

#13

NEW NUMBER

LAW OFFICES

ALVORD AND ALVORD

200 WORLD CENTER BUILDING

918 SIXTEENTH STREET, N.W.

WASHINGTON, D.C.

20006-2973

(202) 393-2266

ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

ROBERT W. ALVORD+
CHARLES T. KAPPLER
JOHN H. DOYLE+
GEORGE JOHN KETO+
RICHARD N. BAGENSTOS
JAMES C. MARTIN, JR.+

+ ALSO ADMITTED IN NEW YORK
+ ALSO ADMITTED IN OHIO
+ ALSO ADMITTED IN MARYLAND

OF COUNSEL
URBAN A. LESTER

CABLE ADDRESS
"ALVORD"

TELEX
440367 A AND A

TELEFAX
(202) 393-2156

INTERSTATE COMMERCE COMMISSION

December 28, 1988

DEC 28 1988 4:35 pm

RECORDATION NO. 6113 Filed 1425

8-363A037

No. DEC 28 1988

Date 13.00

ICC Washington, D.C.

DEC 28 4 32 PM '88
MOTOR PERMIT UNIT
TH...
100 OFFICE

Ms. Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Ms. McGee:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two (2) fully executed copies of an Equipment Lease Agreement dated December 28, 1988, a primary document as defined in the Commission's Rules for the Recordation of Documents, 49 C.F.R. Section 1177.

The names and addresses of the parties to the enclosed document are:

Lessor: Citicorp Leasing, Inc.
601 Midland Avenue
Rye, New York 10580

Lessee: Grand Trunk Western Railroad Company
1333 Brewery Park Boulevard
Detroit, Michigan 48207-2699

A description of the railroad equipment covered by the enclosed document is set forth in Exhibit A attached hereto and made a part hereof.

Also enclosed is a check in the amount of \$13 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return a stamped copy of the enclosed document to Charles T. Kappler, Esq., Alvord and Alvord, 918 Sixteenth Street, N.W., Washington, D.C. 20006.

6485-C

CT. Kappler

C. Quent...

Ms. Noreta R. McGee
Secretary
Interstate Commerce Commission
December 28, 1988

A short summary of the enclosed primary document to appear
in the Commission's Index is:

Equipment Lease Agreement dated December 28, 1988
between Citicorp Leasing, Inc., Lessor, and Grand
Trunk Western Railroad Company, Lessee, covering
100 steel gondola cars bearing car marks and numbers
GTW 147700 through 147799.

Very truly yours,


Charles T. Kappler

Enclosures

EXHIBIT A

EQUIPMENT SCHEDULE

RAILROAD CARS
LEASED BY
GRAND TRUNK WESTERN RAILROAD COMPANY

FROM

CITICORP LEASING, INC.

1. Description of the Cars:

One hundred (100) 100-ton (2,245 cubic foot) 52'6" x 4'6" all steel gondola cars specifically numbered as follows:

Car Marks and
Numbers are: GTW 147700 through 147799

Interstate Commerce Commission
Washington, D.C. 20423

12/29/88

OFFICE OF THE SECRETARY

Charles T. Kappler

Alvord & Alvord

918 16th St. N.W.

Washington, D.C. 20008

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 12/28/88 at 4:35pm, and assigned recordation number(s). 16113

Sincerely yours,

Narta R. McLee

Secretary

Enclosure(s)

DEC 28 1988

1 6113

REGISTRATION NO. _____ FILED 1488

EQUIPMENT LEASE AGREEMENT

THIS EQUIPMENT LEASE AGREEMENT (together with the Schedules and Exhibits hereto, this "Lease") dated December 28, 1988 is by and between CITICORP LEASING, INC., a Delaware corporation ("Lessor"), and GRAND TRUNK WESTERN RAILROAD COMPANY, a Michigan corporation ("Lessee").

1. EQUIPMENT DESCRIPTION.

Concurrently with the execution and delivery of this Lease, Lessor is purchasing, from Security Pacific Leasing Corporation pursuant to a Bill of Sale in form satisfactory to Lessor, one hundred (100) 100-ton 52'6" x 4'6" all steel (2,245 cubic foot capacity) Gondola railroad cars (hereinafter collectively referred to as the "Cars" and separately as a "Car"), more particularly described in the Equipment Schedule attached hereto as Exhibit A and incorporated herein by this reference.

2. LEASE AND TERM.

Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from Lessor, from and as of the date of this Lease, the Cars described in the Equipment Schedule. The term of this Lease as to each Car shall consist of (i) an interim period (the "Interim Lease Term") commencing on the date hereof and ending on June 27, 1989, during which period Lessor and Lessee contemplate that all such Cars will be delivered to Tank Lining and Railcar Repair Company (the "Rebuilder"), and Lessee hereby agrees to deliver the Cars to the Rebuilder at Butler, Pennsylvania, and to bear any freight charges required, at the rate of approximately 10 Cars per week commencing as soon after the date hereof as is reasonably practicable, for restoration pursuant to a Repair Agreement dated as of the date hereof (the "Repair Agreement") between the Lessor and the Rebuilder in accordance with the specifications attached thereto (the "Specifications") and redelivery by the Rebuilder in Butler, Pennsylvania to the Lessee for acceptance pursuant to Section 10 hereof prior to the end of such period, (ii) commencing June 28, 1989, a period of ten (10) years (the "Base Lease Term") expiring on June 27, 1999, and (iii) in the event Lessee exercises the renewal option(s) provided in Section 20 hereof, up to two additional periods of one (1) year each (a "Renewal Term") expiring on June 27, 2000 and June 27, 2001, respectively. An executed copy of the Repair Agreement has been delivered to Lessee and is satisfactory thereto.

3. RENT.

A. As rent for each Car, Lessee agrees to pay Lessor (i) interim rental for the Interim Lease Term in the amounts and on the dates stated in the Equipment Schedule; (ii) quarterly rental as provided on the Equipment Schedule during the Base Lease Term; and (iii) the quarterly rental determined in accordance with Section 20 for the Renewal Term(s), if any. All quarterly rents shall be paid in advance on the 28th day of each June, September, December and March so long as this Lease remains in effect, with the first payment due on June 28, 1989. No interim rental shall abate for any portion of the Interim Lease Term during which any Car is in the possession of the Rebuilder for restoration pursuant to the Repair Agreement or awaiting redelivery to Lessee pursuant to Section 10 hereof.

B. Should Lessee fail to pay any expense required to be paid by Lessee pursuant to this Lease, such expense shall constitute additional rent. Lessor, at its option, may pay such expense, and any amount so expended shall accrue interest from the date expended until paid at a rate equal to Citibank Base Rate plus 200 basis points. The amount of any such Lessor expenditure and all interest accrued thereon shall constitute additional rent and be due and payable from Lessee to Lessor with the next rental payment. Citibank Base Rate shall mean the fluctuating interest rate per annum equal at all times to the rate of interest announced publicly by Citibank, N.A. in New York, New York, from time to time as Citibank, N.A.'s base rate, each change in such fluctuating interest rate to take effect simultaneously with the corresponding change in such base rate.

C. All rents shall be paid to Lessor by wire transfer of Federal or other immediately available funds to Citibank, N.A., ABA No. 0210-00089, for the account of Citicorp Leasing, Inc., Account No. 3885-8133.

4. LATE CHARGE.

ANY PAYMENT NOT MADE BY LESSEE WITHIN TEN (10) DAYS AFTER ITS DUE DATE SHALL BE SUBJECT TO A LATE CHARGE OF ONE AND ONE-HALF PERCENT (1.5%) OF SUCH LATE PAYMENT FOR EACH MONTH OR PORTION THEREOF DURING WHICH SUCH AMOUNT REMAINS UNPAID.

5. LESSEE'S REPRESENTATIONS AND WARRANTIES.

Lessee hereby represents and warrants that:

A. Lessee is a corporation duly organized and validly existing under the laws of the State of Michigan. Lessee has full power to own its assets and conduct its business as presently being conducted and is authorized to conduct such business under the laws of every jurisdiction where authorization is required.

B. Lessee has the power and authority to enter into and perform its obligations hereunder, and the execution, delivery and performance of this Lease and all related instruments and documents: (i) have been duly authorized by all necessary action on the part of Lessee; (ii) do not require any approval or consent of any third party or any federal, state or municipal authority or agency except such as have been duly obtained; and (iii) do not and will not contravene any law, rule, regulation, order, decree or judgment now binding on Lessee, or the Certificate of Incorporation of Lessee, or contravene the provisions of, or constitute a default under, or result in the creation of any lien or encumbrance upon the property of Lessee under any indenture, mortgage, contract or other agreement to which Lessee is a party or by which it or its property is bound, nor is Lessee now in default under any of the same.

C. This Lease has been duly executed and delivered by Lessee and constitutes, and each related instrument and document, when duly executed and delivered by Lessee and Lessor will constitute, the legal, valid and binding obligations of Lessee, enforceable against Lessee in accordance with the terms thereof.

D. There are no pending actions, suits or proceedings to which Lessee is a party, and there are no other pending or threatened actions, suits or proceedings of which Lessee has knowledge, before any court, arbitrator or administrative agency, which, either individually or in the aggregate, would materially adversely affect the financial condition of Lessee, or the ability of Lessee to perform its obligations under this Lease and the related instruments and documents. Further, Lessee is not in default under any material obligations in any agreement, instrument or undertaking, including, without limitation, under any material obligation for the payment of borrowed money, for the deferred purchase price of property or for the payment of any rent or other payment under any lease.

E. The financial statements dated December 31, 1987, of Lessee (copies of which have been furnished to Lessor) are true and correct in all material respects and have been prepared in accordance with United States generally accepted accounting principles consistently applied, and fairly present in all material respects Lessee's financial condition and the results of its operations as of the dates of and for the periods covered by such statements. Since the date of such financial statements, there has been no material adverse change in

Lessee's financial condition or results of operations, nor does there exist any fact, situation or event which materially adversely affects the properties, business, assets, income, prospects or condition (financial or otherwise) of Lessee.

F. The address stated in Section 26 hereof is the chief place of business and chief executive office of Lessee.

G. The Cars are depreciable assets in the hands of Lessor qualifying for depreciation and cost recovery deductions. Lessee has not and will not claim any depreciation deductions under the IRC with respect to any Car subject to this Lease.

H. The Cars are free and clear of any claims, mortgages, security interest, pledge, lien, charge or other encumbrance created by, through or under Lessee.

6. COVENANTS OF LESSEE.

Lessee hereby covenants and agrees as follows:

A. During the term of this Lease, Lessee shall furnish Lessor with (i) audited annual financial statements within 120 days after the end of Lessee's fiscal year; (ii) unaudited quarterly financial statements within 60 days after the end of each fiscal quarter; and (iii) such other information as Lessor may from time to time reasonably request.

B. On or before March 31 in each year, commencing with the calendar year 1990, Lessee will cause to be furnished to Lessor an accurate statement, as of the preceding December 31, showing the amount, description and numbers of the Cars (a) then leased hereunder, (b) that have suffered a loss defined in Section 15(c) hereof during the preceding 12 months (or since the date of this Lease in the case of the first such statement), (c) then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs and setting forth such other information regarding the condition and state of repair of the Cars as Lessor may reasonably request.

C. In entering into this transaction, Lessor has assumed that: (i) Lessor shall be entitled to cost recovery deductions with respect to the Total Restoration Cost within the meaning of Section 168 of the Internal Revenue Code of 1986 (the "IRC"); (ii) except to the extent of the Hulk Cost per Car (defined in Exhibit A, attached hereto), the Cars do not, and will not during

the term of this Lease, constitute property described in Section 168(f)(5) of the IRC; (iii) this Lease will at all times during the term hereof be construed to be a "true lease" and that Lessor will be treated as the owner and lessor of the Cars; and (iv) all income or losses attributable to the Lease shall be from domestic sources. Lessee shall take no action, during or after the term of this Lease inconsistent with these assumptions or with Lessor's intent to claim the tax benefits or attributes described above; provided, however, that neither a Total Loss for which Lessor has received the Stipulated Loss Value nor any action of Lessee permitted by this Lease shall be deemed to be an act inconsistent with these assumptions.

D. Throughout the term of this Lease, Lessee shall promptly furnish to Lessor, if and when reasonably so requested by Lessor, a listing of the Cars by identification number and as to each such Car shall identify its present location, condition and whether it is currently in service.

E. Lessee shall promptly provide written notice to Lessor of the commencement of proceedings under the federal bankruptcy laws or other insolvency laws involving Lessee as a debtor.

F. Lessee will promptly and duly execute and deliver to Lessor such further documents, instruments and assurances and take such further action as Lessor may from time to time reasonably request in order to carry out the intent and purpose of this Lease.

7. CONDITIONS.

The obligations of Lessor to lease the Cars to Lessee are expressly contingent on Lessee's satisfaction and fulfillment of the following conditions, including Lessor's receipt of the following documents and instruments, in form and substance satisfactory to Lessor and its counsel:

A. A Certification by the Secretary of Lessee, or other appropriate corporate officer, certifying that the Certificate of Incorporation and By-laws attached thereto are true and correct copies of the current Certificate of Incorporation and By-laws and any and all amendments thereto adopted by Lessee and confirming the authority of Lessee to execute, deliver and perform this Lease and related instruments and documents.

B. Evidence satisfactory to Lessor as to due compliance with the insurance provisions of Section 14 hereof.

C. An opinion of counsel for Lessee as to each of the matters set forth in subsections (A) through (D) and (H) of Section 5 hereof and as to such other matters as Lessor may reasonably request.

D. This Lease (or a memorandum evidencing this Lease) has been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 11303 of the Interstate Commerce Act and this Lease has been deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision has been made for publication of notice of such deposit in The Canada Gazette in accordance with said Section 86, and no other filing, recording or deposit (or giving notice) with any other Federal, state or local government is necessary in order to protect the rights of Lessor therein or in the Cars in any state of the United States of America or under this Lease in Canada or any Province thereof.

E. A Bill of Sale from Security Pacific Leasing Corporation, transferring title in the Cars to Lessor.

F. Such other instruments and documents as reasonably may be required by Lessor for purposes hereof.

8. WARRANTIES.

A. Lessee acknowledges that Lessor is not the manufacturer or seller of the Cars and is leasing each of the Cars pursuant to this Lease "as is" and "with all faults."

B. LESSOR HEREBY DISCLAIMS ANY AND ALL EXPRESS WARRANTIES AND ALL WARRANTIES OR CONDITIONS IMPLIED BY LAW INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LESSOR SHALL NOT BE LIABLE FOR LOSS OF USE OF THE CARS, LOSS OF TIME, INCONVENIENCE OR OTHER CONSEQUENTIAL DAMAGES.

9. LEASE COMMENCEMENT.

By its execution and delivery of this Lease, Lessee hereby leases and lets all of the Cars from Lessor for the rental and on and subject to the terms and conditions herein set forth, and except as otherwise specifically provided herein, this Lease shall continue in effect with respect to each such Car until the end of the Base Lease Term whether or not such Car shall have been restored pursuant to the Repair Agreement and accepted by Lessee pursuant to Section 10 hereof.

10. INSPECTION AND ACCEPTANCE.

The Repair Agreement provides that, while Cars are under repair, Lessor may assign an inspector to monitor such repairs in progress, that prior to completion of such repairs Lessor will inspect each Car to insure compliance with the Specifications, and that upon such completion the Rebuilder will cause each Car to be tendered to Lessor at Butler, Pennsylvania. Lessee agrees that it will, as agent for Lessor, provide an inspector to perform such monitoring as it deems appropriate and to inspect the Cars under the Repair Agreement and accept the Cars under this Section 10. If a Car is found to be in good order and in compliance with the Specifications, Lessee will accept delivery of such Car at Butler, Pennsylvania and execute and deliver to Lessor a Certificate of Acceptance (the "Certificate of Acceptance") in the form attached hereto as Exhibit B with respect to such Car.

11. USAGE.

A. Lessee covenants and agrees to use the Cars at all times only in the usual and regular course of its business and in a manner consistent with normal usage of railroad cars of similar make and manufacture. Lessee further covenants that it shall use the Cars predominantly in the United States.

B. No person shall have authority to act on behalf of Lessor without written authority from Lessor. Lessee shall comply with all federal, state or municipal requirements applicable to the use and operation of the Cars. Lessee shall hold Lessor harmless from any fines and penalties assessed against the Cars, Lessee or Lessor, and from any and all damage suffered by Lessor arising out of the operation of the Cars, and from all claims asserted by any party, including Lessee's employees and agents arising out of, or in any way connected with, the operation, condition or use of the Cars. If the Cars are confiscated by any public authority, or if Lessor suffers damage, because of Lessee's use of the Cars for an illegal purpose, Lessee shall pay to Lessor the amount of such damage, and Lessor may, at its option, terminate this Lease.

12. MAINTENANCE AND REPAIRS.

During the Base Lease Term and, if applicable, the Renewal Term(s), Lessee, at its own cost and expense, will repair and maintain the Cars in good condition and in accordance with the Rules of Interchange of the Association of American Railroads (or any successor thereto), and will comply with all governmental laws, regulations and requirements and with said Rules of Interchange with respect to the use, maintenance and operation of the Cars. Any parts installed or replacements made upon the Cars by Lessee shall be considered accessions to the Car and title thereto shall be immediately vested in Lessor, with no cost or expense to Lessor.

13. CAR MODIFICATION.

Should any Car require modification pursuant to a regulation of the U.S. Department of Transportation or other agency having jurisdiction over the operation or use of the Cars, Lessee shall be responsible for such modification at its own expense. Rental will continue while modifications are made and any parts installed or replacements made upon the Cars by the Lessee shall be considered accessions to the Cars and title thereto shall be immediately vested in Lessor, with no cost or expense to Lessor.

14. INSURANCE.

Lessee, at Lessee's expense, will provide and maintain insurance on the Cars as follows:

A. Comprehensive coverage, collision damage coverage, bodily injury, property damage and public liability insurance with such insurance companies, in such amounts and for such risks as is customary in the industry for comparable railroad companies and as are at least comparable to insurance coverage carried by the Lessee in respect of similar equipment owned or leased by it, with Lessor named as an additional insured and, where applicable, loss payee.

B. Any other insurance required by any governmental authority.

All such insurance shall provide, if available, that the insurance shall not be invalidated as to Lessor by an act, omission or neglect of Lessee, and shall provide that the insurance will not be canceled nor materially modified without at least thirty (30) days' prior written notice to Lessor. Lessee shall furnish copies of policies, certificates of insurance, or other documentation evidencing the insurance required herein, as is satisfactory to Lessor.

Lessee appoints Lessor as Lessee's attorney in fact to make claim for, receive payment of, and execute and endorse all documents or drafts for loss or damage under any such insurance policies.

Except as otherwise provided in Section 15 below, the proceeds of such insurance that is not by its terms or operation of law payable to third parties, at Lessor's option, shall be applied either toward the replacement or repair of the Cars or toward payment of any obligation of Lessee under this Lease.

If Lessee fails to procure or maintain insurance as required herein or if Lessee is in default pursuant to Section 23 hereof, Lessor shall have the right but shall not be obligated to secure such insurance and any amount so expended shall accrue interest in the manner provided for Lessor expenditures under Section 3(B). In such event, Lessee shall pay Lessor the cost thereof and all interest accrued thereon with the next rental payment.

15. LOSS AND DAMAGE TO CARS.

A. Lessee assumes all risks of loss, theft or destruction of, and damage to, each Car, direct and consequential, and will hold Lessor harmless from any thereof and from all claims and liens for storage, labor and materials incurred, whether or not insured, and from personal injury or the loss or destruction of any other property resulting from the Cars, whether or not insured.

B. A Car which is lost, stolen, wholly destroyed, damaged beyond economic repair or confiscated, seized, forfeited, or title to which is otherwise taken, shall be deemed a "Total Loss." In the event of a Total Loss with respect to a Car not caused by any act of Lessor, this Lease shall terminate as to such Car upon payment by Lessee to Lessor of the amounts specified below with respect to such Total Loss.

C. In the event of loss or damage of any kind whatsoever to any Car which does not constitute a Total Loss, Lessee shall, at its sole cost and expense, promptly repair and restore such Car to the condition required by this Lease. Upon receipt of evidence reasonably satisfactory to Lessor of completion of such repairs, Lessor will apply any insurance proceeds received by Lessor on account of such loss or damage to the cost of such repairs and will pay the remainder of such proceeds, if any, to the Lessee.

D. Upon the occurrence of a Total Loss of any Car during the interim period of this Lease, Lessee shall give prompt notice thereof to Lessor. Thereafter, on the next rental payment date, Lessee shall pay to Lessor the sum of (i) the interim rental with respect to such car due as of such rental payment date, (ii) \$8,000, and (iii) the Restoration Cost per Car incurred by Lessor, as defined in the Equipment Schedule. Lessee thereupon shall become entitled to such Car "as is where is" without warranty, express or implied, with respect to any matter whatsoever.

E. Upon the occurrence of a Total Loss of any Car during the Base Lease Term or any Renewal Term(s), Lessee shall give prompt notice thereof to Lessor. Thereafter, on the next rental payment date, Lessee shall pay to Lessor the Stipulated Loss Value of the Car with respect to which the Total Loss has occurred and any other sums due hereunder with respect to that Car

(less any insurance proceeds award actually paid to Lessor). Lessee thereupon shall become entitled to such Car "as is where is" without warranty, express or implied, with respect to any matter whatsoever.

F. The term "Stipulated Loss Value" as used in this Lease means a sum of money equal to the aggregate Total Cost of the Cars affected (as defined in Exhibit A) multiplied by the percentage factor set forth in the Termination and Stipulated Loss Value Schedule in Exhibit C attached hereto and incorporated herein by this reference, for the quarterly rental payment date next following the date of the Total Loss. This calculation is made on the premise that all rentals due through but not including such quarterly rental payment date following the Total Loss have been timely made.

16. INDEMNITY.

A. Lessee shall indemnify and hold Lessor harmless from any and all claims or actions, including attorneys' fees, arising out of Lessee's use or operation of the Cars or Lessee's failure to comply with any of the terms of this Lease; provided, however, Lessee shall not be responsible for any claims or actions which accrue with respect to any of the Cars that are solely attributable to the wrongful conduct of Lessor or its employees. Upon written notice by Lessor to Lessee of the assertion of any such claim, Lessee shall, at its sole expense, assume full responsibility for the defense thereof, provided, however, Lessor may, at its sole expense, take over the defense of any such claim.

B. This Section 16 shall survive termination of this Lease.

17. TAXES AND OTHER CHARGES.

A. Lessee shall pay and indemnify and hold Lessor harmless from the following costs and expenses assessed upon or incurred with respect to the Cars, Lessor in connection with the Cars or this Lease:

1. Taxes, other than taxes based on or measured by Lessor's income, including, without limitation, personal property taxes imposed by the United States, Canada or Mexico, or any state or province thereof or any governmental or administrative subdivision thereof, and any sales and/or use taxes, gross receipts and franchise taxes; and

2. License fees, assessments, charges, fines, levies, imposts, duties, tariffs, customs, switching, and demurrage, including penalties and interest thereon, levied or imposed by any foreign, federal, state or local government or taxing authority, railroad or other agency.

The provisions of this Section 17(A) notwithstanding, Lessee shall be under no obligation to pay any such costs and expenses so long as Lessee is contesting in good faith and by appropriate legal proceedings imposition of such costs or expenses, appropriate reserves have been made in respect thereof, and the nonpayment thereof does not, in the reasonable opinion of Lessor, adversely affect any title, property or rights of Lessor hereunder.

B. If any such costs and expenses shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor; provided, however, that the Lessee shall not be obligated to reimburse the Lessor for any such costs and expenses so paid unless (i) the Lessor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Lessor reasonably acceptable to the Lessee), (ii) the Lessor shall have informed the Lessee of the imposition of such costs or expenses and the Lessee shall have declined to contest such imposition before Lessor paid such costs or expenses, or (iii) the Lessee shall have approved the payment of such costs or expenses.

C. Except as otherwise provided for in Section 16 (B) hereof, Lessor shall, notwithstanding the provisions of this Section 17, be solely responsible for all income taxes assessed against it for any rental payments or other income realized pursuant to this Lease.

18. EARLY TERMINATION.

Lessee shall have the right to terminate this Lease with respect to all but not less than all of the Cars as of the next quarterly rental payment date (the "Termination Date") upon written notice provided not less than thirty (30) days prior to the Termination Date if Lessee shall have determined in good faith that the Cars are economically obsolete or surplus in its business. Lessee's notice pursuant to this Section 18 shall be accompanied by a certificate stating that the Cars are economically obsolete or surplus in its business. Lessee shall use its best efforts prior to such Termination Date to obtain bids for the purchase of the Cars, and Lessor agrees on the Termination Date to sell the Cars to the highest bidder "as is where is" without warranty, express or implied. In no event shall Lessee, or any affiliate of Lessee, be the purchaser of the Cars. On the Termination Date, Lessee shall pay Lessor in immediately available funds all accrued and unpaid rental payments to but not including the Termination Date, plus all interest accrued thereon, plus the amount, if any, by which the Termination Value thereof on such date exceeds the sale proceeds of the Cars after deduction from the sale proceeds of Lessor's reasonable costs

and expenses, if any, in connection with such sale (collectively the "Termination Payment"). If no sale occurs on the Termination Date or if Lessee does not make the Termination Payment, this Lease shall continue in full force and effect as to the Cars as though no notice of termination had been given by Lessee.

The term "Termination Value" as used in this Lease means a sum of money equal to the aggregate Total Cost of the Cars affected (as defined in Exhibit A) multiplied by the percentage factor set forth in the Termination and Stipulated Loss Value Schedule in Exhibit C for the applicable Termination Date. This calculation is made on the premise that all rentals due through but not including such Termination Date have been timely made.

19. PURCHASE OPTION.

A. So long as no Default shall have occurred and be continuing, at the end of the Base Lease Term, Lessee has the option to purchase all but not less than all of the Cars at a price equal to the then fair market value thereof, which shall be the average of three independent appraisals, by recognized appraisers each agreeable to both Lessor and Lessee, for which Lessor and Lessee shall share the fees and expenses thereof equally and otherwise by appraisers determined as provided in Section 19(B). All sales taxes accruing as a result of the sale shall be the responsibility of Lessee. Lessee shall advise Lessor of such intent to purchase, in writing, not later than six (6) months prior to the lease termination date, and Lessee shall remit to Lessor the total purchase monies plus all other amounts payable by Lessee to Lessor hereunder on or before the lease termination date.

B. If on or before 90 days prior to the expiration of the Base Lease Term, Lessor and Lessee are unable to agree upon the selection of the three independent appraisers, such appraisers shall be determined by the following procedure: Lessor and Lessee shall each appoint an independent appraiser on or before 60 days prior to the expiration of the Base Lease Term, with each to be responsible for the fees and expenses of its appraiser, and the two appraisers so appointed shall on or before 55 days prior to the expiration of the Base Lease Term, appoint a third independent appraiser. If no such third appraiser is appointed on or before 55 days prior to the expiration of the Base Lease Term, either party may apply to the American Arbitration Association to make such appointment, and both parties shall be bound by any appointment so made. Lessor and Lessee shall share equally the fees and expenses of the third appraiser. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine such value of the Cars within 45 days after his or their appointment. Appraisal proceedings, if any, shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the

date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining fair market value and fair market rental value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures.

20. RENEWAL OPTION.

So long as no Default shall have occurred and be continuing hereunder, not later than six (6) months prior to the termination of the Base Lease Term, and, if renewed, the first Renewal Term, Lessee shall, with written notice to Lessor, have the right to renew this Lease for an additional twelve (12) month period subject to the terms and conditions herein contained for the original terms of this Lease, excepting only that the quarterly rental for each such Car shall be equal to the fair market rental value determined at the end of the Base Lease Term, which shall be the average of three independent appraisals, determined in the manner provided and by appraisers selected in accordance with Section 19 hereof.

21. CAR RETURN.

A. Upon the termination of this Lease with respect to any of the Cars subject hereto, Lessee agrees to return the Cars to Lessor at a point designated by Lessor on Lessee's rail lines, free from all charges, including return freight charges, and in an empty and substantially clean condition. If Lessor is unable to accept the Cars on the date of return tender, a free storage period of up to ninety (90) days shall apply within which Lessor may provide forwarding instructions. After expiration of the free storage period, Lessee may charge a reasonable storage fee until forwarding instructions are received by Lessee from Lessor.

B. Lessee shall return the Cars in the same condition as at the commencement of this Lease, excepting reasonable wear and tear. Prior to return, all Cars shall be repaired, as necessary, at the expense of Lessee, to such condition that each Car will be in a condition suitable for normal interchange service with Class I railroads in compliance with the then applicable rules of the Association of American Railroads and Federal Railway Administration or successor entities or any other entity having jurisdiction over the operation or use of the Cars.

22. ASSIGNMENT, TRANSFERS, ENCUMBRANCES.

All rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of, either in whole or in part, and/or Lessor may assign, pledge, mortgage, transfer or otherwise dispose of title to the Cars, with or without the consent of or notice to Lessee. Lessee shall not be obligated to make payment of any amounts due hereunder to such assignee or transferee unless and until advised of the same in writing by Lessor. In such event, this Lease and all rights of Lessee

hereunder or those of any person, firm or corporation who claims or who may hereafter claim any rights in this Lease under or through Lessee, are hereby made subject and subordinate to the terms, covenants and conditions of any security agreement, chattel mortgage, conditional sale agreement, equipment trust agreement or other agreements or assignments covering the Cars heretofore or hereafter created and entered into by Lessor, its successors or assigns, and to all of the rights of any such secured party, chattel mortgagee, assignee, trustee or other holder of legal title to or security interest in the Cars; provided, however, that so long as Lessee is not in default hereunder Lessee shall be entitled to use the Cars in accordance with the terms and conditions hereof.

23. DEFAULT.

Lessee shall be in default hereunder (a "Default") if: (i) Lessee shall fail to make any rental payment or any other payment within fifteen (15) days after such payment shall have become due; (ii) Lessee shall fail to obtain and maintain the insurance required pursuant to Section 14; (iii) Lessee fails to perform or observe any other duty, obligation or covenant contained in this Lease or in any other document furnished in connection herewith and such failure shall continue for thirty (30) days after receipt by Lessee of written, telegraphic or telephone facsimile notice; (iv) Lessee becomes insolvent (that is, unable to pay its debts as they mature), becomes the subject of any proceeding under the Bankruptcy Code, as amended, or any other insolvency law or law providing for the relief of debtors; or (v) any certificate, statement, representation, warranty or audit contained herein or at any time furnished by or on behalf of Lessee proving to have been false in any material respect at the time as of which the facts therein set forth were stated or certified.

24. LESSOR'S RIGHTS ON DEFAULT.

If a Default occurs, Lessor shall have the right to exercise any one or more of the following remedies:

A. Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, including reasonable attorney's fees; and/or

B. By notice in writing to Lessee, terminate this Lease, whereupon all right of Lessee to the use of the Cars shall absolutely cease and terminate as though this Lease had never been made, but Lessee shall remain liable as hereinafter provided; and thereupon, Lessor may by its agents enter upon the premises of Lessee or other premises where any

of the Cars may be located and take possession of all or any of the Cars and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its sublessees, successors or assigns, to use such Cars for any purpose whatever, but Lessor shall nevertheless have a right to recover from Lessee any and all amounts which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such actual number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from Lessee (i) as damages for loss of the bargain and not as a penalty, whichever of the following amounts Lessor, in its sole discretion, shall specify: (x) a sum with respect to each Car which represents the excess of the present worth, at the time of such termination, of all rentals for such Car which would otherwise have accrued hereunder from the date of such termination to the end of the Base Lease Term of this Lease over the then present worth of the then fair market rental value of such Car for such period computed by discounting from the end of such Base Lease Term to the date of such termination rentals which Lessor reasonably estimates to be obtainable for the use of such Car during such period, such present worth to be computed in each case on a basis of a 6% per annum discount, compounded quarterly from the respective dates upon which rental would have been payable hereunder had this Lease not been terminated, or (y) an amount equal to the excess if any of the Stipulated Loss Value of such Car as of the quarterly rental payment date on or immediately succeeding the date of termination over the amount Lessor reasonably estimates to be the fair market value thereof at such time; provided, however, that in the event Lessor shall have sold any Car, Lessor, in lieu of collecting any amounts payable to Lessor by Lessee pursuant to the preceding clauses (x) and (y) respect thereto may, if it shall so elect, demand that Lessee pay Lessor and Lessee shall pay to Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Stipulated Loss Value of such Car as of the quarterly rental payment date on or immediately succeeding the date of termination over the net proceeds of such sale payable to Lessor (net of any of Lessor's expenses related to such sale), and (ii) any damages and expenses, other than for a failure to pay rental, in addition thereof, including reasonable attorneys' fees, which Lessee shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental.

For purposes of this Section 24, the fair market rental value and fair market value for any Car shall be determined in the manner provided in Section 19 hereof except that a single independent

appraiser selected by Lessor shall make such determination, and all fees and expenses of such appraiser shall be paid by Lessee; provided that any sale in a commercially reasonable manner of any Car prior to any such determination shall conclusively establish the fair market value of such Car and any rental in a commercially reasonable manner of any Car prior to any such determination shall conclusively establish the fair market rental value of such Car.

25. INTENT; TITLE; SECURITY INTEREST.

A. It is the express intent of the parties that this Lease constitute a true lease and not a security agreement. Title to the Cars shall at all times remain with Lessor, and Lessee has no right, title or interest in the Cars except as Lessee.

B. Lessor is authorized to file this Lease, a Memorandum of this Lease, a financing statement, or other notice with any filing officer or otherwise make the Lease a matter of public record. Lessee shall execute all documents requested by Lessor to effectuate the filing of such notice.

26. NOTICES.

A. Unless otherwise provided, any notice sent pursuant to this Lease must be in writing and addressed as follows:

To Lessor: Citicorp Leasing, Inc.
601 Midland Avenue
Rye, New York 10580

To Lessee: Grand Trunk Western Railroad Company
Attn: Contract Administration CA7485
1333 Brewery Park Boulevard
Detroit, Michigan 48207-2699

B. Any notice required to be given by a party shall be sufficient if it is in writing and sent by certified or registered mail to the other party at its address indicated in Section 26(A) hereof, or at such other address as one party may have notified the other in writing.

27. MISCELLANEOUS.

A. Lessee shall not assign, transfer or sublease its rights under this Lease without the written permission of Lessor, and will not pledge, mortgage or otherwise encumber the Cars or permit them to become encumbered. No assignment or sublease entered into by Lessee, whether or not permitted by Lessor, shall relieve Lessee of any liability or obligation hereunder which shall be and remain those of a principal and not a surety. Any purported assignment or sublease of the Cars in violation of this Section 27(A) shall be void.

B. Neither the failure of either party to insist upon the performance of any terms or conditions of this Lease, or to exercise any right conferred by this Lease, nor the waiver by either party of any such term, condition or right, shall be construed as thereafter waiving any such term, condition or right.

C. This Lease shall not become effective or binding until accepted by Lessor at its place of business in Rye, New York, and its interpretation shall be governed by the laws of the State of New York.

D. If Lessee is the Lessee under two or more separate Leases with Lessor, a default under any one Lease shall be a default under all Leases, and, so long as no default shall be continuing, any monies received by Lessor from Lessee under either Lease may be applied by Lessor, at its option, to any Lease then in effect.

E. This Lease contains the entire agreement between the parties and embodies any oral representations, negotiations or agreements made in connection herewith. Any modification of the terms of this Lease must be in writing and signed by the parties.

F. Any provision in this Lease which is in conflict with any applicable law or regulation shall be deemed omitted, modified or altered to conform thereto. The invalidity of any portion of this Lease shall not affect the remaining portions hereof.

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

CITICORP LEASING, INC.
(Lessor)

GRAND TRUNK WESTERN RAILROAD
COMPANY
(Lessee)

By _____
Its _____

By 
Its VP Planning

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

CITICORP LEASING, INC.
(Lessor)

GRAND TRUNK WESTERN RAILROAD
COMPANY
(Lessee)

By *James A. Caldwell*
ITS VICE PRESIDENT

By _____
Its _____

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

On this 21st day of December, 1988, before me personally appeared Robert Walker to me personally known, who being by me duly sworn, says that he is the VP-Planning of GRAND TRUNK WESTERN RAILROAD COMPANY, that the foregoing instrument was signed on behalf of said corporation, and he acknowledged that the execution of said instrument was his free act and deed.

Debra Marie Dureched
Notary Public

My commission expires: 8-26-90

STATE OF NEW YORK)
) SS
COUNTY OF WESTCHESTER)

On this _____ day of December, 1988, before me personally appeared _____ to me personally known, who being by me duly sworn, says that he is the _____ of CITICORP LEASING, INC., that the foregoing instrument was signed on behalf of said corporation, and he acknowledged that the execution of said instrument was his free act and deed.

Notary Public

My commission expires:

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

On this _____ day of December, 1988, before me personally appeared _____ to me personally known, who being by me duly sworn, says that he is the _____ of GRAND TRUNK WESTERN RAILROAD COMPANY, that the foregoing instrument was signed on behalf of said corporation, and he acknowledged that the execution of said instrument was his free act and deed.

Notary Public

My commission expires:

STATE OF NEW YORK)
) SS
COUNTY OF WESTCHESTER)

On this 23 day of December, 1988, before me personally appeared JAMES S. ARCHIBALD to me personally known, who being by me duly sworn, says that he is the VICE PRESIDENT of CITICORP LEASING, INC., that the foregoing instrument was signed on behalf of said corporation, and he acknowledged that the execution of said instrument was his free act and deed.



Notary Public

My commission expires: 11/30/89

ROBERT R. GOLDBERG
Notary Public, State of New York
No. 4690571
Qualified in Westchester County
Commission Expires November 30, 1989

EXHIBIT A

EQUIPMENT SCHEDULE

RAILROAD CARS
LEASED BY
GRAND TRUNK WESTERN RAILROAD COMPANY

FROM

CITICORP LEASING, INC.

1. Description of the Cars:

One hundred (100) 100-ton (2,245 cubic foot) 52'6" x 4'6" all steel gondola cars specifically numbered as follows:

Car Marks and
Numbers are: GTW 147700 through 147799

2. Total Cost per Car shall equal the sum of

- (i) \$8,000.00 (Hulk Cost per Car) and
- (ii) the total cost to be paid by Lessor to improve and restore the Cars which have been so restored and delivered to Lessee as of the date the calculation is made divided by the number of such delivered Cars (Restoration Cost per Car).

The Total Restoration Cost per Car is estimated to be \$10,775.00 and shall not exceed \$1,300,000 in the aggregate. All restoration shall be completed by June 27, 1989.

3. Interim Lease Term Rental:

The Interim Rental shall be payable on the dates and in the amounts as follows:

- A. On December 28, 1988 as rental for each Car during the initial three month period of the Interim Lease Term, an amount equal to 3.786% of the Hulk Cost thereof.

B. On March 28, 1989:

(i) As additional daily rental for each Car that is, on or prior to such date, accepted by Lessee pursuant to Section 10 of the Lease, from and including the date of such acceptance to but not including March 28, 1989, an amount equal to 0.042067% of the Restoration Cost thereof;

(ii) As rental for each Car described in clause (i) above for the final three month period of the Interim Lease Term, an amount equal to 3.786% of the sum of the Hulk Cost and the Restoration Cost thereof; and

(iii) As rental for each Car other than those described in clause (i) above for the final three month period of the Interim Lease Term, an amount equal to 3.786% of the Hulk Cost thereof.

C. On June 28, 1989, as additional daily rental for each Car that is accepted by Lessee pursuant to Section 10 of the Lease after March 27, 1989 and on or prior to June 28, 1989, from and including the date of such acceptance to but not including June 28, 1989, an amount equal to 0.042067% of the Restoration Cost thereof.

4. Base Lease Term Rental:

Quarterly Rental per Car shall be equal to 3.786% of the sum of the Hulk Cost and the Restoration Cost per Car (determined as of June 28, 1989, with such Restoration Cost to be zero for any Car not restored and accepted by Lessee pursuant to Section 10 of the Lease prior to such date for whatsoever reason).

5. All rental amounts determined as provided in this Schedule shall be rounded to the next whole dollar.

6. Place of Delivery: Butler, Pennsylvania.

EXHIBIT B

CERTIFICATE OF ACCEPTANCE

UNDER EQUIPMENT LEASE

To: CITICORP LEASING, INC., as Lessor (the "Lessor")

I, a duly appointed and authorized representative of GRAND TRUNK WESTERN RAILROAD COMPANY (the "Lessee") under the Equipment Lease Agreement dated December 28, 1988 (the "Lease") between Lessor and Lessee, do hereby certify that I have inspected, received, approved and accepted delivery under the Lease of the following Cars:

TYPE OF CARS:

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF CARS:

MARKED AND NUMBERED:

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

"OWNED BY A LESSOR AND SUBJECT TO A LEASE AGREEMENT
FILED WITH THE INTERSTATE COMMERCE COMMISSION"

The execution of this Certificate will in no way relieve or decrease the responsibility of any manufacturer, rebuilder or contractor for any warranties it has made with respect to the Cars.

Dated: _____, 198__

Inspector and Authorized
Representative of Lessee

TERMINATION AND STIPULATED LOSS VALUE SCHEDULE

EXHIBIT C

6/89	99.1115
9/89	98.7097
12/89	98.2435
3/90	97.7171
6/90	97.1068
9/90	96.4158
12/90	95.6425
3/91	94.7872
6/91	93.6595
9/91	92.8599
12/91	91.7870
3/92	90.6385
6/92	89.4311
9/92	88.1574
12/92	86.8159
3/93	85.4025
6/93	83.9392
9/93	82.4099
12/93	80.8163
3/94	79.1518
6/94	77.4335
9/94	75.6460
12/94	73.7878
3/95	71.8532
6/95	69.8593
9/95	67.7904
12/95	65.6450
3/96	63.4173
6/96	61.1358
9/96	58.7819
12/96	56.3543
3/97	53.8456
6/97	51.2913
9/97	48.6576
12/97	45.9733
3/98	43.1994
6/98	40.3769
9/98	37.4756
12/98	34.5060
3/99	31.4470
6/99	28.0000