the Units have been delivered for storage (or with respect to any Unit not delivered at the time of such notification, 120 days following notification from Lessee to Lessor that such Unit has been delivered for storage); and

(iii) transport the same to any reasonable place, without charge for the portion thereof occurring east of the Missouri River, (i) on the lines of railroad operated by Lessee or any of its affiliates, or (ii) for interchange to any connecting carrier for shipment, all as directed by Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as provided above shall be at the expense and risk of Lessee and are of the essence of this Lease. Upon application to any court of equity having jurisdiction, Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, deliver,

store and transport the Units. Except as hereinafter provided, during any storage period, Lessee will, at its own expense, maintain and keep the Equipment in the condition required by Section 7(a) and will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. Anything to the contrary contained in this Section 12 notwithstanding, Lessee shall have no obligation under clause (ii) or (iii) of Section 7(a) after the later of (i) the payment in full of all Indebtedness and other sums due under the Purchase Agreement and (ii) the earlier of Lessor's disposition of the Units and the scheduled date of expiration of the then term of this Lease. All rent and per diem charges earned in respect of the Units (including incentive rate charges) after the date of termination of this Lease shall belong to Lessor and, if received by Lessee, shall be promptly turned over to Lessor.

(b) Without in any way limiting the foregoing obligations of Lessee under this Section 12, Lessee hereby irrevocably appoints Lessor as the agent and attorney-in-fact of Lessee, with full power and authority, at any time while Lessee is obligated to deliver possession of any Unit to Lessor, to demand and take possession of such Unit in the name and on behalf of Lessee from whososever shall be in possession of such Unit at the time.

13. Assignment; Possession and Use; Liens. (a) This Lease shall be assignable in whole or in part by Lessor without the consent of Lessee but, in the case of a lessor other than the Agent or the successors thereof or the Owner, only to any successor Lessor which may be appointed pursuant to Article VII of the Trust Agreement or to any banking or financial institution which has a combined capital and surplus of at least $50,000,000 and which does not have an interlocking relationship with Lessee within the meaning of Section 10 of the Clayton Act (49 U.S.C. Section 20); but Lessee shall be under no obligation to any assignee of Lessor except upon written notice of such assignment from Lessor. All rights of Lessor hereunder shall inure to the benefit of Lessor's successors and assigns. So long as this Lease shall be assigned to the Agent or any successor thereto as collateral, the term "Lessor" shall include the Agent and any successors thereto or assignees thereof unless the context shall otherwise require, except that the Agent shall not be subject to any liabilities or obligations under this Lease (the

Agent being specifically named in certain provisions herein shall not be construed to mean that the Agent or any successor thereto is not entitled to the benefits of other provisions where only Lessor is named).

(b) Without the prior written consent of Lessor and the Agent, Lessee may sublease (which sublease by its terms shall be subject to the rights and remedies of Lessor and the Agent hereunder) the Units to, or permit their use by, a user incorporated in the United States of America (or any state thereof or the District of Columbia), upon lines of a railroad owned or operated by Lessee or such user or by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia) or over which Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains or over which their equipment is regularly operated pursuant to contract, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to this Lease; provided, however, that (i) the Agent's and Lessor's consent, not to be unreasonably withheld, must be obtained for any sublease that would be longer than six months, (ii) Lessee shall not sublease or permit the sublease or use of any Unit for service involving operation or maintenance outside the United States of America (except that occasional service in Canada shall be permitted so long as such service in Canada does not involve regular operation and maintenance outside the United States of America), and (iii) any such sublease or use shall be consistent with Section 17. No sublease by Lessee shall relieve Lessee of its obligations hereunder, which shall be and remain those of a principal and not a surety.

(c) Nothing in this Section 13 shall be deemed to restrict the right of Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of the United States of America or any state thereof or the District of Columbia (which shall have duly assumed the obligations of Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all the lines of railroad of Lessee; provided, however, that such assignee, lessee or transferee will not, upon the effectiveness of such merger, consolidation, lease or acquisition, be in default hereunder, and that such

acquisition or lease of railroad lines of Lessee shall not alter in any way Lessee's obligations to Lessor and Agent hereunder which shall be and remain those of a principal and not a surety. The consent of Lessor and the Agent, not to be unreasonably withheld, must be obtained for any other assignment or transfer by Lessee; and any such assignment or transfer made without such consent shall be void. No such other assignment or transfer by Lessee shall relieve Lessee of its obligations hereunder, which shall be and remain those of a principal and not a surety.

(d) Lessee, at its own expense, will pay, or satisfy and discharge: (i) any claim arising against, through or under Lessee and its successors and assigns which, if unpaid, might constitute or become a lien, charge, security interest or other encumbrance upon or with respect to any Unit (unless otherwise expressly permitted by this Lease); (ii) any lien, charge or other encumbrance which may be levied against or imposed upon any Unit as a result of the failure of Lessee to perform or observe any of its covenants under this Lease; and (iii) any other lien, charge or other encumbrance which arises by virtue of claims against, through or under any party other than Lessor, (except any such claim caused by the negligence of Lessor) or Owner; such obligations shall survive the expiration or earlier termination of this Lease and the return of the Equipment as to all such claims, liens, charges, security interests, or other encumbrances arising prior to such expiration or termination and return (notwithstanding the foregoing, Owner shall have no right to receive any payment from Lessee in the nature of an indemnity payment with regard to the foregoing to the extent that Owner shall have recourse to Lessor for the amount of such payment under the Trust Agreement or otherwise). The foregoing covenant, however, will not be breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's mechanics, workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent. Lessee, however, shall be under no obligation to discharge any such lien, charge, security interest or other encumbrance so long as it shall be contesting the same in good faith and by appropriate legal proceedings, and the failure to discharge the same shall not, in the opinion of Lessor or the Agent, as the case may be, adversely affect the title, property or rights of Lessor hereunder or of the Agent under the Purchase Agreement and the Lease Assignment.

14. Right of Extension; Right of First Refusal. (a) If this Lease shall not have been earlier terminated and Lessee shall not be in default hereunder, Lessee, by written notice delivered to Lessor not less than 180 days prior to the end of the original term of this Lease, may elect to extend the term of this Lease with respect to all but not fewer than all the Units then covered hereby for a period of 5 years (the extended term) commencing on the date of the scheduled expiration of the original term of this Lease and ending on the day following the twenty-fifth anniversary of the Basic Rent Commencement Date.

(b) The extended term of this Lease shall be on the same payment anad other terms and conditions as are contained in the Lease, except that (i) the rentals provided for in Section 3(a) for any Unit shall be in an amount equal to the Fair Market Rental (as hereinafter defined) of such Unit, and (ii) the Casualty Value of such Unit as of the first day of the extended term shall be equal to the greater of (x) the Fair Market Purchase Price (as hereinafter defined) of such Unit on such date, and (y) the present value as of such date of all rentals provided for in Section 3(a) with respect to such Unit and payable during such extended term as provided in clause (i) above, discounted at a rate of 13 1/2% per annum, compounded semiannually from the respective dates upon which such rentals are payable hereunder to such date, and thereafter such Casualty Value for the remainder of the extended term shall be reduced on a straight-line basis (computed on the basis of a 360-day year of twelve 30-day months) over the estimated remaining useful life of such Unit (as of the first day of the extended term) to the estimated salvage value of such Unit (as of the first day of the extended term). Both the estimated remaining useful life and the estimated salvage value, if not agreed upon by Lessor and Lessee, shall be determined by appraisal consistent with the procedure hereinafter set forth.

(c) If Lessee shall not have extended the term of this Lease at the expiration of the original term hereof, Lessee shall have the option to exercise a right of first refusal to purchase all of the Units for which Lessor shall have given its notice hereinafter referred to effective at or after the end of such original term; if Lessee shall have extended the term of this Lease as provided above, Lessee shall have the option to exercise a right of first refusal to purchase all of the Units for which Lessor shall have given its notice hereinafter referred to effective at or after the end

of such extended term. Either of such options shall be exercisable by Lessee by giving Lessor, not less than six months prior to the expiration of the original or extended term of this Lease, as the case may be, notice of Lessee's intention to exercise such right. If Lessor shall desire to sell any Unit to a third party effective upon or after the later of the expiration of the original or extended term of this Lease, Lessor shall (i) as promptly as practicable after Lessee shall have given its notice and in any event not less than 100 days prior to the expiration of such term, notify Lessee that it intends to sell such Unit; (ii) if the Fair Market Purchase Price (as hereinafter defined) shall not otherwise be agreed upon by Lessor and Lessee, engage an appraiser appointed as provided in this Section 14 to determine the Fair Market Purchase Price of such Unit (the cost of which shall be shared equally by Lessor and Lessee so long as Lessee shall buy such Unit pursuant to this paragraph; otherwise Lessee shall bear such cost); (iii) upon receipt of such determination, deliver a true copy thereof to Lessee; (iv) in a commercially reasonable manner, solicit offers to buy such Unit, except for such additions, alterations, modifications and replacements which may be removed by Lessee pursuant to Section 10) (Lessee agrees to assist in the solicitation of such bids by advising Lessor of the location of Units so that such Units may be viewed but in no event shall Lessee be obligated to withdraw any Unit from service at any time); and (v) after receipt of one or more offers, deliver to Lessee a true copy of the most favorable bona fide offer (in Lessor's judgment), if any, from a party not related to Lessee, Lessor or Owner. Lessee shall have the right, exercisable by written notice delivered within 15 days after the later of the receipt of such copy (or the receipt of a notice from Lessor that no such offer has been received) and the receipt of such determination of Fair Market Purchase Price, to purchase such Unit at the higher of (x) such Fair Market Purchase Price and (y) the sale price set forth in such offer, if any. If no such offer is received, Lessee may purchase such Unit for a purchase price equal to such Fair Market Purchase Price. If Lessee shall have delivered a notice of its exercise of its right of first refusal with respect to such Unit, this Lease (including the obligation to pay rental) shall be further extended upon the same terms and conditions set forth herein from the date such notice is delivered to Lessor until the date of such purchase, which shall be not more than 15 days after the last day of such term of this Lease. If Lessee shall fail to

give notice of its desire to exercise its right of first refusal hereunder or if Lessor shall determine not to sell any Units to a third party within 2 years after the termination hereof, Lessee's right of first refusal shall terminate.

(d) Upon payment of the Fair Market Purchase Price for any Unit (or such other purchase price as is provided for herein) pursuant to an exercise by Lessee of its right of first refusal with respect to such Unit, Lessor shall execute and deliver to Lessee, or upon request of Lessee to Lessee's assignee or nominee, (i) a bill of sale (without warranties, except as hereinafter provided in this clause (i)) for such Unit which will transfer title to such Unit to Lessee, or to such assignee or nominee, as the case may be, free and clear of all claims, liens, security interests and other encumbrances created by or arising through Lessor or Owner, other than claims, liens, security interests and encumbrances which Lessee is obligated to pay or discharge under or pursuant to this Lease, and (ii) an opinion of counsel (who may be in-house counsel of Owner), satisfactory to Lessee, to such effect. Notwithstanding the foregoing, if any Unit so purchased is to be sold to Lessee under a conditional sale agreement, Lessor shall have the right to retain a security interest in such Unit until such time as all payments in respect thereof shall have been made.

(e) If Lessee shall extend the term of this Lease for the extended term referred to in this Section 14, and Lessor (having no obligation to attempt to sell the Units) shall not give the 100 days notice referred to in Section 14(c) and Lessor shall receive an offer from a third party or parties not related to Lessee, Lessor or Owner for the leasing of any Unit or Units, which offer is acceptable to Lessor, Lessor shall so notify Lessee prior to the expiration of the extended term hereof as long as no Event of Default shall be continuing. If Lessee shall notify Lessor within 15 days of the notice referred to in the preceding sentence of its intention to further extend this Lease with respect to such Units, this Lease shall be so extended on the same terms and conditions and for such Units as were contained in such acceptable third party offer.

(f) The Fair Market Rental or the Fair Market Purchase Price, as the case may be, shall be determined on the basis of, and shall be equal in amount to, the cash rental or the purchase price (as of the date the context hereof requires), as the case may be, which would obtain in an arm's-length

transaction between an informed and willing lessee or purchaser, as the case may be, and an informed and willing lessor or seller (other than a lessee currently in possession) under no compulsion to lease or sell, but there shall be excluded from such determination any portion of such rental or purchase price attributable to additions, alterations, modifications and replacements which Lessee is entitled to remove pursuant to Section 10; in addition, the Fair Market Rental shall be determined on the basis of the term and other terms and conditions of the lease being considered. In making such determination of Fair Market Rental or Fair Market Purchase Price, costs of removal from the location of current use shall not be considered and the Units involved shall be deemed to have been collected in one place on the lines of Lessee as directed by Lessor. If, within 20 days from the giving of notice by Lessee of its election to extend the term of this Lease or from the giving of notice by Lessor that it intends to sell any Units as aforesaid, Lessor and Lessee shall be unable to agree upon the Fair Market Rental or the Fair Market Purchase Price of such Units, such rental or purchase price shall be determined in accordance with the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such rental or purchase price by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser shall be so appointed within 15 business days after such notice shall have been given, each party shall appoint an independent appraiser within 20 business days after such notice shall have been given and the two appraisers so appointed, within 25 business days after such notice is given, shall appoint a third independent appraiser. If no such third appraiser is appointed within 25 business days after such notice shall have been given, either party may request the American Arbitration Association to make such appointment, and both parties shall be bound by any appointment so made. Any appraiser appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental or the Fair Market Purchase Price, as the case may be, of the Units then subject to this Lease as though all such Units were being leased or sold as a unit, within 30 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental or Fair Market Purchase Price, as the case may be, of the

single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from that of the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto as the Fair Market Rental or Fair Market Purchase Price, as the case may be. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental or the Fair Market Purchase Price, as the case may be, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. Except as otherwise provided herein, Lessee and Lessor shall share equally all appraisal expenses.

15. Return of Units upon Expiration of Term. As soon as practicable after the expiration of the original or the extended term of this Lease with respect to any Unit, Lessee, at its own cost and expense and at the request of Lessor, will deliver possession of such Unit, if not purchased by Lessee, to Lessor upon such storage tracks of Lessee as Lessee may reasonably designate, or, in the absence of such designation, as Lessor may reasonably select, and permit Lessor to store such Unit on such tracks for a period not exceeding 60 days following notification to Lessor by Lessee that 75% of the Units have been assembled on such tracks and delivered for storage (or, with respect to any Unit not delivered at the time of such notification, 60 days following notification from Lessee that 75% of the Units have been assembled and delivered for storage) and transport the same, at any time within such 60-day period, to any reasonable place east of the Missouri River on the lines of a railroad operated by Lessee, or to any connecting carrier for shipment, all as mutually agreed upon by Lessor and Lessee, the movement and storage of such Units to be at the expense and risk of Lessee (which shall during such period maintain the insurance required by Section 7). If any Unit shall suffer a Casualty Occurrence during such storage period, Lessee shall pay Lessor the Casualty Value thereof as provided in Section 8. During any such storage period, Lessee will permit Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that

Lessee shall not be liable, except in the case of negligence or strict liability of Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either Lessor or any prospective purchaser, lessee or user, such rights of inspection. Except as hereinafter provided in this Section 15, each Unit returned to Lessor pursuant to this Section 15 (except for additions, alterations, modifications and replacements which Lessee shall be entitled to remove and shall remove pursuant to Section 10) shall be in the condition required by Section 7(a). The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease; and, upon application to any court of equity having jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee requiring specific performance thereof. During any storage period, Lessee, at its expense, will maintain and keep the Units (except for additions, alterations, modifications and replacements which Lessee shall be entitled to remove and shall remove pursuant to Section 10) in the condition required by Section 7(a). Notwithstanding anything to the contrary contained in this Section 15, Lessee shall have no obligation under clause (ii) of Section 7(a) after the expiration of the term of this Lease. All rent and per diem charges earned in respect of the Units after the date of termination of this Lease shall belong to Lessor and, if received by Lessee, shall be promptly turned over to Lessor. If any Unit, upon the expiration of the term of this Lease, shall be on the tracks of Lessee or if any Unit shall arrive thereafter upon the tracks of Lessee, and in each case shall be free from any Bill of Lading or other required movement, shall not be in a repair shop or ordered to a repair shop and shall not be delivered to such storage tracks within 60 days after the later of such expiration or such arrival or completion of such repair, as the case may be, Lessee shall pay to Lessor a per diem charge for such Unit which shall be equal to the daily rental payable hereunder upon the day prior to the expiration of the term hereof for the period commencing upon the 61st day after the later of such expiration, arrival or completion and ending upon the date such Unit is delivered to such storage tracks.

16. Recording. Lessee, at its own expense, will cause this Lease, the Purchase Agreement and any assignment hereof or thereof to be filed in accordance with 49 U.S.C. Section 11303 and deposited with the Registrar General of Canada (and notice of such deposit to be given forthwith in The

Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. Lessee will undertake the filing, registering, deposit, and recording required of Lessor under the Purchase Agreement and from time to time will do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit, or rerecord whenever required) all further instruments required by law or reasonably requested by Lessor or the Agent for the purpose of proper protection, to their satisfaction, of the Agent's and Lessor's respective rights in the Units, or for the purpose of carrying out the intention of this Lease, the Purchase Agreement and the assignments hereof and thereof to the Agent; and Lessee will promptly furnish to the Agent and Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this Section 16, and an opinion or opinions of counsel for Lessee with respect thereto satisfactory to the Agent and Lessor. This Lease and the Purchase Agreement, and the assignments thereof, shall be filed with the Interstate Commerce Commission and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision shall be made for publication of notice of such deposit in The Canada Gazette prior to the delivery and acceptance hereunder of any Unit.

17. Tax Indemnities. (a) Subject to Section 17(e), Owner shall be entitled only to the indemnities provided in Section 17(d) for Federal income tax and state, city and local tax purposes with respect to any of the following events (a Loss):

(i) for the year that the Units are placed in service, Owner shall not be entitled to or shall suffer a disallowance, elimination, reduction, or disqualification of or shall not have or shall lose the right to claim under Section 38 and related Sections of the Code, an investment credit for new tangible personal property with respect to such Units of at least 10% of the Purchase Price of such Units (Investment Credit); for purposes of the Investment Credit the Units will be treated as having been placed in service not later than December 31, 1980;

(ii) Owner shall not be entitled to or shall suffer a disallowance, elimination, reduction, or disqualification of or shall not have or shall lose the right to claim the benefit of current deductions for depreciation on any Unit commencing in the year that such Unit is placed in service under Section 167(a) of the Code (x) computed pursuant to the double declining balance

method of depreciation, switching to the sum-of-the-years digits and switching to the straight-line method, all when most beneficial to the Owner without the consent of the Commissioner of Internal Revenue and pursuant to the asset depreciation range system of Section 167(m) of the Code and Section 1.167(a)-11 of the Regulations issued thereunder, and (y) computed on the basis (A) of a net salvage value of zero (after applying Section 167(f)(1) of the Code), (B) that the adjusted tax basis of such Unit under Section 167(g) of the Code is not less than the Purchase Price with respect to such Unit, (C) that the half-year convention as provided in Reg. Section 1.167 (a)-11(c)(2) be utilized (including 6 months of depreciation in 1980), and (D) that such Unit is entitled to an asset depreciation period of 12 years, which is the lower limit listed in Rev. Proc. 77-10, 1977-1 C.B. 548, for property classified in Asset Guideline Class 00.25 (ADR Deduction);

(iii) Owner shall not be entitled to or shall suffer a disallowance, elimination, reduction, or disqualification of or shall not have the right to claim or shall lose the right to claim the benefit of current deductions under Section 163 of the Code for interest payable under the Purchase Agreement (Interest Deduction);

(iv) any investment credit or deduction for depreciation with respect to any Unit, or any future tax benefit referred to in clause (vi) below relating to a Capital Expenditure (as hereinafter defined), shall be disallowed or recaptured in whole or in part pursuant to Section 47, Section 1245 or other relevant section of the Code, as the case may be;

(v) the Owner shall lose any portion of its foreign tax credit otherwise allowable under Section 901 of the Code because of the use of any Unit or Units outside the United States ("Foreign Tax Credit");

(vi) pursuant to the Code or the regulations issued thereunder or Rev. Proc. 79-48, 1979-2 C.B. 529, any amount shall be required to be included and is included in the gross income of Owner as a result of any improvement, alteration, modification, or addition (including replacement of parts) to a Unit made by Lessee or any other person, with respect to the period of the lease, including any extended term (a Capital Expenditure), but if a Capital Expenditure is included in the gross income of Owner, Owner shall have attempted and shall continue to maximize the future tax benefits from such Capital Expenditure by making such elections (including where advantageous

accelerated depreciation elections and election of the applicable asset guideline repair allowance if then permitted) as will increase Owner's tax benefits.

(b) Lessee represents, warrants and indemnifies that:

(i) at the time of delivery of each Unit, such Unit will constitute property the entire basis of which qualifies for the Investment Credit under Sections 38, 46, 48, and 50 of the Code;

(ii) at the time of delivery of each Unit, such Unit will constitute "new Section 38 property" within the meaning of Sections 46 and 48 of the Code and will not have been used by any person at such time so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 1-67(c)(2) of the Code from commencing on or after such date of delivery;

(iii) Lessee will not at any time during the term of this Lease use or fail to use or permit the use of any Unit in such a way as to disqualify it as "Section 38 property" within the meaning of Section 48(a) of the Code or as property eligible for the ADR Deduction unless such use (but only to the extent such use) is required by the terms of this Lease or by any law or regulation;

(iv) the Lessee will not take any action or fail to take any action which will cause any Unit to be "placed in service" within the meaning of Sections 46 and 167(m) of the Code and the regulations promulgated thereunder prior to delivery under the Lease;

(v) during the term of the Lease with respect to each Unit, such Unit will not be used predominantly outside the United States within the meaning of Section 48(a) of the Code;

(vi) for Federal, state and local income tax purposes, Lessee will take no action nor cause any action so as to result in any amounts includable in the gross income of the Owner with respect to the Units and any deductions allowable to the Owner with respect to the Units being treated as derived from, or allocable to, sources without the United States;

(vii) The Lessee will not claim that it is the owner of the Units at any time during the term of the Lease.

(c) Lessee agrees that neither it nor any corporation controlled by it, in control of it or under common control with it, directly or indirectly, will at any time take any action or file any tax returns or other documents inconsistent with the foregoing (other than any action or filing required by the terms of this Lease or any law or regulation, or any mandatory accounting

requirement applicable to Lessee). Lessee agrees to keep and make available for inspection and copying upon demand by Trustee or Owner such records as will enable Owner to determine the extent to which Owner is entitled to the full benefit of the Investment Credit, the ADR Deduction and the Interest Deduction, with respect to the Units, or the extent to which Owner may suffer a loss of Foreign Tax Credit because of use of the Units outside of the United States or will realize gross income because of a Capital Expenditure. For purposes of this Section 17(c), it is assumed that Owner shall claim in its tax returns all the deductions, credits, and benefits contemplated by Section 17(a).

(d) Except as hereinafter provided, Lessee shall indemnify Owner only with respect to any Loss that results from:

(i) the noncompliance with or breach or misrepresentation by Lessee of any provision of Section 17(b) or (c) hereof; or

(ii) a Capital Expenditure; or

(iii) any act or failure to act at any time by Lessee or any of its officers, employees or agents, except any actions or omissions required to be performed under the terms of this Lease or any law or regulation or any mandatory accounting requirements applicable to Lessee; or

(iv) the inaccuracy or incompleteness of any statement, representation or warranty in any letter, report, opinion, document, or certificate furnished to Trustee or Owner by Lessee (or any officer, agent, attorney, accountant, representative, or employee thereof) including, but not limited to, any statement, representation or warranty in any of the Documents and any statement in any letter or document concerning the fair market value and remaining useful life of each Unit at the end of the original term of the Lease.

(e) Notwithstanding Section 17(d), Lessee shall not indemnify Owner with respect to any Loss that results from any of the following events (i) through (vi) or that results solely from any of the following events (vii) through (x) (such events (i) through (x) being hereinafter called the Excluded Events):

(i) a Casualty Occurrence with respect to any Unit, if Lessee shall have made all payments with respect to such Unit that were required to be made pursuant to Section 8 hereof; or

(ii) a voluntary transfer or other voluntary dispostion by Lessor or Owner, including any voluntary transfer or disposition by Lessor or Owner resulting from bankruptcy or other proceedings for relief of debtors in which Lessor or Owner is the debtor, of any interest in a Unit; or the voluntary reduction by Lessor or Owner of its interest in the rentals from a Unit under this Lease (other than pursuant to the assignment of this Lease to the Agent), unless, in each case, an Event of Default shall have occurred and be continuing; or

(iii) the failure of Owner to claim in a timely and proper manner (including all appropriate elections) on its income tax returns for the appropriate years any credit or deduction contemplated by Section 17(a) (unless Owner shall have received an opinion of independent reputable tax counsel retained jointly by it and Lessee at their joint expense that such claim would be unlawful); or

(iv) the failure of Owner to take timely action in contesting a claim made by the Internal Revenue Service, but only if such action is required by Section 17(f); or

(v) any participation in the residual value of any Unit by any party other than Owner; or

(vi) the tax status of Owner or the tax status of the trust purported to be created by the Trust Agreement; or

(vii) the failure of Owner to have sufficient Federal income tax liability against which to apply the Investment Credit or sufficient income to benefit from such depreciation or interest deductions; or

(viii) except to the extent set forth in clauses (A) and (B) of Section 3(a), any amendment to, or change in, the Code, the regulations thereunder or published administrative or judicial interpretations of the Code or such regulations; or

(ix) any act or failure to act, other than an act or failure to act specified in Excluded Events (i) through (vi), at any time, by Lessor or Owner or any of its officers, employees or agents, which is inconsistent with the obligations of Lessor or Owner under this Lease, the Trust Agreement or the Participation Agreement, except at a time when an Event of Default has occurred and is continuing.

(x) Any involuntary transfer or disposition by Lessor or Owner resulting from bankruptcy or other proceedings for relief of debtors in which Lessor or Owner is the debtor, of any interest in a Unit, unless an Event of Default shall have occurred and be continuing.

(f) Owner shall, without action by Lessee, contest any claim or proceeding by the Internal Revenue Service or any state or local taxing authority which, if successful, would require Lessee to indemnify Owner under this Section 17 (any such claim or proceeding being hereinafter in this Section 17(f) and Section 17(g) called a claim) until the conclusion of the audit or other proceeding at the first administrative level. In the event a claim survives or is made at or after the conclusion of the first administrative level, Owner agrees to contest such claim if requested to do so in writing by Lessee; provided, however, that:

(i) within 20 days after notice by the Owner to the Lessee of such claim, the Lessee shall request that such claim be contested;

(ii) Owner shall determine in its sole discretion the nature of all action to be taken to contest such claim, excluding the right to settle or concede such claim, but including, without limitation, (A) the right to forego any and all administrative appeals, proceedings, hearings and conferences with respect to such claim and (B) the right to pay the tax claimed and sue for a refund in the appropriate United States District Court or the United States Court of Claims (or appropriate state court) as the Owner shall elect, or contest such claim in the United States Tax Court (or the appropriate state court or administrative tribunal). Owner shall appeal any adverse decision of such court or any appellate court, except that no appeal shall be required to the United States Supreme Court;

(iii) prior to taking such action, Lessee at its expense shall have furnished Owner with an opinion of independent reputable tax counsel selected by Owner and approved by Lessee to the effect that a reasonable basis exists for contesting such claim or appealing such decision, as the case may be;

(iv) Lessee shall have indemnified Owner in a manner satisfactory to it for all costs and expenses which Owner may incur as the result of contesting such claim (appropriate allocation being made between costs and expenses of such claim and other claims of Owner not contested under this Section in the event that allocation is necessary) and shall have agreed to pay Owner on demand an amount which, after subtracting the net after-tax

amount of all Federal, state or local taxes imposed by any taxing authority in the United States, which are required to be paid by the Owner in respect of the receipt thereof, and giving effect to all allowable deductions, shall be equal to all costs and expenses which the Owner may incur in connection with contesting such claim, including, without limitation, reasonable attorneys' and accountants' fees and disbursements, and the amount of any interest or Additions to Tax which may ultimately be payable as a result of contesting such claim; for purposes of this Lease, Additions to Tax shall mean those penalties imposed under Federal, state and local income tax laws and those payments described in Sections 6651(a)(3), 6653, and 6655 of the Code, but only if such penalties are imposed or such payments are required as a result of an act or failure to act or any misrepresentation on the part of Lessee;

(v) if Owner shall have elected hereunder to pay the tax resulting from such claim and then seek a refund, Lessee will provide Owner with sufficient funds, on an interest-free basis, to pay the tax subject to repayment of the amount of such funds as hereinafter provided in this Section 17; and

(vi) Owner may elect to settle or concede a claim or not to contest a claim despite the request of Lessee, made in accordance with the terms of this Section, and thereupon (A) Lessee shall be relieved of all liability to indemnify Owner with respect to the Loss involved in respect to such claim and (B) Owner shall repay to Lessee an amount equal to the funds, if any, provided by Lessee to Owner in respect of such claim pursuant to this Section 17.

(g) Lessee's obligation to pay any indemnity payable pursuant to this Section 17 shall become unconditional (1) in the case of a Loss that is required to be reflected in any tax return of Owner, 30 days after the date such return is filed; (2) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service or other taxing authority that is not required to be contested pursuant to Section 17(f), 30 days after Lessee's receipt of the statement referred to in the first sentence of Section 17(h); and (3) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service or other taxing authority that is required to be contested pursuant to Section 17(f), 30 days after the day on which the Owner obtains a Final Determination. For purposes of this Section 17, the term "Final Determination" means the final decision of the Internal Revenue Service or other taxing authority or, in case the Owner is required to contest a claim

or undertake an appeal as provided in Section 17(f), the final decision of the highest court of competent jurisdiction in which such contest or appeal must be brought.

The amount of indemnity payable pursuant to an unconditional obligation of Lessee under this Section 17 shall be an amount which will result in preserving for Owner the after-tax rate of return that would have been realized if such Loss had not occurred, computed on the assumptions (including tax rates) and methods of calculation utilized by Owner in originally evaluating the transaction described in this Lease and the Participation Agreement. Such indemnity payment shall be made in a lump sum in case of (i) a Loss described clause (i) of Section 17(a) (relating to Investment Credit), or (ii) a Loss described in clause (ii) of Section 17(a) (relating to ADR Deduction) for any prior tax year of Owner, unless Lessee elects the level future rental increase method of payment by written notice to Owner within 15 days after written notice to Lessee of the date on which Lessee's obligation to pay such indemnity shall become unconditional. Such lump sum indemnity payment in respect of Investment Tax Credit shall be the amount of lost Investment Tax Credit adjusted as required by Section 17(i), and such lump sum indemnity payment in respect of the ADR Deduction shall be computed as described in the first sentence of this paragraph. All other indemnity payments pursuant to this Section 17 shall be made in the form of level future rental increases payable on each future rental payment date during the remaining original term of this Lease and commencing on the first such date following the date on which Lessee's obligation to pay such indemnity becomes unconditional under this Section 17, and computed in the manner described in the first sentence of this paragraph.

Thirty days after a Final Determination which is favorable to Owner in respect of any claim, Owner shall repay to Lessee the amount, if any, advanced by Lessee in respect of such claim pursuant to Section 17(f)(v), and shall pay over to Lessee any refunds of penalties or interest allowed by the United States Government or other taxing authority plus the amount of interest allowed by such taxing authority with respect to such refunded taxes, penalty and interest in respect of such claim.

In the event of a Final Determination which is unfavorable to Owner in whole or in part in respect of any claim, Owner shall repay the advances, if any, made by Lessee in respect of such claim pursuant to Section

17(f)(v) by applying such advances to pay all lump sum tax indemnity payments, if any, then unconditionally due from Lessee under this Section 17(g). To the extent such lump sum indemnity payments exceed such advances, Lessee shall promptly pay in cash to Owner any such additional lump sum indemnity payments, and to the extent such advances exceed such lump sum indemnity payments, Owner shall promptly repay such excess advances in cash to Lessee.

Owner shall also pay to Lessee that portion of any refund, penalty, Addition to Tax, or interest allowed by the United States Government or other taxing authority which is fairly attributable to any claim as to which a Final Determination is favorable to O r but which is not received by Owner due to any offset by the United States Government or such taxing authority.

(h) If the Owner claims payment under this Lease on account of any Loss, the Owner shall provide the Lessee with a written notice of such claim, which notice shall be accompanied by a statement describing in reasonable detail the Loss, setting forth the computation of the amount(s) so payable and describing the basis for the claimed right to indemnification. Any delinquent payments due from either Lessee or Owner pursuant to this Section 17 shall bear interest at the overdue rate described in this Lease.

(i) The amount (as determined in Section 17(g)) of each payment of indemnity payable pursuant to this Section 17 with respect to a Loss shall (A) include the amount of interest, additions to tax and penalties payable by Owner with respect to such Loss, and (B) include the amount of Federal, state and local taxes on, based on, or measured by, net income (computed at the rates in effect from time to time), interest, additions to tax and penalties incured by Owner as a result of the receipt of such indemnity payment.

(j) If Lessee shall be required to indemnify Owner pursuant to this Section 17 with respect to a Loss relating to a Unit or Units, the Casualty Value of such Unit or Units shall be appropriately adjusted so as to reflect, among other things, the reduction (if any) in taxes that will be payable by Owner with respect to such Unit or Units upon a Casualty Occurrence with respect to such Unit or Units; provided, however, that such Casualty Values shall not be reduced below the amounts required to satisfy the obligations of Lessor in respect of a Casualty Occurrence under the Purchase Agreement and shall be calculated so as to preserve for Owner the after-tax rate of return that Owner would have realized if such Loss of Benefit had not occurred, determined in a manner consistent with Section 17(g).

(k) For purposes of this Section 17, the term "Owner" shall include any affiliated group, within the meaning of Section 3504 of the Code, of which Owner is a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

(l) All payments of indemnity made pursuant to this Section 17 shall be made by Lessee directly to Owner by transfer of immediately available funds to the account of Owner specified in Section 2.1(c) of the Trust Agreement or to such other account or in such other manner as Owner from time to time shall have identified in written instructions given to Lessee. All payments due from Owner to Lessee pursuant to this Section 17 shall be made by Owner by transfer of immediately available funds to the account of Lessee specified in written instructions to Owner or in such other manner as Lessee from time to time has specified in written instructions to Owner.

18. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, the nonpayment of rentals and other obligations due to Lessor or the Agent hereunder shall obligate Lessee promptly to pay, to the extent legally enforceable, interest on such overdue rentals and other obligations for the period of time during which they are overdue at a rate of 14-1/2% per annum, or, if such rate is not legally enforceable, at the highest legally enforceable rate. Except as otherwise expressly provided herein, interest hereunder shall be determined on the basis of a 360-day year of twelve 30-day months for the actual number of days elapsed.

19. Notices. Any notice hereunder to be given by any party to another shall be deemed to have been given when mailed, by registered or certified mail, postage prepaid, return receipt requested, to the addressee thereof at its address as first set forth above or to such other address or to such attention as shall have specified in a written notice to the other party. Copies of each such notice shall be given to the Agent at 135 South La Salle Street, Chicago, Illinois 60690, Attention: Corporate Trust Department, to Owner at its address first set forth above and to Lessee at its address first set forth above to the attention of the Assistant Vice President - Finance.

20. Severability; Effect and Modification of Lease; Third Party Beneficiaries; Effectiveness. (a) Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be ineffective as to such jurisdiction to the extent of such prohibition or unenforceability

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

(b) Except for the Participation Agreement and the exhibits thereto, this Lease exclusively and completely states the rights of Lessor and Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for Lessor and Lessee.

(c) Nothing in this Lease shall be deemed to create any right in any person other than Lessor, Lessee, Owner, the Agent, the Investors, the Builder and their permitted successors and assigns, and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party not referred to above.

21. Immunities. Anything herein to the contrary notwithstanding, (i) Lessor shall be liable in its individual capacity with respect to its wilful misconduct and gross negligence; and (ii), except as provided in clause (i) above, each representation, warranty, undertaking and agreement herein by the financial institution acting as trustee under the Trust Agreement is made and intended not as a personal representation, warranty, undertaking or agreement by Exchange National Bank of Chicago and each successor trustee and cotrustee as the Trustee under the Trust Agreement (the Bank), or for the purpose or with the intention of binding it personally, but is made by the Lessor solely in its capacity as trustee under the Trust Agreement and is intended for the purpose of binding only the Trust Estate, as defined in the Trust Agreement. This Lease is executed and delivered by the Bank solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement. Except for wilful misconduct or gross negligence of Lessor, no personal liability hereunder is assumed by, or at any time shall be asserted or enforceable against, the Bank or the Owner on account of any representation, warranty, undertaking or agreement hereunder of the Lessor, express or implied, all such personal liability, if any, being expressly waived and released by Lessee and by all persons claiming by, through or under Lessee. Lessee or any person claiming by, through or under Lessee, however, may look to the Trust Estate for satisfaction of any claim hereunder.

22. Execution. This Lease may be executed in several counterparts which together shall constitute but one and same instrument, but the counterpart delivered to the Agent shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. No such counterpart need be signed by both parties hereto so long as each party hereto shall have executed and delivered one counterpart hereof. The actual date of execution hereof by any party hereto is the date stated in the acknowledgement of such party attached hereto.

23. Law Governing. This Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois, but Lessor, Lessee and their successors and assigns shall be entitled to all rights conferred by 49 U.S.C. Section 11303 and to any additional rights arising out of the filing or deposit hereof or of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed or deposited.

24. Table of Contents and Headings. The table of contents and the headings of the various Articles, Sections and Schedules of this Lease have been inserted for reference only and do not form a part of or affect any construction or interpretation of this Lease.

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

EXCHANGE NATIONAL BANK OF CHICAGO,
not in its individual capacity
but solely as trustee under that
certain Trust Agreement, dated as
of October 1, 1980, between Exchange
National Bank of Chicago and Mercantile
Trust Company National Association

By _____
Authorized Officer

[Corporate Seal]

Attest:

_____
Authorized Officer

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

By _____
Senior Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

STATE OF ILLINOIS)
) ss.:
COUNTY OF COOK)

On this 26TH day of Nov., 1980, before me personally appeared MICHAEL D. GOODMAN, to me personally known, who being by me duly sworn, says that he is an Authorized Officer of EXCHANGE NATIONAL BANK OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Trustees, and he acknowledged that he executed the foregoing instrument as a free act and deed of said Corporation for the purposes set forth therein.

Notary Public

My Commission Expires: 2/9/83

[Notarial Seal]

STATE OF ILLINOIS)
) ss.:
COUNTY OF COOK)

On this 26th day of Nov, 1980, before me personally appeared J. M. Butler, to me personally known, who being by me duly sworn, says that he is an Authorized Officer of CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that he executed the foregoing instrument as a free act and deed of said Corporation for the purposes set forth therein.

Ron Kerdel
Notary Public

My Commission Expires:
12/16/82

[Notarial Seal]

SCHEDULE A

The Equipment

Description	Builder	Quantity	Lessee's Identification Numbers
4,700 cu. ft., 100-ton covered steel hopper car AAR Mech. Desig. (car-type) code L-153.	FMC Corporation	167	CNW 178,600 through CNW 178,766

SCHEDULE B

Certificate of Inspection and Acceptance

To: Exchange National Bank of Chicago,
acting as Trustee (Lessor) under
Trust Agreement
130 South La Salle Street
Chicago, Illinois 60603

I, the duly authorized representative for Lessor under the Conditional Sale Agreement, dated as of October 1, 1980, between FMC Corporation and the Lessor, and for Chicago and North Western Transportation Company (Lessee) under the Railroad Equipment Lease, dated as of October <>, 1980, do hereby certify that the following equipment has been inspected and that I have accepted delivery of such equipment thereunder:

TYPE OF EQUIPMENT:	4,700 cu. ft. 100 ton covered steel hopper car; manufacturer: FMC Corporation
DATES OF ACCEPTANCE:	**
NUMBER OF UNITS:	***
LESSEE'S ROAD NUMBERS:	<>

I do further certify that such equipment is in good order and condition, and appears to conform to the specifications, requirements and standards applicable thereto as provided in Article 1 of the aforesaid Conditional Sale Agreement.

I do further certify that each unit of such equipment has been marked by means of a stencil printed in contrasting colors upon each side of such unit in letters not less than one inch in height as follows:

"Ownership Subject to a Security Agreement Filed
with the Interstate Commerce Commission"

The execution of this Certificate will in no way relieve or decrease the responsibility of FMC Corporation for any warranties it has made with respect to such equipment.

_____

Authorized Representative of
Lessor and Lessee

SCHEDULE C

Casualty Value Percentage Schedule (1980 Acceptance)

Casualty Value Date	Percentage of Purchase Price
On or before the day prior to:	
February 1, 1981	110.0869
August 1, 1981	110.0869
February 1, 1982	112.3892
August 1, 1982	115.4409
February 1, 1983	116.8352
August 1, 1983	119.7444
February 1, 1984	120.1962
August 1, 1984	114.5417
February 1, 1985	114.3829
August 1, 1985	116.4294
February 1, 1986	115.4445
August 1, 1986	108.8727
February 1, 1987	107.4197
August 1, 1987	108.5187
February 1, 1988	106.3973
August 1, 1988	98.9177
February 1, 1989	96.6531
August 1, 1989	97.0606
February 1, 1990	94.4679
August 1, 1990	94.7305
February 1, 1991	91.8491
August 1, 1991	90.8999
February 1, 1992	86.6358
August 1, 1992	85.3452
February 1, 1993	80.7247
August 1, 1993	79.0461
February 1, 1994	74.1661
August 1, 1994	72.1355
February 1, 1995	67.2034
August 1, 1995	64.9914
February 1, 1996	60.1271
August 1, 1996	57.8069
February 1, 1997	53.0463
August 1, 1997	50.6801
February 1, 1998	46.0901
August 1, 1998	43.7665
February 1, 1999	39.0848
August 1, 1999	36.1737
February 1, 2000	31.1578
August 1, 2000	27.6185
February 1, 2001	22.2300