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LOUIS F. BESIO  
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 FINANCE AND ADMINISTRATION

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1 5793  
 RECORDATION NO. 5793

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1 5793-9  
 RECORDATION NO. 5793-9

MOTOR OPERATING UNIT  
 AUG 31 11 51 AM '88  
 100 OFFICE OF  
 THE SECRETARY

(202) 775-1084  
 AUG 31 1988 - II

AUG 31 1988 - II

INTERSTATE COMMERCE COMMISSION August 31, 1988

1 5793  
 RECORDATION NO. 5793 INTERSTATE COMMERCE COMMISSION

BY HAND

AUG 31 1988 - II

No. 8-244A04

Hon. Noretta R. McGee, Secretary  
 Interstate Commerce Commission  
 12th and Constitution Avenue, N.W.  
 Washington, D.C. 20423

Date AUG 31 1988

Fee \$ 26.00

ICC Washington, D.C.

ATTN: Ms. Mildred Lee, Room 2303

Dear Secretary McGee:

Enclosed for recordation under the provisions of 49 U.S.C. § 11303(a) and 49 C.F.R. Part 1177 are two counterpart originals of:

- (a) Loan and Security Agreement, dated August 30, 1988, between Railcar, Ltd., Atlanta, Georgia ("Debtor"), and The CIT Group/Equipment Financing, Inc., New York, New York ("Lender");
- (b) Lease Agreement, dated May 3, 1988, between Railcar Management, Inc., Atlanta, Georgia, agent for and on behalf of Railcar, Ltd. ("Lessor"), and Westvaco Corporation, New York, New York ("Lessee");
- (c) Notice and Acknowledgement of Assignment, dated as of August 30, 1988, by and among Railcar Management, Inc., The CIT Group/Equipment Financing, Inc., and Westvaco Corporation;

We request that the Notice and Acknowledgement of Assignment be cross-indexed.

Counterpart - Joyce R. Paul

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

Lender: The CIT Group/Capital Financing, Inc.  
270 Park Avenue  
New York, New York 10017  
Attention: Mr. W. S. Pardey, Senior V.P.

Debtor: Railcar, Ltd.  
Suite 303  
1819 Peachtree Road, N.E.  
Atlanta, Georgia 30309-1847  
Attention: Mr. Wilds L. Pierce, President

Lessor: Railcar Management, Inc.  
Suite 303  
1819 Peachtree Road, N.E.  
Atlanta, Georgia 30309-1847  
Attention: Mr. Wilds L. Pierce, President

Lessee: Westvaco Corporation  
229 Park Avenue  
New York, New York 10171  
Attention: Mr. B. D. Thomas, Senior V.P.

A description of the equipment covered by the documents is as follows: One hundred and fifty (150) 100-ton, 7,000 cubic foot woodchip hopper cars currently marked and numbered WVCX 3000-3149, both inclusive.

A fee of \$39.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to:

Fritz R. Kahn, Esquire  
Verner, Liipfert, Bernhard, McPherson & Hand  
Suite 1000  
1660 L Street, N.W.  
Washington, D.C. 20036

A brief summary of the enclosed documents to appear in the index is as follows:

In accordance with the Loan and Security Agreement, dated August 30, 1988 ("Agreement"), between Railcar, Ltd. ("Debtor"), and The CIT Group/Equipment Financing, Inc. ("Lender"), Debtor has borrowed from Lender a portion of the funds for Debtor's purchase of 150 woodchip hopper railroad cars. Additionally, in accordance with the Lease Agreement, dated May 3, 1988, between Railcar Management, Inc. acting as agent for Railcar, Ltd. ("Lessor"), and Westvaco Corporation ("Lessee"), Lessor has leased the cars to Lessee. In accordance with the Notice and Acknowledgement of Assignment, dated August 30, 1988, by and among Railcar Management, Inc., The CIT Group/Equipment Financing, Inc.,

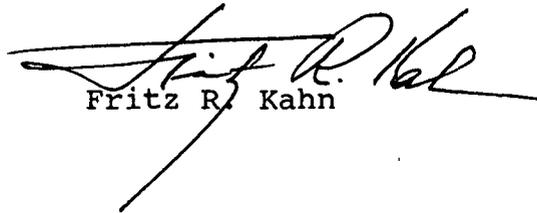
and Westvaco Corporation, Lessor assigns to Lender Lessor's rights and interest in and under the lease.

The undersigned is Interstate Commerce Commission Counsel for the above-described transaction and, as such, has knowledge of the matters set forth herein.

A copy of this letter of transmittal is enclosed for you to stamp to acknowledge your receipt thereof.

If you have any questions or if I may otherwise be of assistance, please do not hesitate to contact me.

Sincerely yours,

  
Fritz R. Kahn

Enclosures

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

OFFICE OF THE SECRETARY

8/31/88

Fritz R. Kahn, Esq.  
Verner, Liipfert, Bernhardf McPherson,  
& Hand  
Suite 1000  
1660 L Street N.W.  
Washington, D.C. 20036

Dear Sir

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 8/31/88 at 11:55AM, and assigned recordation number(s) 15793 lead, & 15793-A & B

Sincerely yours,

*Neville R. McGee*

Secretary

Enclosure(s)

REGISTRATION NO. <sup>1</sup> 5793

AUG 31 1988 - 11 45 PM '88

INTERSTATE COMMERCE COMMISSION

LOAN AND SECURITY AGREEMENT

Dated as of August 30, 1988

BETWEEN

RAILCAR, LTD.,

DEBTOR

AND

THE CIT GROUP/EQUIPMENT FINANCING, INC.,

LENDER

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- EXHIBIT C        Description of Opinion of Counsel  
                  for the Debtor
- EXHIBIT D        Description of Opinion of Counsel  
                  for the Lessee
- EXHIBIT E        Form of Notice and Acknowledgement  
                  of Assignment

## LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (the "Agreement") dated as of August 30, 1988 between RAILCAR, LTD., a Georgia corporation (the "Debtor") and THE CIT GROUP/EQUIPMENT FINANCING, INC., a New York corporation (the "Lender").

### W I T N E S S E T H:

WHEREAS, the Debtor has purchased 150 railroad cars which have been rebuilt and modified for rotary dump service, which cars are more fully described in Exhibit A hereto (such cars, as rebuilt and modified, hereinafter called individually, an "Item of Equipment" and collectively, the "Equipment");

WHEREAS, Railcar Management, Inc. as agent for the Debtor has entered into the Lease with the Lessee;

WHEREAS, the Debtor proposes to finance a portion of the purchase price and rebuilding cost of the Equipment by issuing one or more notes on a nonrecourse basis to the Lender, and to secure its obligations under the notes by a grant hereunder to the Lender of a security interest in the Equipment and the Lease;

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

#### Section 1. DEFINITIONS.

Unless the context otherwise requires, for all purposes of this Agreement the following terms shall have the following meanings (such definitions to be equally applicable to both the singular and plural forms of the terms defined):

"Basic Rent" shall mean interim rental and monthly rental as provided for in Paragraph 6 of the Lease.

"Bill of Sale" shall mean the Bill of Sale from the Seller of each Item of Equipment to the Debtor evidencing the transfer of title thereto to the Debtor.

"Business Day" shall have the meaning specified in Section 9.1 hereof.

"Casualty Occurrence" shall have the meaning specified in Section 5.2 hereof.

"Certificate of Acceptance" shall mean the Certificate of Acceptance issued pursuant to Paragraph 3 of the Lease.

"CIT Commercial Paper" shall have the meaning specified in Section 2.1 hereof.

"Closing Date" shall have the meaning specified in Section 2.1 hereof.

"Collateral" shall have the meaning specified in Section 3 hereof.

"Commitment" shall have the meaning specified in Section 2.1 hereof.

"Equipment" shall have the meaning specified in the Recitals hereof.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"Event of Default" shall have the meaning specified in Section 6.1 hereof.

"Excepted Rights in Collateral" shall have the meaning specified in Section 3.3 hereof.

"Financing Agreements" shall mean, collectively, the agreements set forth in Section 2.3(a) hereof.

"Item of Equipment" shall have the meaning specified in the Recitals hereof.

"Lease" shall mean the Lease Agreement dated as of May 3, 1988 between the Debtor and the Lessee, as amended by Lease Amendment No.1 dated as of August 30, 1988 and any further amendments thereto.

"Lease Event of Default" shall mean an event of default as defined and set forth in Paragraph 18 of the Lease.

"Lessee" shall mean Westvaco Corporation, a Delaware corporation, as lessee under the Lease.

"Loan Value" shall have the meaning specified in Section 5.2 hereof.

"Modification Agreement" shall mean Purchase Order 88005 dated April 25, 1988 between the Debtor and Kustom Karr Corporation.

"Note" shall mean one of the secured notes executed and delivered hereunder substantially in the form of Exhibit B annexed hereto.

"Notice and Acknowledgement of Assignment" shall mean the Notice of Acknowledgement of Assignment signed by the Lessee, substantially in the form of Exhibit E annexed hereto.

"Outstanding Commitment" shall have the meaning specified in Section 2.1 hereof.

"Purchase Agreement" shall mean the Purchase Agreement dated October 22, 1987 between the Debtor and the Seller.

"Seller" shall mean CSX Transportation, Inc. as seller under the Purchase Agreement.

Capitalized terms used but not defined herein are used as defined in the Lease.

## Section 2. ISSUANCE OF THE NOTES.

2.1. Commitment of the Lender. Subject to fulfillment of the conditions specified in Sections 2.3 and 2.4 hereof, the Lender shall make a secured loan to the Debtor on each date designated by the Debtor, (provided that the Debtor shall not designate more than five such dates), by giving notice of such date, which shall be no later than November 1, 1988, and the amount of such secured loan to the Lender not less than five days before such designated date (each such date herein referred to as a "Closing Date"), evidenced by one or more Notes in principal amounts equal to \$21,500 for each Item of Equipment and which in the aggregate shall not exceed \$3,225,000 (the "Commitment") and payable to the order of the Lender. The Notes shall be dated such Closing Date, shall bear interest at the rate set forth in the Commitment Letter dated May 13, 1988 among the Lender, the Debtor and Railcar Management, Inc. and shall be payable as provided in the Note. Notwithstanding the foregoing, any outstanding balance of the Commitment remaining on November 1, 1988 (the "Outstanding Commitment") shall be invested by the Lender for and on behalf of the Debtor in commercial paper issued by The CIT Group Holdings, Inc. in the name of the Debtor (the "CIT Commercial Paper"), any interest earned thereon being payable to the Debtor. Upon the issuance of the CIT Commercial Paper, the Debtor shall grant to the Lender a security interest therein and possession thereof. The Debtor shall execute and deliver a Note in the amount of the Outstanding Commitment dated November 1, 1988 and bearing interest at the rate per annum provided for in this Section 2.1. Upon compliance with the conditions set forth in Section 2.4 hereof, the Lender shall, on behalf of the Debtor, liquidate the CIT Commercial Paper and remit the proceeds to the Debtor.

2.2. Closing. The closing shall take place on each Closing Date at the offices of Haight, Gardner, Poor & Havens, Lender's counsel, 195 Broadway, New York, New York. On each Closing Date, the Lender shall make available to the Debtor, or its order, provided adequate instructions have been timely furnished to the Lender, in immediately available funds the amount of the secured loan being made on such date. Upon receipt of the secured loan made on each Closing Date, the Debtor will simultaneously deliver to the Lender as provided in Section 2.1 hereof a Note in a principal amount equal to the amount of such loan.

2.3. Conditions Precedent to the Initial Closing Date. The obligation of the Lender to make available a portion of its Commitment on the initial Closing Date shall be subject to fulfillment of the following conditions on or prior to such Closing Date to the satisfaction of the Lender:

(a) Fully executed copies of this Agreement, the Lease, the Note, the Notice of Acknowledgement of Assignment, the Purchase Agreement and the Modification Agreement (collectively, the "Financing Agreements") shall have been delivered to the Lender.

(b) The Lease, or a memorandum or short form thereof, this Agreement and the Notice and Acknowledgement of Assignment shall have been duly filed and recorded contemporaneously in conformity with 49 U.S.C. Section 11303 of the Interstate Commerce Act and in such other places within the United States as may be reasonably requested by the Lender as necessary for the protection of the title of the Debtor to, or the security interest of the Lender in, the Equipment.

(c) The Lender shall have received such evidence of fulfillment of the foregoing conditions of this Section 2.3 including, without limitation, certificates of officers of the Debtor, public officials and others, and legal opinions as the Lender may reasonably require to establish to its satisfaction the fulfillment of such conditions.

2.4. Conditions Precedent to Each Closing Date. The obligation of the Lender to make available a portion of its Commitment on each Closing Date, including the initial Closing Date, shall be subject to fulfillment of the following further conditions on or prior to such Closing Date to the satisfaction of the Lender:

(a) The Lender shall have received the Note to be issued to the Lender.

(b) The Lender shall have received: (i) a document unconditionally and absolutely releasing all of Seller's right, title and interest in the Equipment and the Lease, and such document shall have been executed and duly filed and recorded in conformity with 49 U.S.C. Section 11303 of the Interstate Commerce Act (with the recordation number and date of recordation furnished to the Lender) and in such other places within the United States as may reasonably be requested by the Lender, and (ii) confirmation that any further filing and recording reasonably requested by the Lender, in addition to the Lease, or memorandum or short form thereof, and this Agreement, in conformity with 49 U.S.C. Section 11303 of the Interstate Commerce Act and any other applicable laws shall have been duly effected to protect the title of the Debtor to, or the security interest of the Lender in, the Items of Equipment being delivered on such Closing Date.

(c) The Lender shall have received the certificates of insurance or self insurance that the Lessee is required to provide pursuant to Paragraph 12 of the Lease naming the Lender as additional insured and loss payee, as the case may be.

(d) The Lender shall have received certified copies of the organizational documents and the appropriate corporate proceedings of the board of directors of the Debtor and a certified copy of the By-laws of the Lessee with respect to the authorization of the Financing Agreements and the other instruments contemplated herein and therein and with respect to the execution, delivery and performance thereof by the respective party and appropriate certificates showing the incumbency and the specimen signatures of the officers of the Debtor and the Lessee executing the agreements and instruments referred to herein, each such certificate to be dated the Closing Date.

(e) The Lender shall have received copies of the following:

(i) the Purchase Agreement and the Bills of Sale applicable to the Items of Equipment for which such secured loan is being made.

(ii) an invoice of Kustom Karr Corporation and any other contractor performing the rebuilding and modification services on the Equipment, marked paid in full, for the rebuilding and modification costs.

(iii) an executed Certificate of Acceptance with respect to such Items of Equipment as contemplated by Section 3 of the Lease.

(iv) an executed certificate from the Debtor to the effect that each Item of Equipment has been rebuilt and modified in compliance with, and on the Closing Date shall meet all safety and other standards set forth in, all Federal Railroad Administration and Association of American Railroads requirements, and has an Association of American Railroads year date of one (1).

(f) The representations and warranties of the Debtor contained herein, of the Lessee contained in the Lease and of each such party in any certificate delivered pursuant thereto and hereto shall be true and correct on and as of each Closing Date with the same effect as though made on and as of such Closing Date; on the Closing Date there shall be (A) no default, or event which, but for the lapse of time or the giving of notice or both, would be such a default, hereunder or under the Lease or under any other lease or loan agreement to which the Lessee is a party wherein the outstanding aggregate rental payments or the aggregate principal amount of borrowed money is greater than or equal to \$1,000,000, (B) no event giving rise to the payment of a casualty loss pursuant to Paragraph 16 of the Lease, or the occurrence of any event which, but for the lapse of time or the giving of notice or both, would give rise to such payment, and (C) no material adverse change in the business, assets or financial condition of the Lessee from the financial and business condition of the Lessee reflected in the financial statements dated December 31, 1987 previously submitted to Lender; and the Lender shall have received from the Debtor a certificate to such effect (other than as to clause (c)), dated the Closing Date and signed by a duly authorized representative of the Debtor.

(g) The Lender shall have received a signed opinion, dated the Closing Date, of (i) such legal counsel for the Debtor as is acceptable to the Lender covering the matters described in Exhibit C annexed hereto, (ii) such legal counsel for the Lessee as is acceptable to the Lender covering the matters described in Exhibit D annexed hereto and (iii) its legal counsel in New York, and special Interstate Commerce Commission counsel as to the filing at the Interstate Commerce Commission, in form and substance satisfactory to it.

(h) The Lender shall have received such evidence of fulfillment of the foregoing conditions of this Section 2.4

including, without limitation, certificates of officers of the Lessee, the Debtor, public officials and others, and legal opinions as the Lender may reasonably require to establish to its satisfaction the fulfillment of such conditions.

2.5. Representations, Warranties and Covenants.

(a) Debtor. The Debtor represents, warrants and covenants that:

(i) The Debtor is a corporation duly organized, validly existing and in good standing under the laws of the State of Georgia and is duly licensed or qualified to do business as a foreign corporation in good standing in each jurisdiction in which such qualification is required.

(ii) The Debtor has full corporate power and authority to execute, deliver and perform this Agreement, the Lease and the Notes.

(iii) This Agreement and the Lease have each been duly authorized, executed and delivered by the Debtor and constitute the legal, valid and binding obligations of the Debtor enforceable against it in accordance with the terms thereof, except to the extent that enforcement may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditor's rights generally and except to the extent that enforcement is subject to general principles of equity (including but not limited to all matters of public policy) regardless of whether such enforceability is considered in a proceeding in equity or at law.

(iv) Each Note has been duly authorized by the Debtor, and, when executed and delivered by the Debtor, will constitute the legal, valid and binding obligation of the Debtor enforceable against it in accordance with the terms thereof, except to the extent that enforcement may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditor's rights generally and except to the extent that enforcement is subject to general principles of equity (including but not limited to all matters of public policy) regardless of whether such enforceability is considered in a proceeding in equity or at law.

(v) No authorization, consent or approval of any governmental authority is required for the execution, delivery or performance by the Debtor of this Agreement, the Lease or the Notes.

(vi) Neither the execution, delivery or performance by the Debtor of this Agreement, the Lease and the Notes, nor compliance with the terms and provisions thereof, conflicts or will conflict with or will result in a breach or violation of any of the conditions or provisions of any law, governmental rule or regulation or the charter documents, as amended, or by-laws, as amended, of the Debtor, or any order, writ, injunction or decree of any court or governmental authority against the Debtor or by which it or any of its properties is bound, or of any indenture, mortgage or contract or other agreement or instrument to which the Debtor is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties except for the security interest granted herein.

(vii) Neither the Debtor nor, to its knowledge, anyone acting on its behalf has directly or indirectly offered any Note, or similar securities relating to the Equipment, for sale to, or solicited any offer to acquire any of the same from, anyone other than the Lender.

(viii) The Debtor has acquired its interest in the Equipment for its own account and with its general corporate assets and no funds used to acquire any Item of Equipment have been furnished directly or indirectly out of the assets of or in connection with any employee benefit plan (or its related trust) or any separate account in which any employee benefit plan has any interest. As used in this paragraph (viii), the terms "employee benefit plan" and "separate account" shall have the respective meanings assigned to them in ERISA.

(ix) The Debtor hereby warrants and represents that it has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as the assignment hereunder shall remain in effect, any of its right, title or interest hereby assigned, to anyone other than the Lender, and that it will not, so long as the assignment hereunder shall remain in effect, except as provided in this Agreement, accept any payment from the Lessee, enter into any agreement amending or supplementing the Lease, execute any waiver or modification of, or consent under, the terms of the Lease, settle or compromise any claim against the Lessee arising under the Lease, or submit or consent to the submission of any dispute, difference or other matter arising under or in respect of the Lease to arbitration thereunder without the prior written consent of the Lender thereto.

(x) There are no actual, pending or, to the knowledge of any officer of the Debtor, threatened legal actions, arbitrations, or other proceedings involving the Debtor which might have an adverse effect on the validity or enforceability of this Agreement or the Notes.

(xi) The Debtor hereby ratifies and confirms the Lease and hereby agrees that it will not take or omit to take any action, the taking or omission of which might result in an alteration or impairment of the Lease, or of any of the rights created by the Lease, or the assignment hereunder.

(xii) The Debtor covenants and agrees well and truly to perform, abide by and to be governed and restricted by each and all of the terms, provisions, restrictions, covenants and agreements herein set forth, in the Lease, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns to the same extent as through each and all of said terms, provisions, restrictions, covenants and agreements were fully set out herein and as though any amendment or supplement to the Lease were fully set out in an amendment or supplement to this Agreement.

(xiii) The Debtor has good and marketable title to the Collateral, free and clear of all liens (other than by, through or under the Lessee and other than the security interest granted herein); and the Debtor will warrant and defend the title to the Collateral against all claims and demands of all persons whatsoever except persons claiming by, through or under the Lessee or the Lender. The Debtor agrees to pay or discharge, at its own cost and expense, any and all claims, liens or charges (other than those arising by, through or under the Lessee or the Lender) on or with respect to the Collateral. The Debtor further agrees to indemnify and hold harmless the Lender from and against any direct loss, costs or expenses (including legal fees and expenses) incurred, in each case, as a result of the imposition or enforcement of any such claim, lien, or charge. Without limiting the foregoing, there is no financing statement or other filed or recorded instrument in which the Debtor is named and which the Debtor has signed, as debtor or mortgagor, now on file at the Interstate Commerce Commission or in any other public office covering any of the Collateral excepting the financing statements or other instruments filed or to be filed in respect of and for the security interest provided for herein.

(xiv) The Debtor will, at no expense to the Lender, do, execute, acknowledge and deliver every and all further acts, deeds, conveyances, transfers and assurances (a) for the perfection of the security interest being herein provided for in the Collateral, whether now owned or hereafter acquired and (b) as the Lender may consider necessary or desirable for giving full effect to this Agreement or for securing the rights of the Lender hereunder. Without limiting the foregoing but in furtherance of the security interest herein granted in the revenues and other sums due and to become due under the Lease, the Debtor covenants and agrees that it will cause the Lessee to be notified of such assignment pursuant to Paragraph 19 of the Lease and direct the Lessee, upon written notice by the Lender, to make all payments of such revenues and other sums due and to become due under the Lease, other than the Excepted Rights in Collateral, as the Lender may direct.

(xv) The Debtor will not, without the prior written consent of the Lender:

(A) declare a default or exercise the remedies of the Debtor under, or terminate or modify or accept a surrender of, or offer or agree to, any termination or modification or surrender of, or take or omit to take any action which might result in an alteration or impairment of, the Lease or by affirmative act consent to the creation or existence of any security interest or other lien to secure the payment of indebtedness upon the rights created by the Lease or any part thereof; or

(B) receive or collect or permit the receipt or collection of any payment of Basic Rent under the Lease prior to the date for payment thereof provided for by the Lease or assign, transfer or hypothecate (other than to the Lender hereunder) any Basic Rent then due or to accrue in the future under the Lease in respect of the Equipment; or

(C) sell, mortgage, transfer, assign or hypothecate (other than to the Lender hereunder) its interest in the Equipment or any part thereof or in any amount to be received by it from the use or disposition of the Equipment.

(xvi) The Debtor hereby constitutes the Lender and its successors and assigns, the true and lawful attorney of the Debtor, irrevocably and with full power of substitution for and in the name, place and stead of the Debtor or

otherwise, to demand, collect, receive, receipt for, sue for, compound and compromise and give acquittance for, any and all rents, income, profits, moneys and claims for sums which are assigned under Sections 3.1 and 3.2 hereof, to endorse any checks or other instruments or orders in connection therewith, to make all waivers and agreements and to file any claims (including without limitation any proof of claim in any bankruptcy proceeding commenced by or against the Lessee) or take any actions or institute any proceedings with respect thereto which the Lender may deem necessary or advisable in its sole and complete discretion. Anything herein contained to the contrary notwithstanding, neither the Lender nor its successors or assigns shall have any obligation or liability by reason of or arising out of this Agreement to make any inquiry as to the nature or sufficiency of, to present or file any claim with respect to, or to take any action to collect or enforce the payment of, any amounts to which it may be entitled at any time by virtue of this Agreement. Upon written request from the Debtor, such request to be made no more frequently than once in any six month period, the Lender shall account to the Debtor for any and all rents, income, moneys and claims for sums received by the Lender pursuant to the grant of security herein.

(xvii) The Debtor warrants that it will pay or caused to be paid all appropriate brokers commissions or finders fees in connection with the acquisition of the Equipment and the other transactions contemplated thereby. The Debtor agrees that the Lender has no obligation to pay such fees and it agrees to indemnify the Lender for any and all sums whatsoever required to be expended by the Lender in payment of such claims by brokers provided that the Debtor shall be under no obligation to indemnify the Lender for fees incurred solely as a result of acts by the Lender.

(xviii) The Debtor further covenants and agrees that it will give the Lender prompt written notice of any event or condition constituting an Event of Default under the Lease or an event which, but for the lapse of time or the giving of notice or both, would be an Event of Default if the Debtor has actual knowledge of such event or condition.

(xix) On the Closing Date applicable to each Item of Equipment, such Item of Equipment shall have been rebuilt and modified in compliance with, and shall meet all safety and other standards set forth in, all Federal Railroad Administration and Association of American Railroads requirements, and shall have an Association of American Railroads year date of one (1).

(xx) The Debtor will furnish the Lender promptly upon receipt thereof, duplicates or copies of all reports, notices, requests, demands, certificates, financial statements and other instruments furnished to the Debtor under the Lease, to the extent that same shall not have been furnished to the Lender pursuant to the Lease.

(b) Lender. The Lender represents and warrants that:

(i) The Lender understands that each Note has not been registered under the Securities Act of 1933, as amended, and that each Note must be held indefinitely unless subsequent disposition thereof is registered under said Act or is a transaction exempt from registration.

(ii) Each Note to be issued to the Lender pursuant hereto is being acquired by it with its general corporate assets, and no funds used to acquire such Note will be furnished directly or indirectly out of the assets of or in connection with any employee benefit plan (or its related trust) or any separate account in which any employee benefit plan has any interest. As used in this paragraph (ii), the terms "employee benefit plan" and "separate account" shall have the respective meanings assigned to them in ERISA.

(iii) The acceptance of each Note by the holder shall constitute a reaffirmation as of the date of acquisition of the representations and warranties contained in this Section 2.5(b).

### Section 3. GRANT OF SECURITY.

The Debtor, in order to secure the prompt payment of the principal of, premium (if any) and interest on each Note issued hereunder, and to secure the payment of all other indebtedness of the Debtor to the Lender pursuant to this Agreement and the performance and observance of all covenants and conditions in each of the Financing Agreements, and for the benefit of the Lender and any other holders of a Note, does hereby convey, warrant, mortgage, pledge, assign and grant to the Lender, its successors and assigns, for the security and benefit of each holder of a Note a first priority security interest in all of the Debtor's right, title and interest in and to the properties, rights, interests and privileges described in Sections 3.1 and 3.2, hereof whether now owned or hereafter acquired, and all proceeds thereof, subject always to the exceptions, reservations and limitations contained in Section 3.3 hereof (all of which properties, rights, interests and privileges hereby mortgaged, assigned and pledged, or intended so to be, are collectively referred to as the "Collateral").

3.1 Equipment Collateral. Collateral includes the Equipment described in the Certificate of Acceptance delivered on the initial Closing Date and each subsequent Closing Date forming part of the Equipment identified in Exhibit A attached hereto and made a part hereof and in any amendments or additions to such exhibit hereafter attached hereto and filed herewith together with all accessories, equipment, parts and appurtenances appertaining or attached to any of the Equipment, whether now owned or hereafter acquired, and all substitutions, renewals or replacements of, and additions, improvements, accessions and accumulations to, or proceeds of any and all of said Equipment, together with all the rents, issues, income, profits, avails and other proceeds (including insurance proceeds) therefrom, and includes the Purchase Agreement and the Modification Agreement and all of the Debtor's right, title, interest, claims and demands thereunder.

3.2 Lease Collateral. Collateral also includes all right, title, interest, claims and demands of the Debtor in, to and under the Lease, including any extensions of the term of the Lease with respect to the equipment identified in Exhibit A to the Lease, and each Certificate of Acceptance, together with all rights, powers, privileges, options and other benefits of the Debtor under the said Lease, including, without limitation, but subject always to the exceptions, reservations and limitations contained in Section 3.3 hereof:

(1) the immediate and continuing right to receive and collect all Basic Rent and loss value payments, insurance proceeds, condemnation awards and other payments, proceeds, tenders and security now or hereafter payable to or receivable by the Debtor under said Lease or pursuant thereto, together with the immediate and continuing right to receive and collect same;

(2) the right to make all consents, waivers and agreements and to enter into any amendments relating to the Lease or any provision thereof; provided, however, that the Lender shall be under no obligation to take such actions; and

(3) the right to take such action upon the occurrence of an Event of Default under said Lease or an event which with the lapse of time or giving of notice, or both, would constitute an Event of Default under said Lease, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by the Lease or by law, and to do any and all other things whatsoever which the Debtor or its successors and assigns is or may be entitled to do under the Lease;

it being the intent and purpose hereof that, subject always to the exceptions, reservations and limitations contained in Section 3.3 hereof, the assignment and transfer to the Lender of said rights, powers, privileges, options and other benefits shall be effective and operative immediately and shall continue in full force and effect, and the Lender shall have the right to collect and receive Basic Rent and loss value payments, insurance proceeds, condemnation awards and other payments for application in accordance with the provisions of Sections 5 and 6 hereof at all times during the period from and after the date of this Agreement until the indebtedness hereby secured has been fully paid and discharged.

It is expressly agreed that anything herein contained to the contrary notwithstanding, the Debtor shall remain liable under the Lease to perform all of the obligations assumed by it thereunder, all in accordance with and pursuant to the terms and provisions thereof, and the Lender and the holders of any Note shall have no obligation or liability under the Lease by reason of or arising out of the assignment hereunder, nor shall the Lender or the holder of any Note be required or obligated in any manner to perform or fulfill any obligations of the Debtor under or pursuant to the Lease or, except as herein expressly provided, to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or present or file any claim, or take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

3.3 Excepted Rights in Collateral. There are expressly excepted and reserved from the security interest and operation of this Agreement the following described properties, rights, interests and privileges (hereinafter the Excepted Rights in Collateral) and nothing herein or in any other agreement contained shall constitute an assignment of the Excepted Rights in Collateral to the Lender:

(a) all payments of any indemnity under Paragraphs 12 and 14 of the Lease which by the terms of the Lease are payable to the Debtor for its own account;

(b) all rights of the Debtor under the Lease to demand, collect, sue for or otherwise obtain all amounts from the Lessee due the Debtor on account of any such indemnities or payments due pursuant to said Paragraphs 12 and 14 of the Lease; and

(c) any insurance proceeds payable under general public liability policies maintained by the Lessee pursuant to Paragraph 12 of the Lease which by the terms of the Lease are payable directly to the Debtor for its own account.

Section 4. POSSESSION, USE AND RELEASE OF PROPERTY.

4.1 Possession of Collateral. So long as no Event of Default, or event which with time or notice or both would constitute an Event of Default, has occurred and is continuing, the Debtor shall be suffered and permitted to remain in full possession, enjoyment and control of the Equipment and to manage, operate and use the same and each part thereof with the rights and franchises appertaining thereto; provided always that the possession, enjoyment, control and use of the Equipment shall at all times be subject to the observance and performance of the terms of this Agreement and the Lease. It is expressly understood that the use and possession of the Equipment by the Lessee under and subject to the Lease shall not constitute a violation of this Section 4.1.

4.2 Release of Property. So long as no Event of Default, or event which with time or notice or both would constitute an Event of Default, has occurred and is continuing, the Lender shall execute a release in respect of any Item of Equipment withdrawn, lost or destroyed as referred to in Paragraph 16 of the Lease upon receipt from the Lessee of written notice designating the Item of Equipment in respect of which the Lease will terminate and receipt by the Lender of the Loan Value with respect thereto, or upon receipt by the Lender of evidence that any withdrawn Item of Equipment has been substituted in accordance with the terms of Paragraph 10 of the Lease. After payment in full of all the indebtedness hereby secured, including but not limited to all of the Notes then outstanding, the Lender shall, upon the written request of the Debtor, execute and deliver to, or as directed in writing by, the Debtor, such instruments (in due form for filing and recording) as may be reasonably requested and furnished by the Debtor, releasing the Equipment from, and terminating and discharging, this Agreement and the security interests created hereby or pursuant hereto.

4.3 Protection of Purchaser. No purchaser in good faith of property purporting to be released hereunder shall be bound to ascertain the authority of the Lender to execute the release, or to inquire as to any facts required by the provisions hereof for the exercise of such authority; nor shall any purchaser, in good faith, of any item or unit of the Collateral be under obligation to ascertain or inquire into the conditions upon which any such sale is hereby authorized.

Section 5. APPLICATION OF ASSIGNED RENT AND CERTAIN OTHER MONEYS RECEIVED BY THE LENDER.

5.1 Application of Assigned Rent. So long as no Event of Default or event which, but for the lapse of time or the

giving of notice or both would constitute an Event of Default shall have occurred and be continuing, the amounts from time to time received by the Lender which constitute payment by the Lessee under the Lease of the installments of Basic Rent shall be applied: first, to the payment of the installment of the aggregate unpaid interest, or of principal and interest (in each case first to interest and then to principal), then due or which have become due on the Notes (including, without limitation, the final payment of interest on the Notes) ratably without priority of one over the other in the proportion that the sum of the aggregate unpaid principal amount of the Notes held by each such holder, plus the accrued but unpaid interest thereon to the date of distribution, bears to the sum of the aggregate unpaid principal amount of all outstanding Notes held by all such holders, plus the accrued but unpaid, interest thereon to the date of distribution; second, the balance, if any, of such amounts shall be paid to or upon the order of the Debtor.

5.2 Application of Casualty Payments. So long as no Event of Default or event which, but for the lapse of time or the giving of notice or both would constitute an Event of Default shall have occurred and be continuing, the amounts from time to time received by the Lender pursuant to the Lease under circumstances which constitute payment for a Casualty Occurrence (defined as an event whereby any Item of Equipment is lost, stolen, destroyed or damaged beyond economic repair) with respect to any Item of Equipment shall be paid and applied as follows:

First, an amount equal to the accrued and unpaid interest due under the Notes shall be applied ratably to the holders of the Notes, without priority of one over the other in the proportion that the amount of such payments to which each such holder is entitled bears to the aggregate amount of all such payments;

Second, an amount equal to the Loan Value of such Item of Equipment for which settlement is then being made shall be applied pro rata to each remaining payment under the Notes equally as a prepayment of the principal of the Notes ratably to the holders of the Notes, without priority of one over the other in the proportion that the amount of such payments to which each such holder is entitled bears to the aggregate amount of all such payments;

Third, the balance, if any, to the Debtor.

As used herein, the Loan Value, in respect of any Item of Equipment, shall be an amount equal to the product of (A) a fraction, the numerator of which is one and the denominator of which is the aggregate number of Items of Equipment (including the Item of

Equipment for which settlement is then being made), times (B) the aggregate unpaid principal amount of the Notes immediately prior to the prepayment provided for in this Section 5.2 (after giving effect to all payments of installments of principal made or to be made on the date of prepayment provided for in this Section 5.2). The Lender shall calculate the Loan Value and a revised amortization schedule for the Notes and submit such calculations to the Debtor before such date of prepayment. The Lender's calculations shall be conclusive absent manifest error.

5.3 Default. If an Event of Default, or event which, but for the lapse of time or the giving of notice or both, would constitute such an Event of Default, shall have occurred and be continuing, all amounts received by the Lender shall be held until (i) such event or condition has been cured or (ii) such amounts are applied in the manner provided for in Section 6.6 hereof.

5.4 Excepted Payments. Notwithstanding any other provision of this Agreement, all payments constituting part of Excepted Rights in Collateral, if received by any holder of a Note, shall be paid to the Debtor.

## Section 6. DEFAULTS AND OTHER PROVISIONS.

6.1 Events of Default. The term Event of Default shall mean one or more of the following events (whatever the reason for such Event of Default and whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) Default in payment of any installment of the principal of, premium, if any, or interest on, any Note when and as the same shall become due and payable, whether at the due date thereof or at the date fixed for prepayment or by acceleration or otherwise, and any such default shall continue unremedied for sixty days from written notice thereof; provided written notice of non-payment is concurrently given to the Lessee if the Lender is then legally permitted to do so; or

(b) A Lease Event of Default shall have occurred and be continuing unless the Debtor shall have cured such Lease Event of Default and the corresponding Event of Default hereunder within the expiration of the applicable grace period; provided, however, that notwithstanding any provision to the contrary herein, the Lender shall have given a copy to the Debtor of any notice given by the Lender to the Lessee in connection with any Lease Event of Default concurrently with the giving of such

notice to the Lessee; and provided further, that if more than twelve Lease Events of Default in total or if more than six consecutive Lease Events of Default shall have occurred resulting from failure to make any payment of Basic Rent, any such Lease Event of Default shall be an Event of Default hereunder whether or not the corresponding Event of Default hereunder is cured; or

(c) Default on the part of the Debtor in the due observance or performance of any covenant or agreement to be observed or performed by the Debtor under this Agreement (other than the covenants referred to in Section 6.1(a), (e) and (f)), and such default shall continue unremedied for thirty days after written notice from the Lender to the Debtor specifying the default and demanding the same to be remedied; or

(d) Any representation or warranty on the part of the Debtor made herein or in the Lease or in any report, certificate, financial or other statement furnished in connection with this Agreement or the Lease or the transactions contemplated herein or therein, shall prove to be false or misleading in any material respect when made; or

(e) Any claim, lien or charge arising by, through or under the Debtor shall be asserted against or levied or imposed upon the Equipment or any Item of the Equipment or the security interest granted hereunder shall cease to be a perfected and enforceable first priority security interest in the Collateral other than as a result of acts by the Lender, and such claim, lien or charge shall not be discharged or removed or such security interest restored as a perfected and enforceable first priority security interest within thirty calendar days after written notice from the Lender or the holder of a Note to the Debtor demanding the discharge or removal or restoration thereof; or

(f) Failure on the part of the Debtor to give notice to the Lender, within ten days of the occurrence thereof, of any Event of Default or of the occurrence of any event known to the Debtor which, with the lapse of time or the giving of notice, or both, would constitute an Event of Default; or

(g) The entry of a decree or order by a court having jurisdiction in the premises for relief in respect of the Debtor under any bankruptcy, insolvency or similar act, law or statute now or hereafter in effect, or adjudging the Lessee a bankrupt or insolvent, or approving a petition seeking reorganization, adjustment or composition of or in respect of the Lessee under Title 11 of the United States Code, as now constituted or hereafter in effect or under any other applicable Federal or State bankruptcy law or other similar law, or the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or similar

official) of the Debtor or of any substantial part of its property, or the entry of an order for the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; or

(h) The filing by the Debtor of any petition, application, answer or consent to or for liquidation, reorganization, arrangement or any other relief under any Chapter of Title XI of the United States Code or any similar state or federal law or statute, as now or hereafter in effect or the consent by it to the filing of any such petition or application for the relief requested therein, or the consent by it to the appointment or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Debtor or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the failure of the Debtor generally to pay its debts as such debts become due, or the taking of lawful action by the Debtor in furtherance of any such action.

6.2 Lender's Rights. If any Event of Default shall have occurred and be continuing, the Lender shall have the rights, options, duties and remedies of a secured party, and the Debtor shall have the rights and duties of a debtor, under the Uniform Commercial Code of the State of New York (regardless of whether such Code or a law similar thereto has been enacted in a jurisdiction wherein the rights or remedies are asserted), and:

(a) The entire unpaid principal balance of the Notes and accrued interest thereon shall be immediately due and payable without notice, presentment or demand of any kind in the case of an Event of Default under Section 6.1(g) and (h) above, and with notice to the Debtor of any acceleration hereunder following any other Event of Default;

(b) At the request of the Lender, the Debtor shall promptly execute and deliver to the Lender such instruments of title and other documents as the Lender may deem necessary or advisable to enable the Lender or an agent or representative designated by the Lender, at such time or times and place or places as the Lender reasonably may specify, to obtain possession of all or any part of the Collateral to which the Lender shall at the time be entitled hereunder; if the Debtor shall for any reason fail to execute and deliver such instruments and documents after such request by the Lender, (i) the Lender may obtain a judgment conferring on the Lender the right to immediate possession and requiring the Debtor to execute and deliver such instruments and documents to the Lender, to the entry of which judgment the Debtor hereby specifically consents, and/or (ii) the Lender

personally or by agents or attorneys, shall have the right to take immediate possession of the Collateral, or any portion thereof, and for that purpose may pursue the same wherever it may be found, and may enter any premises, with or without notice, demand, process of law or legal procedure, and search for, take possession of, remove, keep and store the Collateral, or, to the extent permitted by law, use and operate or lease the Collateral until sold;

(c) Upon every such taking of possession, the Lender may, from time to time, at the expense of the Collateral, make all such expenditures for maintenance, insurance, repairs, replacements, alterations, additions and improvements to and of the Collateral, as it may deem proper, including the right to enter into any and all such agreements with respect to the maintenance, use, operation, storage, leasing, control, management or disposition of the Collateral or any part thereof as the Lender may determine; and the Lender shall be entitled to collect and receive directly all tolls, rents (including rental under the Lease), revenues, issues, income, products and profits of the Collateral and every part thereof, except Excepted Rights in Collateral, without prejudice, however, to the right of the Lender under any provision of this Agreement to collect and receive all cash held by, or required to be deposited with the Lender hereunder;

(d) The Lender may, if at the time such action may be lawful (subject to compliance with any mandatory legal requirements), either with or without taking possession and either before or after taking possession, and without instituting any legal proceedings whatsoever, and having first given notice of such sale by registered mail to the Debtor once at least ten days prior to the date of such sale, sell and dispose of said Collateral, or any part thereof, at public auction to the highest bidder, in one lot as an entirety or in separate lots, and either for cash or on credit and on such terms as the Lender may determine, and at any place (whether or not it be the location of the Collateral or any part thereof) designated in the notice above referred to; provided, however, that any such sale should be held in a commercially reasonable manner provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Debtor should tender full payment of the total unpaid balance of the Notes, together with interest thereon accrued and unpaid and all other payments due under the Notes and this Agreement as well as expenses of the Lender in retaking possession of, removing, storing, holding and preparing the Equipment for and otherwise arranging for the sale and the Lender's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Lender, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the

Debtor. Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales, or for any such adjourned sale or sales, without further published notice, and the Lender or any holder of a Note, or of any interest therein, or the Debtor may bid and become the purchaser at any such sale;

(e) The Lender may proceed to protect and enforce this Agreement and said Notes by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted; or for foreclosure hereunder, or for the appointment of a receiver or receivers for the Collateral or any part thereof, for the recovery of judgment for the indebtedness hereby secured or for the enforcement of any other proper, legal or equitable remedy available under applicable law;

(f) The Lender may proceed to exercise all rights, privileges and remedies available to the Debtor under the terms of the Lease including, without limitation, the right to terminate the Lease and may exercise all such rights and remedies either in the name of the Lender or in the name of the Debtor for the use and benefit of the Lender. In the event the Lender shall at any time declare that a Lease Event of Default shall have occurred, subject to the terms of Section 6.1(b) hereof, the unpaid balance of all Notes then outstanding, together with all accrued interest thereon, shall immediately be and become immediately due and payable without presentment, demand, protest or notice, all of which are hereby waived; and

(g) The Debtor will pay all reasonable actual fees, costs and expenses, including attorneys fees incurred by the Lender or any holder of a Note in enforcing its rights and remedies under the terms of this Agreement.

6.3 Acceleration Clause. In case of any sale of the Collateral, or of any part thereof, pursuant to any judgment or decree of any court or otherwise in connection with the enforcement of any of the terms of this Agreement, the aggregate principal amount of the Notes, if not previously due, and the interest accrued thereon, shall at once become and be immediately due and payable; also in the case of any such sale, the purchaser, for the purpose of making settlement for or payment of the purchase price, shall be entitled to turn in and use the Notes and any claims for interest matured and unpaid thereon, in order that there may be credited as paid on the purchase price the sum apportionable and applicable to the Notes, including principal and interest thereof, out of the net proceeds of such sale after allowing for the proportion of the total purchase price required to be paid in actual cash.

6.4 Waiver by Debtor. To the extent permitted by law, the Debtor covenants that it will not at any time insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law now or at any time hereafter in force providing for the valuation or appraisal of the Collateral or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained or to a decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and, to the full extent legally permitted, hereby expressly waives for itself and on behalf of each and every person all benefit and advantage of any such law or laws and covenants that it will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to the Lender, but will suffer and permit the execution of every such power as though no such law or laws had been made or enacted; provided, however, that any such sale or sales shall be made in a commercially reasonable manner.

6.5 Effect of Sale. Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Debtor in and to the property sold and shall be a perpetual bar, both at law and in equity, against the Debtor, its successors and assigns, and against any and all persons claiming the property sold or any part thereof under, by or through the Debtor, its successors or assigns.

6.6 Application of Sale Proceeds. The proceeds of any sale of the Collateral, or any part thereof, and the proceeds of any remedy hereunder and any other amounts received by the Lender pursuant to this Agreement after an Event of Default shall have occurred and be continuing shall be paid to and applied as follows:

First, to the payment of costs and expenses of foreclosure or suit, if any, and of such sale, and of all proper expenses, liability and advances, including reasonable actual legal expenses and attorneys' fees, incurred or made hereunder by the Lender, or the holders of the Notes, and of all taxes, assessments or liens superior to the lien of these presents, except any taxes, assessments or other superior lien subject to which said sale may have been made; and

Second, to the payment to the holders of the Notes of the amount then due, owing or unpaid on the Notes for principal and interest; and in case such proceeds shall be insufficient to

pay in full the whole amount so due, owing or unpaid upon the Notes, then first to unpaid interest thereon, second, to unpaid principal thereof ratably to the holders of the Notes, without priority of one over the other in the proportion that the amount of such proceeds to which each such holder is entitled bears to the aggregate amount of all such proceeds; and

Third, to the payment of any other indebtedness hereby secured to the holders of the Notes, ratably, without priority of one over the other in the proportion that the amount of such proceeds to which each such holder is entitled bears to the aggregate amount of all such proceeds; and

Fourth, to the payment of the surplus, if any, to the Debtor, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

6.7 Discontinuance of Remedies. In case the Lender shall have proceeded to enforce any right under this Agreement by foreclosure, sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely, then, and in every such case, the Debtor, the Lender and the holders of the Notes shall be restored to their former positions and rights hereunder with respect to the property subject to the security interest created under this Agreement.

6.8 Cumulative Remedies. No delay or omission of the Lender or of any holder of a Note to exercise any right or power arising from any default on the part of the Debtor, shall exhaust or impair any such right or power or prevent its exercise during the continuance of such default. No waiver by the Lender, or any holder of a Note, of any such default, whether such waiver be full or partial, shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom except as may be otherwise provided herein. The Lender may exercise any one or more or all of the remedies hereunder and no remedy is intended to be exclusive of any other remedy but each and every remedy shall be cumulative and in addition to any and every other remedy given hereunder or otherwise existing now or hereafter at law or in equity; nor shall the giving, taking or enforcement of any other or additional security, collateral or guaranty for the payment of the indebtedness secured under this Agreement operate to prejudice, waive or affect the security of this Agreement or any rights, powers or remedies hereunder, nor shall the Lender or the holders of the Notes be required to first look to, enforce or exhaust such other or additional security, collateral or guaranties.

6.9 Indemnity. The Debtor agrees to protect, indemnify and hold the Lender, its successors and assigns, directors, officers, employees, servants and agents, harmless from and against any and all costs, expenses, causes of action, suits, damages, losses, penalties, claims, demands or judgments of any nature whatsoever which may be imposed on, incurred by or asserted against the Lender in any way relating to or arising or alleged to arise out of this Agreement or the Lease except that no indemnity shall be made (i) for any matters arising from the gross negligence or the willful misconduct of the Lender, (ii) on account of transaction expenses contemplated by Section 9.11 hereof in excess of the amount set forth in said Section 9.11, or (iii) for the internal costs and expenses, such as salaries and overhead, of the Lender.

Section 7. TRANSFER OF DEBTOR'S INTEREST.

The Debtor agrees that it will not sell or otherwise transfer its interest in the Equipment or the Lease, or any part thereof, without the prior written consent of the Lender.

Section 8. THE NOTES.

8.1 Execution of the Notes. Each Note shall be signed on behalf of the Debtor by an authorized signatory who, at the date of the actual execution thereof, shall be duly authorized to execute the same.

8.2 Payment of the Notes.

(a) The principal of and interest on the Notes shall be payable on each payment date under the Notes by wire transfer of immediately available funds, at Chemical Bank, 640 Madison Avenue, New York, New York, Account No. 116-003855, for the account of The CIT Group/Equipment Financing, Inc. or to such other account as the holder of each Note shall designate to the Debtor from time to time in writing, and if no such designation is in effect, by check, duly mailed, first class, certified, postage prepaid, or delivered to the Lender at the address last furnished to the Debtor. All payments so made shall be valid and effective to satisfy and discharge the liability upon such Note to the extent of the sums so paid. All such payments shall be free and clear of and without deduction for or an account of wire or other charges. Each holder (or the person for whom such holder is a nominee) by its acceptance of a Note agrees that, before selling, transferring or otherwise disposing of such Note, it will advise the Debtor upon such transfer and notation of payment as provided in Sections 8.3 and 8.4.

(b) There shall be mandatory prepayment without penalty or premium of principal on the Notes in an aggregate amount equal to the applicable Loan Value, plus interest accrued thereon, when a Casualty Occurrence exists and the Lessee has not provided substitute Equipment pursuant to Paragraph 16 of the Lease.

(c) If any payment hereunder or under the Notes is due on a day other than a Business Day, payments required to be made on such day shall be made on the next succeeding Business Day.

(d) The Debtor shall pay to the Lender or any holder of a Note interest on overdue principal and (to the extent permitted by applicable law) overdue interest and any other amounts payable hereunder or under any Note which are overdue at the rate of 12% (twelve per cent) per annum (calculated on the basis of a year of 365 days and actual days elapsed) whether as scheduled or upon acceleration or otherwise, but not in excess of the highest rate permitted by law.

### 8.3 Transfers and Exchanges of Notes; Lost or Mutilated Notes.

(a) The holder of a Note may transfer such Note upon the surrender thereof at the principal office of the Debtor and the Debtor shall execute in the name of the transferee a new Note or Notes, in such denominations as may be requested by the holder, in aggregate principal amount equal to the unpaid principal amount of the Note so surrendered, and deliver such new Note or Notes to said holder for delivery to such transferee.

(b) The holder of a Note or reissued Notes may surrender such Note or Notes at the principal office of the Debtor, accompanied by a written request for a new Note or Notes in the same aggregate principal amount as the then unpaid principal amount of the Note or Notes so surrendered. Thereupon, the Debtor shall execute in the name of such holder a new Note or Notes in the denomination or denominations so requested and in aggregate principal amount equal to the aggregate unpaid principal amount of the Note or Notes so surrendered and deliver such new Note or Notes to such holder.

(c) All Notes presented or surrendered for exchange or transfer shall be accompanied (if so required by the Debtor) by a written instrument or instruments of assignment or transfer, duly executed by the registered holder or by its attorney duly authorized in writing. The Debtor shall not be required to make a transfer or an exchange of any Note for a period of ten days preceding any installment payment date with respect thereto.

(d) No notarial act shall be necessary for the transfer or exchange of any Note pursuant to this Section 8.3, and the holder of any Note issued as provided in this Section 8.3 shall be entitled to any and all rights and privileges granted under this Agreement to the holder of such Note.

(e) In case any Note shall become mutilated or be destroyed, lost or stolen, the Debtor, upon the written request of the holder thereof, shall execute and deliver a new Note in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. The applicant for a substituted Note shall furnish to the Debtor such security or indemnity as may be required by the Debtor to save it harmless from all risks in connection therewith, and the applicant shall also furnish to the Debtor evidence to its satisfaction of the mutilation, destruction, loss or theft of the applicant's Note and of the ownership thereof. In case any Note which has matured or is about to mature shall become mutilated or be destroyed, lost or stolen, the Debtor may, instead of issuing a substituted Note, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Note), if the applicant for such payment shall furnish to the Debtor such security or indemnity as the Debtor may require to save it harmless, and shall furnish evidence to the satisfaction of the Debtor of the mutilation, destruction, loss or theft of such Note and the ownership thereof. If the Lender, or its nominee, is the owner of any such lost, stolen or destroyed Note, then the affidavit of the president, vice president, treasurer or assistant treasurer of such Lender setting forth the fact of loss, theft or destruction and of its ownership of the Note at the time of such loss, theft or destruction shall be accepted as satisfactory evidence thereof and no indemnity shall be required as a condition to execution and delivery of a new Note other than the written agreement of the Lender to indemnify the Debtor for any claims or action against it (and for its attorneys' fees) resulting from the issuance of such new Note or the reappearance of the old Note.

#### 8.4 New Notes.

(a) Each new Note issued pursuant to Section 8.3(a), (b) or (e) in exchange for or in substitution or in lieu of an outstanding Note shall be dated the date of such outstanding Note. The Debtor shall mark on each new Note (i) the dates to which principal and interest have been paid on such outstanding Note, (ii) all payments and prepayments of principal previously made on such outstanding Note which are allocable to such new Note, and (iii) the amount of each installment payment payable on such new Note. Each installment of principal payable on such new Note on any date shall bear the same proportion to the

installment of principal payable on such outstanding Note on such date as the original principal amount of such new Note bears to the aggregate unpaid principal amount of such outstanding Note on the date of the issuance of such new Note. Interest shall be deemed to have been paid on such new Note to the date on which interest shall have been paid on such outstanding Note, and all payments and prepayments of principal marked on such new Note, as provided in clause (ii) above, shall be deemed to have been made thereon.

(b) All new Notes issued pursuant to Section 8.3(a), (b) or (e) in exchange for or in substitution or in lieu of outstanding Notes shall be valid obligations of the Debtor evidencing the same debt as outstanding Notes and shall be entitled to the benefits and security of this Agreement to the same extent as the outstanding Notes.

(c) Upon the issuance of any Note pursuant to this Agreement, the Debtor shall prepare and deliver to the Lender a copy of an amortization schedule with respect to such Note setting forth the amount of the installment payments to be made on such Note after the date of issuance thereof and the unpaid principal balance of such Note after each such installment payment. The Lender shall deliver, or send by first class mail, postage prepaid, one copy of the applicable schedule to the holder of such Note at its address furnished to the Debtor for such purpose.

8.5 Cancellation of Notes. If any Note is surrendered for the purpose of payment, redemption, transfer or exchange, such Note shall be delivered to the Debtor for cancellation or, if surrendered to the Debtor, shall be cancelled by it, and no Note or Notes shall be issued in lieu thereof except as expressly required or permitted by any of the provisions of this Agreement.

#### Section 9. MISCELLANEOUS.

9.1 Business Days. As used herein, the term "Business Day" means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in the States of New York or Georgia are authorized or obligated to remain closed.

9.2 Successors and Assigns. Whenever any of the parties hereto is referred to such reference shall be deemed to include the successors and assigns of such party; and all the covenants, premises and agreements in this Agreement contained by or on behalf of the Debtor or by or on behalf of the Lender shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

9.3 Partial Invalidity. The unenforceability or invalidity of any provision or provisions of this Agreement shall not render any other provision or provisions herein contained unenforceable or invalid.

9.4 Communications. All communications provided for herein shall be in writing and shall be deemed to have been given (unless otherwise required by the specific provisions hereof in respect of any matter) when delivered personally or when deposited in the United States mails, certified first class, postage prepaid, addressed as follows:

If to the Debtor:

Railcar, Ltd.  
Suite 303  
1819 Peachtree Road, N.E.  
Atlanta, Georgia 30309-1847  
Attn: Mr. Wilds L. Pierce, President

If to the Lender:

The CIT Group/Equipment Financing, Inc.  
270 Park Avenue  
New York, New York 10017  
Attn: General Counsel

or to the Debtor or the Lender at such other address as the Debtor or the Lender may designate by notice duly given in accordance with this Section to the other party.

9.5 Governing Law. This Agreement and the Note shall be construed in accordance with and governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof, as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

9.6 Counterparts. This Agreement may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Agreement.

9.7 Table of Contents and Headings. The Table of Contents hereto and any headings or captions preceding the text of the several sections hereof are intended solely for convenience

of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

9.8 Limitation of Liability. It is understood and agreed by the Lender that, except for the obligations of the Debtor in Sections 2.5(a)(xiii), 2.5(a)(xvii) and 7 hereof, the liability of the Debtor or any assignee of the Debtor for all payments to be made by it under and pursuant to this Agreement and the Notes, including without limitation the indemnity contained in Section 6.9 hereof, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment". As used herein and in the Notes the term "income and proceeds from the Equipment" shall mean: (i) if one of the Events of Default specified in Section 6.1 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are received by the Debtor or any assignee of the Debtor at any time after any such event and during the continuance thereof (a) all amounts of operating revenues and amounts in respect of any Casualty Occurrence paid for or with respect to the Equipment or pursuant to the Lease and any and all other payments received under the provisions of the Lease or any other Collateral (except for Excepted Rights in Collateral) and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition; and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Debtor or any assignee of the Debtor and as shall equal the portion of the principal of the Note (including prepayments thereof required in respect of any Casualty Occurrence) and/or interest thereon due and payable under the terms of the Notes and this Agreement or as shall equal any other payments then due and payable under this Agreement. Nothing contained herein limiting the liability of the Debtor shall derogate from (i) the obligation of the Lender to pay over to the Debtor amounts received by the Lender under the Lease which exceed amounts owing and payable to the Lender under the Notes and any other Financing Agreement; or (ii) the right of the Lender to proceed against the Collateral for the full unpaid principal amount of the Note and interest thereon and all other payments and obligations hereunder and thereunder. Notwithstanding any other provision of this Agreement, the Debtor shall be liable to the Lender in the event any representation or warranty made by the Debtor in Section 2.5(a)(i)-(viii), (x), (xiii), (xviii) and (xix) herein shall prove to have been incorrect in any material respect when the same was made. Except as expressly provided in this Section 9.8, the Lender shall have no recourse against the properties and assets of the Debtor.

9.9 Marking of Equipment. The Debtor will cause each Item of Equipment to be kept numbered and conspicuously marked indicating that ownership in the Item of Equipment is subject to a Loan and Security Agreement filed with the Interstate Commerce Commission. The Debtor will not permit the identifying number of any Item of Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor which previously shall have been filed by or on behalf of the Debtor in all public offices where this Agreement shall have been filed. Except as aforesaid, the Debtor will not allow the name of any person, association or corporation to be placed on any Item of Equipment as a designation that might be interpreted as a claim of ownership or lien; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee.

9.10 Participation. Notwithstanding any other provision of this Agreement, the Lender may enter into participation agreements before, in conjunction with or after the closing hereof, with participating lenders whereby the Lender will allocate certain percentages of this Agreement and the Notes to such participating lenders. The Debtor agrees that its obligations under this Agreement are undertaken for the benefit of, and as an inducement to, each of any such participants as well as the Lender.

9.11 Transaction Expenses. Whether or not the transactions contemplated by this Agreement and the Lease are consummated, the Debtor shall pay on demand all expenses up to \$15,000 in connection with such transactions, including without limitation the reasonable fees and expenses of Haight, Gardner, Poor & Havens, special counsel to the Lender and the reasonable fees and expenses of special I.C.C. counsel.

[Rest of page intentionally left blank]

IN WITNESS WHEREOF, the Debtor and the Lender have executed this Agreement as of the day and year first above written.

ATTEST:

RAILCAR, LTD.

Madean C. Stumbles  
Secretary

By Wilds L. Pierce  
Name: Wilds L. Pierce  
Title: President

(CORPORATE SEAL)

ATTEST:

THE CIT GROUP/EQUIPMENT FINANCING,  
INC.

Assistant Secretary

By W.S. Farley  
Name: W.S. Farley  
Title: Senior Vice President

(CORPORATE SEAL)

STATE OF GEORGIA                    )  
  )  SS  
COUNTY OF FULTON                 )

On this 30TH day of AUGUST, 1988 before me personally appeared Wilds L. Pierce and NADEAN HUMBLES, to me personally known, who being by me duly sworn, say that they are the President and SECRETARY, respectively, of RAILCAR, LTD., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Bylaws, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

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

My Commission expires:

Notary Public, Clayton County, Georgia  
My Commission Expires May 30, 1992

3395A



EXHIBIT A

(to the Loan and Security Agreement)

DESCRIPTION OF EQUIPMENT

TYPE AND DESCRIPTION OF CAR: 100 ton 7000 cu. ft.  
woodchip hopper cars

NUMBER OF CARS: One hundred fifty (150)

PERMITTED LADING USE: Wood products only

RESTRICTIVE USE: Cars to be used exclusively  
in rotary dump service

REPORTING MARK AND NUMBERS: WVCX 3000-3149

OWNER RAILCAR, LTD.

PREVIOUS REPORTING MARKS  
AND NUMBERS:

SBD NUMBER		FORMER NUMBER		
FROM	TO	FROM	TO	TO
SDB 432580	432613	WA	26000	26034
SDB 432614	432647	AWP	46000	46034
SDB 432648	432648	SCL	195900	195900
SDB 432649	433037	SCL	195001	195389
SDB 433038	433047	SCL	195390	195399
SDB 433048	433048	WA	26015	26015

EXHIBIT B

(to the Loan and Security Agreement)

FORM OF SECURED NOTE

THIS NOTE HAS NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE. THE NOTE MAY NOT BE OFFERED OR SOLD UNLESS IT IS REGISTERED UNDER THE APPLICABLE SECURITIES LAWS OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.

SECURED NOTE

No. \_\_\_\_\_, 1988

§ \_\_\_\_\_ New York, New York

FOR VALUE RECEIVED, the undersigned, Railcar, Ltd., (the Debtor) promises to pay to the order of The CIT Group/Equipment Financing, Inc. (the Lender) at Chemical Bank, 640 Madison Avenue, New York, New York, Account No. 116-003855, for the account of The CIT Group/Equipment Financing, Inc., or to such other person and/or such other place as the holder hereof may from time to time designate, the principal sum of (\$ \_\_\_\_\_)

together with interest from the date hereof until maturity (calculated on the basis of a 360-day year of twelve consecutive 30-day months) on the unpaid principal hereof from time to time, at a rate per annum (hereinafter called the Interest Rate) equal to \_\_\_\_\_. The principal and interest hereof shall be payable in installments as follows, with each such payment first credited to interest due and any remainder to reduction of principal:

(1) monthly installments of interest only, payable in arrears, commencing thirty (30) days after the date hereof up to and including February 1, 1989, calculated on the basis of a year of 365 days and actual days elapsed; followed by

(2) one hundred seventy-nine (179) monthly installments of principal and interest, each in the amount of \$ \_\_\_\_\_ payable on March 1, 1989 and on the first day of each month thereafter to and including January 1, 2004; followed by

(3) a final installment on February 1, 2004 in the amount equal to the entire principal and accrued interest (at the Interest Rate) hereof which shall remain unpaid as of said date.

If any payment hereunder is due on a day other than a Business Day (as defined in the Loan and Security Agreement), payments required to be made on such day shall be made on the next succeeding Business Day.

The Debtor shall pay to the holder hereof interest on overdue principal and (to the extent permitted by applicable law) overdue interest and any other amounts payable hereunder which are overdue at the rate of 12% per annum (calculated on the basis of a year of 365 days and actual days elapsed) whether as scheduled, or upon acceleration or otherwise, but not in excess of the highest rate permitted by law.

This Note is one of the Secured Notes of the Debtor (the Note) issued under and pursuant to and secured by the Loan and Security Agreement dated as of August 30, 1988 (the Loan and Security Agreement) between the Lender and the Debtor. Reference is made to the Loan and Security Agreement and all supplements and amendments thereto executed pursuant to the Loan and Security Agreement for a description of the collateral, the nature and extent of the security and rights of the Lender, the holder or holders of the Note or Notes issued in exchange for the Notes and of the Debtor in respect thereof.

The terms and provisions of the Loan and Security Agreement and the rights and obligations of the Lender and the rights of the holder of this Note may be changed and modified to the extent permitted by and as provided in the Loan and Security Agreement.

The Debtor also agrees to pay to the holder hereof any and all indemnity amounts which are payable in respect of the holder under the Loan and Security Agreement.

Principal and interest and other amounts due hereunder shall be payable in immediately available funds at Chemical Bank, 640 Madison Avenue, New York, New York, Account No. 116-003855, for the account of The CIT Group/Equipment Financing, Inc. or any such other place as the holder hereof shall have designated to the undersigned in writing. All such payments shall be free and clear of and without deduction for an account of wire or other charges.

This Note and the Loan and Security Agreement are governed by and construed in accordance with the laws of the State of New York; provided, however, that the holder of this Note shall be entitled to all the rights conferred by any applicable Federal statute, rule or regulation.

It is understood and agreed that the liability of the Debtor or any assignee of the Debtor for all payments to be made

by it under and pursuant to this Note shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment" as defined in Section 9.8 of the Loan and Security Agreement.

This Note is subject to prepayment without penalty or premium as provided in Section 8.2(b) of the Loan and Security Agreement.

IN WITNESS WHEREOF, the Debtor has caused this Note to be duly executed.

WITNESS:

RAILCAR, LTD.

\_\_\_\_\_

By \_\_\_\_\_  
Name: Wilds L. Pierce  
Title: President

EXHIBIT C

(to the Loan and Security Agreement)

DESCRIPTION OF OPINION OF  
COUNSEL FOR THE DEBTOR  
TO BE DELIVERED ON THE CLOSING DATE

The opinion of counsel for the Debtor, which is called for by Section 2.4(g) of the Loan and Security Agreement, shall be dated the Closing Date, shall be addressed to the Lender and shall be to the effect that:

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

2. The Debtor has full corporate right, power and authority to enter into, execute and deliver the Loan and Security Agreement, and the Notes and to perform each and all of the matters and things provided for in said instruments.

3. The Loan and Security Agreement, and the Lease have been duly authorized, executed and delivered by the Debtor and Railcar Management, Inc. ("RMI") as agent for and on behalf of the Debtor, respectively, and, assuming due authorization, execution and delivery by the other parties thereto, and said Loan and Security Agreement and Lease constitute the legal, valid and binding obligations of the Debtor in the case of the Loan and Security Agreement, and RMI as agent for and on behalf of the Debtor, in the case of the Lease, enforceable in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and except as enforcement is subject to general principles of equity (including but not limited to all matters of public policy), regardless of whether such enforceability is considered in a proceeding in equity or at law.

4. The Notes constitute the legal, valid and binding obligations of the Debtor enforceable in accordance with their terms, except as may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and except as enforcement is subject to general principles of equity (including but not limited to all matters of public policy), regardless of whether such enforceability is considered in equity or at law.

5. There are no proceedings pending, or to the knowledge of such counsel, threatened, against or affecting the Debtor or the transactions contemplated by the Loan and Security Agreement in any court or before any governmental authority or

arbitration board or other tribunal which, if adversely determined, would materially affect the right, power and authority of the Debtor to enter into or perform the Loan and Security Agreement and to the Lease.

6. No consent, approval or authorization of any governmental authority or, to the knowledge of such counsel, any third party is required (i) on the part of the Debtor in connection with the execution and delivery of the Loan and Security Agreement, or the offer, issue, sale or delivery of the Notes or (ii) on the part of RMI in connection with the execution and delivery of the Lease.

7. The Bills of Sale are effective to vest in the Debtor any right, title and interest of the Seller in and to the Equipment.

EXHIBIT D

(to the Loan and Security Agreement)

DESCRIPTION OF OPINION OF COUNSEL FOR THE  
LESSEE TO BE DELIVERED ON THE CLOSING DATE

The opinion of counsel for the Lessee, which is called for by Section 2.4(g) of the Loan and Security Agreement, shall be dated the Closing Date, shall be addressed to the Debtor and the Lender, and shall be to the effect that:

1. The Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and has full right, power and authority to carry on its business and own its property, to enter into, execute and deliver the Lease, each Certificate of Acceptance and the Notice and Acknowledgement of Assignment attached hereto and to perform each and all of the provisions to be performed by the Lessee thereunder.

2. The Lease, each Certificate of Acceptance and the Notice and Acknowledgement of Assignment have been authorized by all necessary corporate action on the part of the Lessee and have been duly executed and delivered by the Lessee. Said agreements constitute the legal, valid and binding obligations of the Lessee, enforceable in accordance with their respective terms, except as such terms may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and except as enforcement is subject to general principles of equity (including but not limited to all matters of public policy), regardless of whether such enforceability is considered in a proceeding in equity or at law.

EXHIBIT E

(to the Loan and Security Agreement)

FORM OF NOTICE AND ACKNOWLEDGEMENT  
OF ASSIGNMENT

THIS NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT dated as of August 30, 1988 ("Notice and Acknowledgement") among RAILCAR MANAGEMENT, INC., a Georgia corporation, acting as agent for and on behalf of RAILCAR, LTD. ("Lessor"), THE CIT GROUP/EQUIPMENT FINANCING, INC., a New York corporation ("Lender"), and WESTVACO CORPORATION, a Delaware corporation ("Lessee"),

W I T N E S S E T H:

A. Prior to the execution hereof, Lessor and Lessee have executed the Lease Agreement dated as of May 3, 1988 as amended by Lease Amendment No. 1 dated as of August 30, 1988 (the "Lease"), pursuant to which Lessor will lease to Lessee the equipment described in Exhibit A to the Lease (the "Equipment").

B. Concurrently with the execution hereof, Lessor and Lender are executing the Loan and Security Agreement dated as of August 30, 1988 (the "Security Agreement"), pursuant to which Lessor will borrow from Lender a portion of the funds necessary to maintain its investment in the Equipment, transfer to Lender a security interest in the Equipment, and assign to Lender Lessor's rights and interests in and under the Lease to secure Lessor's limited recourse obligation to repay the funds borrowed from Lender.

C. Lessee is willing to consent to such assignment of the Lease.

NOW, THEREFORE, in consideration of the mutual agreements contained in the Lease and the Security Agreement, and intending to be legally bound, the parties hereto agree as follows:

1. Definitions. Capitalized terms used herein but not otherwise defined herein are used with the respective meanings given to such terms in the Lease or the Security Agreement.

2. Consent of Lessee to Assignment as Security to Lender. Lessee hereby acknowledges and consents to the assignment of the Lease by Lessor to Lender under and pursuant to the Security Agreement and agrees for the benefit of Lender as follows:

(a) To make each payment of rental or other sums due under the Lease, including interest thereon for late payment thereof ("Rent") assigned thereby directly to Lender by paying to The CIT Group/Equipment Financing Inc. by one or more checks drawn on any bank or trust company (selected by Lessee and reasonably acceptable to Lender) having a banking office in New York, New York, made payable to Lender and delivered to Lender at the address indicated in Section 2(h) hereof at least two Business Days before the date such payment is due, so long as any indebtedness of Debtor to Lender secured under the terms of the Security Agreement shall be outstanding and unpaid;

(b) Each installment of rent provided for in Paragraph 6 of the Lease ("Basic Rent") and each payment of casualty loss set forth in Exhibit C to the Lease ("Casualty Loss") payable under the Lease shall be, under any circumstances and in any event, payable in accordance with the terms of the Lease;

(c) Not to seek the recovery of any payment made to Lender pursuant to the Security Agreement and this Notice and Acknowledgement once such payment has been made;

(d) That so long as any indebtedness of Debtor to Lender secured under the terms of the Security Agreement shall be outstanding and unpaid, all rights of Lessor with respect to the Lease and the items of Equipment or any part thereof shall be exercisable by Lender, as assignee and secured party or lienholder, subject to the terms of the Security Agreement;

(e) At the request of the Lender, to execute any financing statements, continuation statements or other documents necessary to create, perfect, protect and preserve the priority security interest acquired, or intended to be acquired, by Lender under the Security Agreement until all obligations of Debtor in connection with the transactions contemplated hereby and thereby shall have been fulfilled;

(f) To execute and deliver such other documents as Lessor or Lender may reasonably request;

(g) That any amendment to, or any waiver, discharge or termination of, any term or provision of the Lease (or any consent of Lessor required thereunder) shall also require the written consent of Lender;

(h) That Lessee will deliver to Lender at 270 Park Avenue, New York, New York, 10017, Attention: General

Counsel, a copy of all notices required to be delivered to Lessor under the Lease concurrently with the delivery of such notices to Lessor;

(i) That Lender shall be named as loss payee with respect to any insurance carried by Lessee pursuant to Paragraph 12 of the Lease;

(j) That each of the representations, warranties and indemnities of Lessee set forth in the Lease, and the sixty day grace period established under Section 18 of the Lease, are hereby incorporated by reference herein and are deemed to apply to Lender as well as Lessor as fully and to the extent and with the force and effect as if set forth in full in this Section 2(j); and

(k) For the purpose of applying Paragraph 14 of the Lease to Lender, Lender and its successors, assigns, agents, servants, employees and officers shall each be an indemnified person.

3. No Further Amendments. Except as expressly modified or amended herein, all of the terms, covenants and conditions of the Lease shall remain unamended and in full force and effect.

4. Governing Law. This Notice and Acknowledgement shall be governed by and construed in accordance with the laws of the State of New York.

5. Counterparts. This Notice and Acknowledgement may be executed in two or more counterparts, which together shall constitute one and the same instrument.

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

ATTEST:

WESTVACO CORPORATION

\_\_\_\_\_  
Secretary

(CORPORATE SEAL)

By \_\_\_\_\_  
Name:  
Title:  
Date:

ATTEST:

RAILCAR, LTD.  
by Railcar Management, Inc. as  
agent for Railcar, Ltd.

\_\_\_\_\_  
Secretary  
(CORPORATE SEAL)

By \_\_\_\_\_  
Name: Wilds L. Pierce  
Title: President  
Date:

ATTEST:

THE CIT GROUP/EQUIPMENT  
FINANCING, INC.

\_\_\_\_\_  
Secretary  
(CORPORATE SEAL)

By \_\_\_\_\_  
Name:  
Title:  
Date:

STATE OF GEORGIA        )  
                          ) ss.:  
COUNTY OF FULTON       )

On this            day of                   , 19   , before me personally appeared Wilds L. Pierce and                   , to me personally known, who being by me duly sworn, say that they are the President and                   , respectively, of RAILCAR MANAGEMENT, INC., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

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

My Commission expires:

STATE OF NEW YORK     )  
                                  ) ss.:  
COUNTY OF NEW YORK    )

On this            day of            , 19    , before me personally appeared            and            , to me personally known, who being by me duly sworn, say that they are the            and            , respectively, of THE CIT GROUP/EQUIPMENT FINANCING, INC., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

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

My Commission expires:

