

1039  
New Number

- A  
- B

**WHITE & CASE**

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WASHINGTON, D.C.  
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200 SOUTH BISCAYNE BOULEVARD, MIAMI  
20 PLACE VENDÔME, PARIS  
66 GRESHAM STREET, LONDON

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(212) 819-8200  
TELEX: 126201

20-5, ICHIBANCHO, CHIYODA-KU, TOKYO  
15 QUEEN'S ROAD CENTRAL, HONG KONG  
50 RAFFLES PLACE, SINGAPORE  
BIRGER JARLSGATAN 14, STOCKHOLM  
CUMHURİYET CADDESİ 12/10, ISTANBUL  
ZİYA UR RAHMAN CADDESİ 17/5, ANKARA

RECORDATION NO. 1 6056/B  
No. 8-335 A013  
Date NOV 30 1988  
GJC:CEJ  
INTERSTATE COMMERCE COMMISSION  
November 30, 1988

RECORDATION NO. 1 6056  
NOV 30 1988 - 12 35 PM  
INTERSTATE COMMERCE COMMISSION  
Washington, D.C.  
re Documents for Recordation, 49 USC Section 11303  
NOV 30 1988 - 12 35 PM  
INTERSTATE COMMERCE COMMISSION

Heather J. Gradison, Chairman  
Interstate Commerce Commission  
12th Street & Constitution Avenue N.W.  
Washington, D.C. 20423

Dear Ms. Gradison:

Enclosed herewith are an original and 2 counterparts of each of the three documents described below to be recorded today pursuant to Section 11303 of Title 49 of the U.S. Code.

The first document, identified as "Equipment Lease Agreement," dated as of August 1, 1988, is a lease and is a primary document.

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

- LESSOR: Wilmington Trust Company  
Rodney Square North  
Wilmington, DE 19890
- LESSEE: CSX Transportation, Inc.  
100 N. Charles Street  
Baltimore, MD 21201

*C. F. Haysler*  
*C. Quinlan*

NOV 30 12 30 PM '88  
RECORDATION NO. 1 6056

A short summary of the document to appear in the Index should be as follows:

Equipment Lease Agreement dated as of August 1, 1988 between Wilmington Trust Company, not in its individual capacity but solely as trustee, Lessor, and CSX Transportation, Inc., Lessee, covering up to 133 open top hopper railcars (100 ton), from series identified by the Lessee as : CSXT Nos. 808914-811195.

The second document, identified as "Loan and Security Agreement", dated as of August 1, 1988, is a loan agreement, and is also a primary document.

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

LESSOR: Wilmington Trust Company  
Rodney Square North  
Wilmington, Delaware 19890

LENDERS: The Prudential Insurance  
Company of America  
Prudential Property and Casualty  
Insurance Company  
Pruco Life Insurance Company  
c/o Prudential Capital Corporation  
Three Gateway Center  
Newark, NJ 07102

A short summary of the document to appear in the Index should be as follows:

Loan and Security Agreement dated as of August 1, 1988 between Wilmington Trust Company, not in its individual capacity but as Owner Trustee, Lessor, and The Prudential Insurance Company of America, Prudential Property and Casualty Life Insurance Company and Pruco Life Insurance Company, Lenders, covering up to 133 open

top hopper railcars (100 ton) from series identified by the Lessee as: CSXT Nos. 808914-811195.

The third document, identified as "Lease and Security Agreement Supplement No. 1", dated November 30, 1988 is a supplement to the Equipment Lease Agreement and the Loan and Security Agreement, and is a secondary document which is being filed concurrently with the above-referenced primary documents to which recordation numbers have not yet been assigned.

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

LESSOR/OWNER: TRUSTEE	Wilmington Trust Company Rodney Square North Wilmington, DE 19890
LESSEE:	CSX Transportation, Inc. 100 N. Charles Street Baltimore, MD 21201
LENDERS:	The Prudential Life Insurance Company of America Prudential Property and Casualty Insurance Company Pruco Life Insurance Company c/o Prudential Capital Corporation Three Gateway Center Newark, NJ 07102

A description of the equipment covered by the document is attached hereto as Schedule A.

A short summary of the document to appear in the Index should be as follows:

Lease and Security Agreement Supplement No. 1 dated November 30, 1988 among Wilmington Trust Company, not in its individual capacity but as

Heather J. Gradison, Chairman

-4-

Lessor/Owner Trustee, CSX Transportation, Inc., Lessee and The Prudential Life Insurance Company of America, Prudential Property and Casualty Insurance Company and Pruco Life Insurance Company, Lenders, covering 133 open top hopper railcars (100 ton) from series identified by the Lessee as: CSXT 808914-811195.

A check for the required recordation fee of \$39.00 is enclosed. Please return the originals and any extra copies not needed by the Commission for recordation to the undersigned.

The undersigned certifies that he is acting as counsel to The Prudential Insurance Company of America, Prudential Property and Casualty Insurance Company and Pruco Life Insurance Company, Lenders, for purposes of this filing and that he has knowledge of the matter set forth in the above-described documents.

Very truly yours,

Gad J. Cohen

Enclosures

cc: Sylvia Fung Chin, Esq.  
Clifford J. Hendel, Esq.

## Schedule A

NCNB CARS = 133

INIT NUMBER	INIT NUMBER	INIT NUMBER	INIT NUMBER
CSXT 808914	CSXT 809405	CSXT 810633	
CSXT 808915	CSXT 809409	CSXT 810634	
CSXT 808920	CSXT 809425	CSXT 810636	
CSXT 808927	CSXT 809427	CSXT 810632	
CSXT 808929	CSXT 809439	CSXT 810661	
CSXT 808954	CSXT 809442	CSXT 810720	
CSXT 808960	CSXT 809445	CSXT 810800	
CSXT 808965	CSXT 809447	CSXT 810835	
CSXT 808969	CSXT 809448	CSXT 810841	
CSXT 808977	CSXT 809453	CSXT 810848	
CSXT 808978	CSXT 809455	CSXT 810859	
CSXT 809008	CSXT 809469	CSXT 810883	
CSXT 809027	CSXT 809472	CSXT 810909	
CSXT 809039	CSXT 809492	CSXT 810945	
CSXT 809044	CSXT 809512	CSXT 810982	
CSXT 809047	CSXT 809519	CSXT 811029	
CSXT 809060	CSXT 809522	CSXT 811064	
CSXT 809075	CSXT 809524	CSXT 811067	
CSXT 809076	CSXT 809532	CSXT 811068	
CSXT 809077	CSXT 809533	CSXT 811069	
CSXT 809112	CSXT 809537	CSXT 811097	
CSXT 809120	CSXT 809551	CSXT 811101	
CSXT 809122	CSXT 809558	CSXT 811118	
CSXT 809147	CSXT 809578	CSXT 811137	
CSXT 809154	CSXT 809586	CSXT 811144	
CSXT 809158	CSXT 809610	CSXT 811153	
CSXT 809160	CSXT 809672	CSXT 811189	
CSXT 809162	CSXT 809719	CSXT 811191	
CSXT 809167	CSXT 809734	CSXT 811195	
CSXT 809169	CSXT 809736		
CSXT 809170	CSXT 809745		
CSXT 809174	CSXT 809762		
CSXT 809215	CSXT 809792		
CSXT 809224	CSXT 809826		
CSXT 809229	CSXT 809945		
CSXT 809244	CSXT 809961		
CSXT 809245	CSXT 810006		
CSXT 809247	CSXT 810115		
CSXT 809253	CSXT 810130		
CSXT 809260	CSXT 810180		
CSXT 809265	CSXT 810192		
CSXT 809279	CSXT 810209		
CSXT 809285	CSXT 810211		
CSXT 809313	CSXT 810276		
CSXT 809318	CSXT 810404		
CSXT 809326	CSXT 810453		
CSXT 809327	CSXT 810468		
CSXT 809329	CSXT 810494		
CSXT 809368	CSXT 810523		
CSXT 809378	CSXT 810577		
CSXT 809395	CSXT 810595		
CSXT 809399	CSXT 810611		

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

11/30/88;

OFFICE OF THE SECRETARY

Gad J. Cohen  
White & Case  
1155 Avenue Of The Americas  
New York, N.Y. 10036

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/30/88 at 12:35pm, and assigned recordation number(s). 15766-D, 15788-D, 16056, 16056-A & 16056-B

Sincerely yours,

*Narta L. McEa*

Secretary

Enclosure(s)

1 6056  
REGISTRATION NO. \_\_\_\_\_ FROM 1980

NOV 2 10 1988 4 22 PM

INTERSTATE COMMERCE COMMISSION

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EQUIPMENT LEASE AGREEMENT

Dated as of August 1, 1988

Between

WILMINGTON TRUST COMPANY,  
not in its individual capacity but solely as trustee

Lessor,

and

CSX TRANSPORTATION, INC.,

Lessee

---

OPEN TOP HOPPER RAILCARS

Note: This Equipment Lease Agreement has been assigned as security for the performance of certain obligations as provided in Section 15 hereof. This Equipment Lease Agreement has been executed in 10 counterparts, each of which is an original, but all of which together shall constitute but one and the same instrument; except to the extent, if any, that this Lease constitutes "chattel paper" (as such term is defined in the Uniform Commercial Code as in effect in the applicable jurisdiction), no security interest may be created except through the transfer or possession of the original counterpart which the parties shall mark "Counterpart Number 1". This counterpart is Counterpart Number 4.

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FILED WITH THE INTERSTATE COMMERCE COMMISSION  
PURSUANT TO 49 U.S.C. § 11303

ON \_\_\_\_\_, 1988 AT \_\_\_\_\_ : \_\_\_\_\_ P.M.

RECORDATION NUMBER \_\_\_\_\_.

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EXHIBIT A - FORM OF LEASE AND SECURITY AGREEMENT SUPPLEMENT

SCHEDULE 1 - RENT FACTORS

SCHEDULE 2 - CASUALTY LOSS FACTORS

## EQUIPMENT LEASE AGREEMENT

THIS EQUIPMENT LEASE AGREEMENT ("Lease") is entered into as of August 1, 1988, by and between WILMINGTON TRUST COMPANY, a Delaware banking corporation, not in its individual capacity but solely as Owner Trustee ("Lessor") under that certain Trust Agreement dated as of August 1, 1988 with NCNB LEASE INVESTMENTS, INC., a North Carolina corporation as trustor ("Owner Participant"), (the "Trust Agreement"), and CSX TRANSPORTATION, INC., a Virginia corporation ("Lessee"), with reference to the following (capitalized terms used in this Lease having the meanings given in Appendix I, unless otherwise expressly provided or unless the context otherwise requires):

### RECITALS

A. Lessor (in its individual capacity as expressly stated therein and otherwise solely as trustee), Lessee, Owner Participant, Raceland Car Corporation, a Delaware corporation ("Seller") and The Prudential Insurance Company of America, a New Jersey mutual insurance company Prudential Property and Casualty Insurance Company, a New Jersey corporation and Pruco Life Insurance Company, an Arizona corporation (each, a "Lender" and collectively, "Lenders"), have entered into a Participation Agreement pursuant to which, on the Purchase Date (i) Lenders shall loan funds to Lessor pursuant to the Participation Agreement and the Security Agreement in the amount of the Debt Portion of Lessor's Cost of the open top hopper railcars to be purchased and leased on such date (the "Units"), (ii) Owner Participant will make funds available to Lessor in the amount of the Equity Portion of Lessor's Cost of such Units and (iii) Lessor will purchase such Units from Seller, and lease such Units to Lessee.

B. Lessor in its individual capacity and Owner Participant have entered into the Trust Agreement pursuant to which Lessor, as trustee, shall purchase and lease the Units for the benefit of Owner Participant.

C. Lessor and Seller have entered into the Car Purchase Agreement pursuant to which Lessor will purchase up to 133 Units from Seller.

D. Lessor and Lenders have entered into the Security Agreement pursuant to which Lessor has granted to Lenders a security interest in the Units and the Lease and the rents and certain other sums due or to become due thereunder, and the Car Purchase Agreement, and any security interest in favor of Lessor thereunder, as security for Lessor's obligations evidenced by the Notes issued thereunder.

E. Lessor and Lessee propose to enter into this Lease, and each Lease and Security Agreement Supplement, pursuant to which Lessor will (i) lease the Units to be purchased and leased on the Purchase Date to Lessee and (ii) grant to Lenders a security interest in such Units simultaneously with Lessor's acquisition of such Units.

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements contained herein, the parties, intending to be legally bound, agree as follows:

#### SECTION 1. INTERPRETATION.

1.01 Terms. The terms "hereof", "herein", "hereby", "hereto", and "hereunder" refer to this Lease, taken as a whole.

1.02 Section, Schedule and Exhibit References. References to a given Section, subsection, Appendix, Schedule or Exhibit are references to a Section, subsection, Appendix, Schedule or Exhibit of this Lease.

1.03 Agreement References. Reference to a given agreement or instrument is a reference to that agreement or instrument as originally entered into, and as modified, amended, supplemented and restated through the date as of which reference is made.

#### SECTION 2. PURCHASE AND LEASE.

2.01. Purchase and Lease. On the Purchase Date, if the conditions set forth in Section 4 of the Participation Agreement have been satisfied (a) Lessor shall purchase certain Units, (b) Lessor shall be deemed to have tendered delivery of such Units to Lessee, and Lessee shall be deemed to have accepted delivery, (c) Lessor shall lease such Units to Lessee and Lessee shall lease such Units from Lessor, under this Lease and for the Lease Term and (d) Lessor and Lessee shall conclusively evidence that such

Units have been made subject to this Lease by executing and delivering a Lease and Security Agreement Supplement, in the form attached as Exhibit A hereto covering the Units purchased and leased.

2.02 Lease Term. The term of this Lease in respect of each Unit shall commence on the Purchase Date and shall end on the Expiration Date, unless sooner terminated as provided hereunder or extended pursuant to Section 12.02.

### SECTION 3. RENT.

3.01 Interim Rent. On the last day of the Interim Term, Lessee shall pay Interim Rent to Lessor for each Unit in the amount set forth in the Lease and Security Agreement Supplement relating thereto; provided, however, that Lessee shall not be required to make such payment of Interim Rent to the extent that the amount thereof has been funded by a payment by Lessor to Lenders.

3.02 Base Rent. Lessee shall pay Base Rent to Lessor for each Unit as follows:

(a) Base Term. Lessee hereby agrees to make 20 payments of Base Rent semiannually in arrears on each Rent Payment Date occurring in the Base Term, each in an amount equal to Lessor's Cost of such Unit multiplied by the Rent Factor for such Unit, as adjusted pursuant to Section 3.03, applicable to such Rent Payment Date.

(b) Renewal Term. If Lessee renews the Lease in respect of such Unit pursuant to Section 12.02, Lessee shall make payments of Base Rent semiannually in arrears on each Rent Payment Date occurring in the Renewal Term, each in an amount equal to the Fair Market Rental Value of such Unit.

3.03 Adjustment of Rent Factor. (a) Assumptions. In making its investment in the Units and causing Lessor to enter into this Lease, Owner Participant has assumed, among other assumptions, that: (i) delivery and acceptance of the Units shall occur on the date and in the amount set forth in Exhibit G to the Participation Agreement as in effect on August 3, 1988; (ii) no Change in Tax Law shall have occurred prior to the Purchase Date which would affect the economics of the transactions contemplated by this Lease by changing the Owner Participant's Net Return; and (iii) the total amount of transaction costs paid by

Owner Participant pursuant to Section 10.01 of the Participation Agreement shall be \$35,000.00; and (iv) the Interim Rent payable on the last day of the Interim Term shall be calculated on the basis of a 360-day year of twelve 30-day months from and including the first day of the Interim Term to but excluding the last day of the Interim Term and, therefore, the number of days used to calculate the Interim Rent with respect to Units purchased on the Purchase Date hereunder will be 30, assuming that such Purchase Date occurs on the date set forth in Exhibit G to the Participation Agreement as in effect on August 3, 1988 ((i), (ii), (iii) and (iv) collectively the "Rent Assumptions").

(b) Adjustment. If any of the Rent Assumptions proves to be incorrect, then the Rent Factors and Casualty Loss Factors shall be adjusted (upward or downward) in order that Owner Participant's Net Return, calculated in the same manner and using the same assumptions used by Owner Participant in originally entering into the transactions contemplated by the Operative Documents, but taking into account the effect of any prior event which resulted in an Indemnity Payment under the Tax Indemnity Agreement and any adjustment pursuant to Section 7 thereof and any variance in the Rent Assumptions, will be at the same level that would have resulted had the Rent Assumptions been correct in all respects.

(c) Limit on Adjustments. Notwithstanding anything to the contrary contained in this Lease, including, without limitation, the provisions of Section 3.03(a) and (b), each installment of Base Rent, and any payment of Casualty Value, together with any payments of Supplemental Rent, shall be in an amount sufficient to pay on each Rent Payment Date or Casualty Payment Date, as the case may be, the principal of, and Yield-Maintenance Premium, if any, and interest on, the Notes due on such date or to be redeemed on such date, including any modifications thereto pursuant to Section 2.06 of the Security Agreement.

(d) Amendments Evidencing Adjustments. If the Rent Factors or the Casualty Loss Factors are adjusted pursuant to this Section 3.03, Lessor and Lessee shall execute an amendment or supplement to the Lease reflecting the adjustment. Whether or not a supplement or amendment to the Lease evidencing the adjustment or recomputation of the factors has been executed, the recomputed factors shall apply to any payment due hereunder of Base Rent or with respect to a Casualty Event occurring after the adjustment.

(e) Notice and Verification. Owner Participant shall notify Lessee in writing whenever the terms of the Lease require the adjustment of the Rent Factors or the Casualty Loss Factors. Lessee may, within 10 days of receipt from Owner Participant of notice of such adjustment, request, by written notice delivered to Owner Participant, to have an independent certified public accounting firm chosen by Owner Participant and reasonably acceptable to Lessee verify the accuracy of such computations and the consistency of the method and assumptions used by Owner Participant with respect thereto. The conclusion reached by such independent certified public accounting firm shall be binding upon Lessee, Lessor and Owner Participant in the absence of fraud or manifest error. All information disclosed by Owner Participant to such independent certified public accounting firm in connection with such review shall be confidential and not divulged. All costs and expenses that may be incurred under this Section 3.03(e) shall be paid by Lessee.

3.04 Supplemental Rent. (a) Other Obligations. Lessee shall pay, as Supplemental Rent, or satisfy, promptly as they become due, all amounts and obligations which Lessee agrees to pay or assumes under this Lease or under any other Operative Document, to or with respect to Lessor or others, including without limitation, Casualty Values payable pursuant to Section 10, payments of Yield Maintenance Premium pursuant to Section 12.01(b), indemnities payable pursuant to the Participation Agreement or the Tax Indemnity Agreement, and insurance premiums, if any, payable pursuant to Section 7.

(b) Payment of Interest. If any installment of Base Rent or any Casualty Value or other Rent Amount is not paid when due, Lessee shall pay to Lessor, as Supplemental Rent, on demand, interest at the Default Rate on the unpaid amounts from the date due until paid.

3.05 Obligation to Pay Rent. Each payment of Interim Rent, Base Rent and Supplemental Rent shall be made in funds which are immediately available by check or wire transfer prior to 11:00 a.m., New York time, on the date when such payment is due. Lessee shall immediately notify Lessor and Lender of any failure to pay Interim Rent, Base Rent or Supplemental Rent when due hereunder. In any case where the scheduled date for a payment of Interim Rent, Base Rent or Supplemental Rent hereunder shall not be a Business Day, such payment shall be made on the next succeeding Business Day. Lessee's obligations to pay Interim Rent,

modification or release of any claims which the Lessee may have at any time for damages or equitable relief for any breach by Lessor of this Lease or any other Operative Document.

SECTION 4. USE, SUBLEASE, MAINTENANCE  
AND REPAIR.

4.01 Use. During the Lease Term, so long as no Lease Event of Default has occurred, Lessee has the exclusive right to possession, control and full use of the Equipment in accordance with the terms of this Lease.

4.02 Sublease and Assignment. Lessee shall not sublease or deliver possession of any Unit or assign any rights under this Lease in respect of any Unit to any person without the prior written consent of Lessor, which consent shall not be unreasonably withheld; provided, however, without such prior written consent, Lessee may so long as no Lease Event of Default shall have occurred and be continuing (i) sublease the Units for a term of 12 months or less to any railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), (ii) permit commercial operation of the Units in the usual interchange of railroad traffic or in through or run-through service and (iii) sublease to any Affiliate of Lessee. Any sublease, delivery of possession to a third party or assignment shall be subject and subordinate to the terms and conditions of this Lease and no Unit shall be used or operated outside the continental United States except for, on a fleet basis, de minimus operation into and out of Canada incidental to normal interchange practice. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety.

4.03 Use, Maintenance and Repair in Compliance with Standards. Lessee shall use each Unit only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. Lessee shall, at its own cost and expense, maintain, repair, and keep each Unit in such condition as Lessee would, in the prudent management of its own business, maintain and use similar equipment owned or leased by Lessee, consistent with prudent industry practice and in compliance with all Applicable Laws (unless Lessee is contesting the validity of an Applicable Law by a Permitted Contest) and Insurance Requirements, but in any case, so as to maintain each Unit in good operating order, and in the same condition (ordinary wear and tear

Base Rent and Supplemental Rent are absolute and unconditional. Lessee shall pay Interim Rent, Base Rent and Supplemental Rent without notice, demand, set-off, counterclaim, recoupment, defense, abatement, suspension, deferment or diminution. Lessee may not terminate this Lease (except in accordance with Section 10) or be released from its obligations to pay Interim Rent, Base Rent and Supplemental Rent, or from any other obligation under this Lease for any reason whatsoever, including, without limitation: (i) defect in the title, condition, design, operation, merchantability or fitness for use of any Unit; (ii) existence of Liens or rights of others to or with respect to any Unit; (iii) loss or destruction of, or damage to, a Unit, or interruption or limitation in the use or possession of a Unit by Lessee, or diminution or cessation of use by Lessee, whether resulting from an act, omission or breach on the part of Lessor or any other Person, from accident, or without fault on part of Lessee, or from any other reason; (iv) invalidity or unenforceability of any Operative Document or lack of power or authority of any party thereto to enter into any Operative Document; (v) insolvency, bankruptcy, reorganization or similar proceeding by or against Lessee, Lessor or any other Person; (vi) any assignment, sublease, purported assignment or purported sublease by Lessee of any of its rights or obligations hereunder; (vii) any merger or consolidation between Lessee and any other Person or any sale, lease, transfer or other disposition of substantially all the assets of Lessee or Lessor; or (viii) any other event or circumstance, whether or not similar to those described in this Section 3.05. If for any reason whatsoever (except as provided in Section 10) this Lease is terminated in whole or in part by operation of law or otherwise, Lessee shall pay an amount equal to each payment of Interim Rent, Base Rent and Supplemental Rent at the time such payment would have become due and payable in accordance with the terms hereof had the Lease not been terminated. Lessee waives, to the extent permitted by Applicable Law, any rights it may now have or hereafter may have conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the Lease, except as provided in Section 10. Each payment of Interim Rent, Base Rent and Supplemental Rent is final, and Lessee shall not seek to recover all or any part of the payments from Lessor or any other Person. Lessee agrees that all amounts of Interim Rent, Base Rent and Supplemental Rent payable by Lessee on any Rent Payment Date will be sufficient to enable the full payment of interest, Yield-Maintenance Premium and principal required to be paid on the Notes on such date. Nothing contained in this Section 3.05 may be construed to be a waiver,

excepted) as on the date on which Lessee executed and delivered the Lease and Security Agreement Supplement with respect to each Unit. Notwithstanding the foregoing, Lessee, in its discretion, may withdraw from service any Unit for any reason for a period of time during which Lessee shall not be required to maintain or repair such Unit; provided, however, that (i) Lessee shall remain responsible for the preservation, safekeeping, use, operation and safe storage of such Unit and (ii) Lessee's actions with respect to such Unit shall not impair the value, utility, useful life or residual value that such Unit would have had had it been kept in service and maintained in accordance with this Section 4.03.

4.04 Replacement of Parts. If any component part of a Unit is damaged or worn in service so that its use does not satisfy the standards set out in Section 4.03, is used by Lessee for replacement purposes, is lost or destroyed, or otherwise becomes unavailable for use, Lessee shall replace such component part and, upon such replacement, the replacement part shall become the property of Lessor and be included as part of the Equipment for all purposes of this Lease, and the replaced part shall become the property of Lessee. All replacement parts shall be free and clear of all Liens and shall be in as good operating condition as, and shall have a value, utility and useful life at least equal to, the replaced parts.

4.05 Permits, Logs. Lessee shall obtain and keep in force the permits or licenses, if any, necessary or appropriate in connection with the use of any Unit or its maintenance, repair, replacement or modification, and shall maintain the logs and other records consistent with prudent industry practice and Applicable Law with respect to the use, maintenance, repair, replacement or modification of any Unit.

4.06 Inspection. Lessor shall have at all reasonable times during normal business hours (upon 48 hours' prior written or telephonic request and subject to Lessee's reasonable operating convenience) the right of access to the premises where the Equipment is located for the purpose of inspecting the Equipment and applicable maintenance records for, and records, if any, of hours of use of, the Equipment and observing its use and operation and otherwise protecting the security interest created herein; provided, however, in exercising such right of inspection, (i) Lessor shall not unreasonably interfere with Lessee's normal business operations and (ii) Lessor shall hold Lessee harmless from any

claims resulting from injury, loss or death sustained by Lessor's representatives on Lessee's premises during any such inspection except to the extent that any such injury, loss or death occurs as a direct result of Lessee's negligence or willful misconduct.

4.07 Net Lease. This Lease is a net lease, and it is intended that Lessee shall pay all costs and expenses of every character, whether foreseen or unforeseen, ordinary or extraordinary, in connection with the use, operation, maintenance, repair, and replacement of the Equipment, including, without limitation, the costs and expenses expressly set forth in this Lease.

SECTION 5. ADDITIONS AND IMPROVEMENTS.

5.01 Required Alterations. Lessee shall make the additions, modifications or improvements ("Alterations") to each Unit that are necessary for compliance with Applicable Law (except for such provisions of Applicable Law as are then being contested by a Permitted Contest). Any such Alteration shall, when made, become the property of Lessor without further act or instrument and shall be included within the meaning of "Equipment" for all purposes of this Lease.

5.02 Permitted Alterations. Lessee may make significant Alterations to any Unit, in addition to those required by Section 5.01, provided that:

(a) neither the making of the Alteration, nor the use of the Unit with the Alteration in place, nor the removal of the Alteration impair, or are anticipated to impair the value, appearance, utility, useful life or residual value that the Unit would have had if the Alteration had not been made;

(b) the Alteration constitutes an "Improvement" that the Lessee may finance in accordance with Revenue Procedure 79-48 or the Revenue Procedure, ruling or statute amending or superseding that procedure; and

(c) the Alteration will not cause a Unit to be considered "limited use property" within the meaning of Revenue Procedure 76-30.

Any Alterations made to any Unit pursuant to this Section 5.02 shall remain the property of Lessee, and shall not be deemed to constitute part of the Equipment for purposes of

this Lease. At the end of the Lease Term, Lessor or any purchaser of any Unit shall be entitled to purchase from Lessee any such Alteration at its then Fair Market Value. Lessee shall not be required to remove any Alteration if the retention of such Alteration will not, in Lessor's reasonable opinion, adversely affect the operating capabilities, the Fair Market Value or the Fair Market Rental Value of the Unit. Any Alteration not so removed shall become the property of Lessor.

SECTION 6. WARRANTY ENFORCEMENT.

For so long as no Lease Default or Lease Event of Default has occurred and is continuing, Lessor constitutes Lessee as the agent and attorney-in-fact of Lessor for the purpose of exercising and enforcing, and with full right, power and authority to exercise and to enforce, to the exclusion of Lessor and all Persons claiming through or under Lessor, all of the right, title and interest of Lessor in, under and to the Equipment. Lessor shall execute and deliver any instruments necessary to enable Lessee to enforce such rights.

SECTION 7. INSURANCE; PAYMENT UPON CASUALTY EVENT.

7.01 Insurance. (a) Lessee shall at all times after delivery and acceptance of each Unit, at its own expense, carry and maintain or cause to be carried and maintained (i) property insurance with respect to each such Unit and (ii) public liability insurance with respect to third party personal and property damage, in each case with such deductibles, in such amounts, against such risks in such form with such insurance companies of recognized responsibility as is usually carried by corporations of established reputation engaged in the same or a similar business as Lessee and similarly situated and subject to such self-insurance, in each case as is consistent with Class I railroad industry practice, and in any event, in amounts not less than and against such risks so as to be no less protective than the insurance, if any, maintained by Lessee with respect to similar equipment which it owns or leases.

(b) The foregoing notwithstanding, throughout any period during which Lessee's bond rating, as determined by any nationally recognized rating service, drops below investment grade (BBB or equivalent), Lessee shall be required to maintain in effect casualty insurance covering the Equipment in an amount equal to 110% of the Casualty

Value of the Equipment then subject to this Lease and comprehensive general public liability insurance covering such Equipment in an amount not less than \$50,000,000 per occurrence, with such deductibles for each such type of insurance as Lessor has consented to in writing.

7.02 Policies. All policies of insurance required to be carried in accordance with Section 7.01(b) shall (i) name and insure Owner Participant, Lessor (both in its individual capacity and as trustee) and Lenders as additional insureds, as their interests may appear, and the casualty policies shall insure Owner Participant, Lessor (or Lender if the Security Agreement remains in effect) as loss payee, under policies that insure such parties regardless of any breach or violation of any warranty, declaration or condition therein contained in such policy by Lessee or any other person (other than Owner Participant, Lessor and Lenders, but only in respect of their respective coverages), (ii) provide that, in respect of the interests of Lessor and Lenders in such policies, the insurance shall not be invalidated by any action or inaction of Lessee or any other Person (other than Owner Participant, Lessor or Lenders, but only in respect of their respective coverages), (iii) insure Owner Participant, Lessor and Lenders regardless of any breach or violation of any warranty, declaration or condition contained in such violation of policies (or in the application therefor or in any other document submitted to the insurer in connection therewith) by lessee or by any other Person (other than Owner Participant, Lessor or Lenders, but only in respect of their respective coverages), (iv) provide that such insurance is primary without right of contribution from any other insurance which might otherwise be available to the insured party, (v) provide that, in the event of any loss payment under a policy, the insurer shall waive any rights of subrogation against the insured party and shall waive any setoff or counterclaim or any other deduction, whether by attachment or otherwise (vi) include a cross-liability endorsement providing that inasmuch as the policies are written to cover more than one insured, all terms and conditions, insuring agreements and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured and (vii) provide that no person other than Lessee shall be liable for the payment of the premiums due thereunder.

7.03 Market Limitations. In the event any insurance required to be maintained under Section 7.01(a) shall not be available at commercially reasonable premiums in the

commercial insurance market, Lessor shall not unreasonably withhold its agreement to waive such requirement to the extent the maintenance thereof is not so available; provided, however, that (i) Lessee shall first request any such waiver in writing, which request shall be accompanied by a written report prepared by an independent insurance advisor satisfactory to Lessor stating that such insurance is not reasonably available in the commercial insurance market at economically reasonable premiums and explaining in detail the basis for such conclusion; (ii) at any time after the granting of any such waiver, but not more often than twice a year, Lessor may request, and Lessee shall furnish to Lessor within thirty (30) days after such request, supplemental reports reasonably acceptable to Lessor from such insurance advisor updating their prior reports and reaffirming such conclusions; and (iii) any such waiver shall be effective only as long as such insurance shall not be so available. This Section 7.03 shall not apply to any insurance required by, or limit in any way Lessee's obligations under, Section 7.01(b).

7.04 Notice of Cancellation or Change. All policies of insurance required to be carried in accordance with this Section 7 shall require thirty (30) days' prior written notice from the appropriate insurance broker to Owner Participant, Lessor and Lenders of cancellation, nonrenewal or material change in coverage or differentiation of self-insurance status, and Lessee shall be obligated to notify Owner Participant, Lessor and Lenders of any such act or event; provided, however, that if it is not practicable for Lessee to have actual or constructive knowledge of such events at least thirty (30) days prior to the occurrence thereof, Lessee shall give Owner Participant, Lenders and Lessor written notice as soon as Lessee has actual or constructive knowledge of such occurrence. For purposes of this Section 7.04, "material changes" shall mean changes in limits, exclusions, deductibles or self-insurance exposure.

7.05 Evidence of Insurance. Lessee shall not less than once in any twelve (12) month period furnish Lessor with (i) certificates or other satisfactory evidence (the "Insurance Broker's Certificate") of maintenance of the insurance required by Section 7.01(b) and (ii) a certificate of nationally recognized reputable insurance brokers or agents not affiliated with Lessee stating that the insurance maintained by Lessee complies with the requirements of Section 7.01(b), and with respect to any renewal policy or policies shall furnish certificates evidencing such renewal upon the expiration of the original policy or policies. In

addition, Lessor may, but not more than once in any twelve (12) month period, request from Lessee and Lessee shall promptly thereafter furnish to Lessor and Lender, an Officer's Certificate (i) setting forth all policies of insurance maintained by Lessee pursuant to this Section 7 and (ii) describing such policies, including the amounts of coverage, any deductible amounts, the names of the insurance providers and a general description of each such policy's terms.

7.06 Proofs of Loss. Lessee shall make the proofs of loss and take the steps necessary to effect collections from insurers for loss under any insurance policy covering the Equipment. Lessor shall, at Lessee's expense, cooperate in making proofs of loss and take the steps necessary to assist Lessee in such efforts.

7.07 Proceeds. (a) Casualty Event. If a Casualty Event has occurred, Lessee may receive and retain insurance proceeds with respect to such Casualty Event, up to an amount equal to the Casualty Value to the extent already paid by Lessee with respect thereto, and the balance, if any, of such proceeds shall be paid to Lessor promptly as its property, except that if a Lease Default or Lease Event of Default has occurred, insurance proceeds shall be paid to Lessor.

(b) Non-Casualty Event. If a loss has occurred with respect to any Unit that does not constitute a Casualty Event, Lessee may receive and retain casualty insurance proceeds in respect of such loss, provided that Lessee has first evidenced to Lessor that damage to such Unit has been fully repaired, except that if a Lease Default or Lease Event of Default has occurred, insurance proceeds shall be paid to Lessor.

(c) Liability Insurance. Insurance proceeds attributable to losses covered by liability insurance policies carried pursuant to Section 7.01 shall be paid to the Person suffering the loss or otherwise entitled thereto.

7.08 Separate Insurance. Each of Owner Participant, Lessor and Lenders may maintain insurance at its own expense, provided that such insurance does not conflict with or otherwise limit the insurance required to be maintained by Lessee under this Section 7.

SECTION 8. OWNERSHIP, NATURE OF PROPERTY, LIENS.

8.01 Title. Lessor and Lessee confirm that this is an agreement of lease only. Lessee does not have and, except as provided in Sections 10 and 12, may not obtain title to the Equipment, nor any legal or equitable right or interest in the Equipment except solely as lessee under this Lease.

8.02 Personal Property. Lessee warrants that the Equipment is, and Lessee and Lessor confirm that it is their intent that it remain, personal property. Lessee shall take the actions necessary to preserve the character of the Equipment as personal property and to prevent any person from acquiring any right to or interest in the Equipment by reason of its being deemed to be real property or part of real property.

8.03 Liens. Lessee shall not directly or indirectly create, assume or suffer to exist any Lien on or with respect to the Equipment, other than Permitted Liens. Lessee shall notify Lessor promptly in writing of the imposition of any Lien and shall promptly cause each Lien (other than a Permitted Lien) to be discharged, dismissed or removed promptly, and in any event within 30 days after Lessee first knows of the existence of the Lien.

8.04 Filings. Lessee shall, at its own expense, (a) cause the Lease and the Security Agreement and any amendments or supplements thereto to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303 of the Interstate Commerce Act, and (b) execute or cause to be executed and file or cause to be filed financing statements and continuation statements which are necessary or appropriate to perfect, confirm and protect the interests of Owner Participant, Lessor and Lender in and to the Equipment and the Lease; provided, however, that any of Owner Participant, Lessor or Lenders may, at their option, file and record the Lease and the Security Agreement and any supplements to either thereto and prepare and file such financing and continuation statements at Lessee's expense. Owner Participant, Lessor or Lenders may file with the proper filing or recording officers any other papers or documents which they deem necessary or appropriate for the protection of their interests hereunder, and Lessee shall execute and deliver to Owner Participant, Lessor or Lenders, upon their request, any further documents and instruments required by law or which Owner Participant, Lessor or Lenders may reasonably require to perfect, confirm and

protect their interests in and to the Equipment and the Lease.

8.05 Identification Marks. Lessee will cause each Unit to be kept numbered with the identifying number as set forth in Schedule 1 to the Lease and Security Agreement Supplement executed and delivered on the Purchase Date hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit in letters not less than one inch in height, the words "Owned by a bank or trust company and subject to a security agreement filed with the Interstate Commerce Commission" or other appropriate words designated by Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by Applicable Law in order to protect the title of Lessor and Lenders and the rights of Lessor and Lenders under the Operative Documents. Lessee will not place any Unit in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. Lessee will not permit the identifying number of any Unit to be changed except in accordance with a Lease amendment or statement of new identifying numbers to be substituted therefor, which Lease amendment or statement shall have been previously filed, recorded or deposited in all public offices where this Lease will have been filed, recorded and deposited. Except as provided above, Lessee will not allow the name of any person, association or corporation, other than that of Lessee or an Affiliate of Lessee, to be placed on any Unit, as a designation that might be interpreted as a claim of ownership.

#### SECTION 9. DISCLAIMER OF WARRANTIES.

9.01 Generally. Lessee acknowledges that (a) the Equipment is of a design and manufacture selected by Lessee, (b) the Equipment is suitable for Lessee's purposes and (c) neither Lessor nor any Lender is a manufacturer or dealer in property. LESSEE ACKNOWLEDGES THAT NEITHER OWNER PARTICIPANT, LESSOR NOR ANY LENDER MAKES ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE DESIGN, OPERATION OR CONDITION OF THE EQUIPMENT, OR AS TO THE TITLE OR AS TO LESSOR'S OR LESSEE'S INTEREST IN THE EQUIPMENT OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE EQUIPMENT, AND THAT NEITHER OWNER PARTICIPANT, LESSOR NOR ANY LENDER MAKES ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR PURPOSE OR ANY OTHER

REPRESENTATION OR WARRANTY WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS AMONG OWNER PARTICIPANT, LESSOR, LENDERS AND LESSEE ARE TO BE BORNE BY LESSEE AND THE BENEFITS OF ANY IMPLIED WARRANTY OF OWNER PARTICIPANT, LESSOR OR LENDERS ARE HEREBY WAIVED BY LESSEE.

9.02 Complete Expression. The provisions of this Section 9 have been negotiated by Lessor and Lessee and are intended to be a complete exclusion and negation of any representations or warranties of Lessor, express or implied, with respect to the Equipment that may arise pursuant to any law now or hereafter in effect, or otherwise, except that, on and after the Purchase Date, Lessor shall be deemed to warrant to Lessee that Lessor has whatever right, title and interest in and to the Equipment Lessor received on the Purchase Date.

9.03 No Waiver. Nothing in this Section 9 shall be construed as a waiver of any claim that Lessor or Lessee may have against Seller or any other Person with respect to the Equipment.

SECTION 10. RISK OF LOSS, PAYMENT OF CASUALTY VALUE.

10.01 Generally. During the Lease Term with respect to a Unit, and for so long thereafter as Lessee has not returned possession thereof to Lessor, Lessee shall bear the risk of and all responsibility for loss or damage to the Unit. Lessee shall indemnify and hold Lessor harmless against all risks to the Equipment, including, without limitation, loss or damage caused by fire, lightning, tornadoes, earthquakes, wind storm, water damage, explosion, smoke and smudge, strikes, riots, civil commotion, vandalism, malicious mischief, burglary and theft.

10.02 Casualty Event. The happening of any of the following events with respect to a Unit shall be deemed to be a "Casualty Event" with respect to that Unit:

- (a) the loss, theft or destruction of the Unit;
- (b) the occurrence of damage to the Unit which, in Lessee's good faith opinion, makes repair uneconomical or renders the Unit unfit for commercial use; or
- (c) the requisition of title to, or the seizure or forfeiture of any Unit by any governmental authority which is not withdrawn or released within 180 days

after its happening or within a period equal to or shorter than the remaining Lease Term.

10.03 Notice. Lessee shall notify Lessor in writing of the happening of a Casualty Event, promptly after notification is received by a Responsible Officer of Lessee, fully informing Lessor of the nature of the Casualty Event.

10.04 Payment. Lessee shall continue to be obligated to pay Base Rent with respect to the Unit on each Rent Payment Date occurring through and including the Casualty Payment Date. On the Casualty Payment Date, Lessee shall pay an amount ("Casualty Value") equal to the sum of (i) the amount determined by multiplying the Lessor's Cost of the Unit by the Casualty Loss Factor of the Unit, determined as of the Casualty Payment Date, plus (ii) all Base Rent and Supplemental Rent payable on or prior to the Casualty Payment Date and (iii) all costs, expenses, interest, liquidated damages, indemnities, reimbursements or other amounts payable pursuant to this Lease or any other Operative Document, which are due and unpaid as of the Casualty Payment Date; provided, however, that the Casualty Value as of any date shall be at least an amount sufficient to pay on the Casualty Payment Date the mandatory prepayment of the Notes pursuant to Section 2.04(a) of the Security Agreement.

10.05 Conveyance. Upon payment in full of the Casualty Value, this Lease will be terminated to the extent that it relates to the Unit suffering the Casualty Event, and Lessor, if requested by Lessee, shall convey to Lessee or to such other Person as directed by Lessee, all of Lessor's right, title and interest in and to such Unit, without warranty of any kind, express or implied, except that Lessor has whatever right, title or interest in and to such Unit as it received from Seller and that the Unit is free and clear of Lessor's Liens. Lessee shall pay the out-of-pocket expenses, if any, incidental to such conveyance.

#### SECTION 11. RETURN OF EQUIPMENT.

11.01 Liens, Condition. Upon the termination of this Lease with respect to any Unit, Lessee shall cause each Unit to be free and clear of all Liens and rights of others and in the condition and repair required to be maintained during the Lease Term pursuant to Section 4.03.

11.02 Return. (a) Delivery. Not later than ninety (90) days prior to the expiration of the Base Term or any Renewal Term, Lessor shall give written notice to Lessee

designating the storage tracks owned by Lessee and at a location reasonably agreeable to Lessor and Lessee where Lessee shall, on the date of expiration of the Base Term or Renewal Term, assemble and deliver possession of the Units to Lessor at Lessee's own cost and expense and Lessee shall so assemble and deliver possession of the Units. Each Unit shall be (i) suitable for use in a manner consistent with railcars of similar age and type and (ii) in a condition consistent with the requirements of Applicable Law. In addition to the foregoing, the condition of the Units upon such return shall be as required pursuant to Section 4.03 excepting the passage of time and reasonable wear and tear, which does not include damage caused to the Units by any corrosive or abrasive substance loaded therein or used in connection therewith, damage caused to the Units by excessive or unbalanced loading, excessive, unusual or avoidable damage caused to the Units by open flames, vibrations, sledges or other similar devices during loading or unloading operations and damage caused to the Units resulting from damaged safety appliances. Lessee shall pay Lessor the daily equivalent of the Base Rent for any Units not returned on the expiration of the Base Term or any Renewal Term as provided for herein.

(b) Inspection; Free Storage. When Lessee has assembled all Units at the location selected by Lessor, Lessee shall notify Lessor in writing of the availability of the Units at the designated storage locations for inspection to determine whether the Units are in good operating condition and have been maintained in accordance with Section 4.03. Lessor shall have the right to store the Units on such tracks free of charge for a period not to exceed 45 days from the end of the Lease Term and Lessee shall transport the Units to a mutually agreed interchange point on Lessee's line. The movement and storage of the Units prior to Lessee's notification and during such 45-day period shall be at the expense and risk of Lessee; provided, however, that the movement and storage of any Unit after such 45-day period shall be at the risk of Lessor, except for any Units which are not in the operating condition required by Section 11.02(a) and Section 4.03 which shall continue to be at the risk of Lessee.

(c) Additional Storage. Lessor shall have the right to store any Units which have been returned to it in compliance with the terms of this Section 11.02 for an additional period of 90 days after the 45-day period described in clause (b) above; provided, however, that Lessee may charge Lessor an amount based on the then normal rates

charged by Lessee to third parties for storage of railcars of the same type on its tracks.

(d) Repair. Any Units that have not been maintained in accordance with Applicable Law and the standards set forth in Section 4.03 and this Section shall accrue rent as provided for in Section 11.02(a) and shall be repaired by Lessee in compliance with such standards no later than 30 days after Lessor's inspection provided for in clause (b) of this Section 11.02, after which Lessee shall notify Lessor in writing of the availability of such Units at their designated storage location for inspection by Lessor.

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

#### SECTION 12. PURCHASE OPTIONS, RENEWAL OPTION.

12.01 Purchase Options. (a) At Expiration. At the expiration of the Base Term or any Renewal Term, if no Lease Default has occurred and is continuing, and if Lessee has given Lessor written notice of its intention to do so not less than 180 days prior to such expiration, Lessee may purchase the Equipment for an amount, in cash, equal to the Fair Market Value thereof as of such expiration date. Lessor and Lessee shall cause the Fair Market Value to be determined in accordance with the Appraisal Procedure as soon as practicable after such notice, but in any event not less than 120 nor more than 180 days prior to the expiration of the Base Term or Renewal Term during which the election is made.

(b) On and After December 31, 1995. So long as no Lease Event of Default has occurred and is continuing, Lessee shall have the right to purchase all but not less than all the Equipment on any Rent Payment Date which is on or after December 31, 1995 at a price equal to the higher of the Fair Market Value or the Casualty Value on such Rent Payment Date. To exercise this right of termination, Lessee shall give Lessor at least 150 days' prior written notice specifying the Rent Payment Date on which the purchase is to occur (the "Early Termination Date"). Lessee may revoke such notice at any time prior to such date, provided that Lessee has not previously exercised such right of revocation

more than once, and provided further, that in the event of such revocation, Lessee shall be responsible for all costs and expenses thereby incurred by the other parties to the Operative Documents. Lessor and Lessee shall cause the Fair Market Value to be determined in accordance with the Appraisal Procedure as soon as practicable after such notice, but in any event not less than 90 days prior to the Early Termination Date. Upon the payment by Lessee of (i) the greater of the Fair Market Value or the Casualty Value of the Equipment, (ii) all of the Rent Amounts with respect to the Equipment due on and prior to the Early Termination Date, (iii) an amount equal to the Yield Maintenance Premium and (iv) any other obligations due under the Operative Documents, the obligation of Lessee to pay all Rent Amounts hereunder with respect to the Equipment after the Early Termination Date shall cease and the Lease Term shall end effective as of the Early Termination Date.

(c) As Is, Where Is. The conveyance of Lessor's interest in any Units pursuant to Lessee's exercise of its purchase option as provided in this Section 12 will be made "as is, where is", without recourse, representation or warranty of any kind, express or implied, except that Lessor has whatever right, title or interest in the Equipment it obtained from Seller and that the Equipment is free of Lessor's Liens.

12.02 Renewal Option. If no Lease Default has occurred and is continuing, and if Lessee has given Lessor written notice of its intention to do so not less than 180 days prior to expiration of the preceding term hereof, Lessee may renew the Lease as to all but not less than all the Equipment, and the Lease shall continue in full force and effect, at a rental equal to the Fair Market Rental Value, for up to two consecutive one-year terms (each, a "Renewal Term") upon the expiration of the Base Term. If Lessee gives notice of its election to renew this Lease as provided for in this Section 12.02, Lessor and Lessee shall cause the Fair Market Rental Value to be determined in accordance and satisfactory to Lessor with the Appraisal Procedure as soon as practicable after such notice, but in any event not less than 120 nor more than 180 days prior to the expiration of the Base Term or the first one-year term of the Renewal Term during which the election is made.

13. EVENTS OF DEFAULT.

The following events shall each constitute a Lease Event of Default under this Lease:

(a) Payment of Base Rent. Lessee fails to pay the whole or any part of any payment of Base Rent or a Casualty Value within 5 Business Days after the same becomes due;

(b) Maintenance of Insurance. Lessee fails to maintain insurance as provided in Section 7, if any, or to discharge Liens as provided in Section 8.03;

(c) Payment of Supplemental Rent. Lessee fails to pay the whole or any part of Supplemental Rent within 10 Business Days after demand therefor is made (other than a payment of Casualty Value, a failure to pay such amounts being covered by Section 13(a));

(d) Failure to Return Equipment. Lessee fails to return the Equipment to Lessor upon the expiration of the Base Term or Renewal Term in accordance with Section 11, and such failure shall have continued for a period of 90 days;

(e) Failure to Perform Obligations. Lessee fails to perform any of its obligations under this Lease in any material respect (other than those enumerated in Sections 13(a), (b), (c) or (d)), or Lessee fails to perform any of its obligations under any other Operative Document in any material respect to which it is a party and such failure continues for more than 30 days after written notice of such failure has been received by Lessee at the address set forth in Section 10.06 of the Participation Agreement;

(f) Representation or Warranty Untrue. Any representation or warranty of Lessee herein, in any Operative Document or in any document or certificate delivered pursuant hereto or thereto is untrue in a material respect or Lessee omits to state a material fact necessary to make the statements herein or therein, in light of the circumstances under which they were made, not misleading; provided, however, that this Section 13(f) shall not apply to the incorrectness of any of Lessee's representations made in Section 3 of the Tax Indemnity Agreement; or

(g) Bankruptcy. Lessee becomes insolvent or bankrupt or ceases paying or providing for the payment of its debts generally, or is dissolved or adjudged a bankrupt by a court of competent jurisdiction, or makes a general assignment for the benefit of its creditors, or a petition for liquidation or for an arrangement or its reorganization under the Bankruptcy Code is filed by it, or such petition is filed by creditors and approved by a court of competent jurisdiction, or such arrangement or a reorganization is approved by such a court, whether proposed by a creditor, a member or any other Person, or a receiver or receivers whether appointed in bankruptcy, common law or equity proceedings, is appointed by a court of competent jurisdiction with respect to any of the Equipment, or all or substantially all of the property of Lessee, and (except with respect to any of the foregoing events as to which Lessee shall have taken action for the purpose of effecting the same) such judgment, approval, appointment or decree continues unstayed, on appeal or otherwise, and in effect, for a period of 60 days.

SECTION 14. ACTION FOLLOWING AN EVENT OF DEFAULT.

14.01 Declaration of Lease Default. At any time after a Lease Event of Default has occurred and so long as it is continuing, Lessor may declare this Lease to be in default ("Declaration of Lease Default"). After a Declaration of Lease Default, Lessor may elect one or more of the remedies set forth below, and Lessee shall perform its obligations imposed thereby:

(a) Redelivery of Units. Lessor may require Lessee, at Lessee's expense and risk, to redeliver to Lessor any or all of the Units, in the condition required by Section 4.02 and Section 11.02(a), as follows:

(i) Lessee shall:

(1) as soon as practicable, place the Equipment in such reasonable storage place on Lessee's lines of railroad as Lessor may reasonably designate;

(2) permit Lessor to store the Equipment in such reasonable storage place on Lessee's lines of railroad without charge for insurance, rent or storage until the Equip-

ment has been sold, leased or otherwise disposed of by Lessor and, during such period of storage, shall continue to maintain the insurance required by Section 7 hereof; and

(3) transport the Equipment to any place on the lines of railroad operated by Lessee or to any connecting carrier for shipment, all as Lessor may direct in writing;

(ii) All sums earned in respect of the use of the Equipment after the Declaration of Lease Default shall belong to Lessor and, if received by Lessee, shall be promptly turned over to Lessor. In the event any Unit is not assembled, delivered and stored as provided herein within 30 days after the Declaration of Lease Default, Lessee shall, in addition, pay to Lessor or to Lender as its assignee for each day thereafter an amount equal to the amount, if any, by which the Fair Market Rental Value for such Unit for each such day exceeds the amount, if any, received (pursuant to the preceding sentence) by Lessor or Lender (either directly or from Lessee) for such day for such Unit;

(b) Recovery of Units. Lessor may retake any or all of the Units wherever found, whether or not Lessee or any other Person is in possession of the Units, all without prior notice or demand and without legal process, and for that purpose Lessor or its agent may enter upon the premises where the Units may be and take possession thereof, without Lessor or its agent incurring any liability by reason of such retaking, whether for damage to property caused by such retaking or otherwise;

(c) Payment Generally. Lessor, by written notice to Lessee specifying a payment date (the "Payment Date") not earlier than 3 Business Days, or more than 30 Business Days, after the date of such notice, may require Lessee to pay to Lessor on the Payment Date, with respect to any or all of the Units, as liquidated damages for loss of a bargain and not as a penalty:

(i) all unpaid Rent Amounts payable on Rent Payment Dates occurring through the Payment Date (together with interest thereon at the Default Rate from the due date until paid), plus

(ii) an amount equal to the excess, if any,  
of:

(1) the value determined by multiplying the Lessor's Cost for the Units by the Casualty Loss Factor of the Units computed as of (x) the Rent Payment Date occurring on or immediately preceding the Payment Date, or (y) the Expiration Date, if the Payment Date occurs after the last Rent Payment Date, or (z) the Base Term Commencement Date, if the Payment Date occurs before the first Rent Payment Date, over

(2) the Fair Market Value of the Units as of the Rent Payment Date occurring on or immediately preceding the Payment Date, except that (a) the Fair Market Value of a Unit, the possession of which is not recovered by Lessor after reasonable efforts to do so, will be deemed to be zero, (b) if Lessor has sold a Unit prior to the giving of its notice, the Fair Market Value of the Unit sold will be deemed to be equal to the net proceeds of such sale after deducting the costs and expenses incurred by Lessor in connection therewith, and (c) the Fair Market Value shall be increased by the net proceeds received by Lessor from any lease of a Unit to others after deducting all costs and expenses of Lessor with respect thereto, which proceeds are received by Lessor prior to the giving of its notice; and

(d) Sale. Lessor or its agent may sell any or all of the Units at public or private sale, with or without notice to Lessee, and with or without advertisement or publication (but with at least 10 days' prior notice to Lessee of Lessor's intention to exercise its rights of sale), or otherwise may dispose of, hold, use, operate, lease (whether for a period greater or less than the balance of the Lease Term) to others, or keep any or all of the Units.

14.02 Other Amounts and Expenses. In addition, Lessee shall be liable for all reasonable legal fees and other costs and expenses incurred by Lessor by reason of the occurrence of a Lease Event of Default or the exercise of Lessor's remedies with respect thereto, including all costs

and expenses incurred by Lessor in connection with the return of any Unit or placing any Unit in the condition required hereunder.

14.03 Other Rights and Remedies. Except as otherwise expressly provided above, no remedy referred to in this Section 14 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity. No express or implied waiver by Lessor of any Lease Event of Default is a waiver of any future Lease Event of Default. To the extent permitted by Applicable Law, Lessee waives any rights now or hereafter to require Lessor to take any judicial proceedings in connection with the Equipment or to give any notice or to sell, lease or otherwise use any Unit in mitigation of Lessor's damages or which may otherwise limit Lessor's rights or remedies under this Section 14.

#### SECTION 15. ASSIGNMENT OF RIGHTS TO LENDERS.

15.01 Acknowledgment of Assignment. Lessee acknowledges and agrees that the right, title, and interest of Lessor in, to and under this Lease have been assigned to Lender pursuant to the Security Agreement. Lessee acknowledges and agrees that, subject to the terms of the Security Agreement, Lenders have succeeded to certain of Lessor's rights and privileges and that Lender may exercise such rights pursuant to the Security Agreement, so long as it is in effect.

15.02 Payments. Lessor acknowledges that so long as the Security Agreement is in effect, Lenders shall be entitled to instruct Lessee to make payment of all amounts due hereunder not constituting Excepted Payments and Rights directly to Lenders and such payments shall satisfy Lessee's obligations hereunder to make such payments to Lessor. Lessee agrees that, until it has received such instructions from Lender, Lessee shall make payment directly to Lessor of all amounts due to Lessor hereunder.

15.03 Notices. So long as the Security Agreement is in effect, in any case where Lessee is required to give or cause to be given a notice or any other document to Lessor hereunder, such notice or other document shall also be given to Lenders.

15.04 Amendment. Except as provided in Section 3.03(d) hereof, so long as the Security Agreement is in

effect, Lessee shall not amend, modify or terminate the Lease without the prior written consent of Lenders. Any such attempted assignment, modification or termination without consent shall be void.

15.05 Obligations under Lease. Notwithstanding the exercise by Lenders of any rights or remedies under or in respect to the Security Agreement, in the event of any default by Lessor, the existence of any defense, setoff, counterclaim or right of abatement, reduction or recoupment as between Lessor and Lessee, the existence of any other liability or obligation of any kind or character on the part of Lessor to Lessee or to any third person or governmental authority, or any bankruptcy or other proceedings affecting Lessor or any assignee thereof or any action taken by any trustee, custodian or receiver of Lessor or of any such assignee or by any court in any such proceeding:

(a) Performance of Obligations. Lessee shall not be relieved of its obligation to perform or observe all the covenants and conditions to be performed or observed by Lessee hereunder; and

(b) Lessee's Rights. So long as no Lease Event of Default has occurred and is continuing, Lessee shall not be deprived of any of its rights or benefits hereunder (and shall not be disturbed in its possession, use, management, operation and quiet enjoyment of such rights and benefits) except in accordance with the terms and conditions of this Lease.

SECTION 16. LESSOR MAY CURE DEFAULTS;  
REIMBURSEMENT BY LESSEE.

If Lessee fails to perform or observe any of the terms of this Lease, Lessor may do such acts as it in its reasonable discretion deems necessary to remedy such failure, including, without limitation, insuring of the Units and making repairs to and maintaining any Unit, and Lessee shall promptly reimburse Lessor, together with interest on such amount at the Default Rate for the expenditures so made, including, without limitation, payments by Lessor to Lender in respect of actions taken by Lenders under Section 3.07 of the Security Agreement to the extent caused by or resulting from such failure by Lessee. Lessor is under no obligation to Lessee or any other Person to do any such act or make any such expenditures nor shall the making thereof relieve Lessee of any default in that respect.

SECTION 17. WAIVER.

Lessor's failure to require strict performance by Lessee of any of the provisions of the Lease does not waive or diminish Lessor's right thereafter to demand strict compliance therewith or with any other provision. Failure by Lessor to collect the Rent Amount or any other sums as and when the same fall due, or to exercise its right to take possession of the Equipment as provided in this Lease, do not waive or in any way affect Lessor's rights under this Lease or extend the time for making such payments. None of the conditions or provisions of this Lease will be waived by any act or knowledge of Lessor, its agents or employees, but only by an instrument in writing signed by an officer of Lessor and delivered to Lessee.

SECTION 18. NOTICES.

Lessee shall promptly notify Lessor in writing of the following:

(a) Taxes. The amount of any delinquent taxes assessed or charged to Lessor, Lessee or any assignee under any law now or hereafter in force, of which Lessee has notice, that may reasonably subject the Equipment to the hazard of seizure or lien;

(b) Claims. Any claim, demand, action or dispute that involves the rights of Lessor, Lessee or any assignee hereunder, or that involves the interpretation of any of the provisions of the Lease that directly or indirectly affects the tax or other liability or rights of Lessor, Lessee or any assignee, in each case of which Lessee has notice; and if any litigation, suit or action is begun by or against Lessee or any assignee relating to the Lease or the Equipment, Lessor shall have the right, but not the obligation, to intervene in the litigation, suit or action at its own expense and assist in the prosecution or defense of the same;

(c) Lease Event of Default. Promptly after receiving notice thereof, the occurrence of a Lease Event of Default;

(d) Change in Location. Any change in the location of the chief executive office or principal place of business of Lessee and any change in Lessee's name within 60 days after either such change;

(e) Casualty Event. Promptly after receiving notice thereof, the occurrence of any Casualty Event; and

(f) Change in Self-Insurance. At least 30 days prior thereto, any material change with respect to any self-insurance maintained by Lessee; provided, however, that if it is not practicable to have knowledge of a material change in coverage at least 30 days prior to the occurrence thereof, Lessee shall give Lessor written notice as soon as Lessee learns of such change.

SECTION 19. SALE, CONSOLIDATION OR MERGER.

19.01 Merger, Consolidation. Lessee shall not merge or consolidate with any other Person or sell, lease, transfer or otherwise dispose of substantially all of its assets to any Person unless the requirements set out below are met:

(a) Lessee Surviving Entity. If there occurs a merger or consolidation, such merger or consolidation results in Lessee's being the surviving entity and there is no material adverse change in the financial condition of Lessee; or

(b) Lessee Not Surviving Entity. If there occurs a merger or consolidation where Lessee is not the surviving entity, or if a disposition of Lessee's assets occurs, such merger, consolidation or disposition satisfies each of the following conditions:

(i) such action is on such terms as not to impair the rights of Owner Participant, Lessor and Lender under this Lease or any Operative Document and the business, assets and financial condition of the surviving corporation or of the transferee of such assets are at least as favorable as Lessee's business, assets and financial condition;

(ii) no Lease Event of Default or Lease Default has occurred and is continuing prior to or upon such action becoming effective;

(iii) prior to or simultaneously with such action becoming effective, the surviving corporation or the transferee of such assets expressly assumes the payment of all Rent Amounts and the performance of all the other obligations of Lessee

under this Lease and under each other Operative Document to which Lessee is a party, and that such assumption is permissible under Applicable Law; and

(iv) such action will not result in the modification, cancellation or termination of any insurance required by Section 7 unless, prior to such modification, cancellation or termination, such insurance is replaced by other insurance meeting the requirements of that Section.

19.02 Substitution. Upon any merger, consolidation, sale, lease, transfer or other disposition permitted by Section 19.01 becoming effective, the entity formed by or surviving such consolidation or merger, or to which such sale, lease, transfer or other disposition has been made, shall succeed to and be substituted for Lessee hereunder and under each other Operative Document to which Lessee is a party with the same effect as if it had been named herein and therein.

#### SECTION 20. MISCELLANEOUS.

20.01 Amendments. This Lease may not be supplemented, amended, modified, waived, discharged or terminated except by an instrument in writing signed by the party against which enforcement of the supplement, amendment, modification, waiver, discharge or termination is sought.

20.02 Governing Law. This Lease shall be construed and enforced in accordance with and governed by the laws of the State of New York.

20.03 Table of Contents, Titles and Headings. The Table of Contents, the titles of the Sections and the headings of the Sections, subsections and clauses are for convenience only and shall not affect the construction or meaning of any provision of this Lease.

20.04 Counterparts. This Lease may be executed in 10 counterparts, each of which is an original, but all of which together shall constitute but one and the same instrument; except to the extent, if any, that this Lease constitutes "chattel paper" (as such term is defined in the Uniform Commercial Code as in effect in the applicable jurisdiction), no security interest therein may be created except through the transfer or possession of the original counterpart, which the parties shall mark "Counterpart Number 1".

20.05 Further Assurances, Documents. Lessor and Lessee shall execute, deliver and furnish or to cause to be executed, delivered and furnished, all such further assurances, certificates, opinions and other documents, and to perform or cause to be performed all such actions as may be necessary or proper to carry out this Lease.

20.06 Severability of Provisions. The invalidity of any provision of this Lease shall not affect the remainder hereof, which shall in such event be construed as if the invalid provision had not been inserted.

20.07 Notices and Payments. All payments required or provided to be made by one party to another pursuant to this Agreement, and all notices or communications required or provided hereunder, shall be made or given as set forth in Section 12.06 of the Participation Agreement.

20.08 Concerning Lessor. Wilmington Trust Company is entering into this Agreement solely in its capacity as Owner Trustee under the Trust Agreement and not in its individual capacity, and in no case whatsoever shall Wilmington Trust Company (or any entity acting as successor Owner Trustee under the Trust Agreement) be personally liable for or on account of any of the statements, representations, warranties, covenants or obligations of Lessor hereunder; provided, however, that Wilmington Trust Company (or any successor Owner Trustee) shall be personally liable hereunder for its own gross negligence or willful misconduct. If a successor Owner Trustee is appointed in accordance with the terms of the Trust Agreement, such a successor Owner Trustee shall, without any further act, succeed to all the rights, duties, immunities and obligations of Lessor hereunder, and the predecessor Owner Trustee shall be released from all further duties and obligations hereunder.

20.09 Successors and Assigns. This Lease shall be binding upon the successors and assigns and shall inure to the benefit of the permitted successors and assigns of Lessor and Lessee.

IN WITNESS WHEREOF, Lessor and Lessee have executed and delivered this Lease as of the date hereof.

LESSOR:

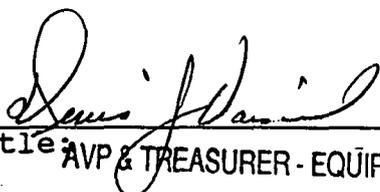
WILMINGTON TRUST COMPANY,  
not in its individual capacity  
but solely as trustee

By   
\_\_\_\_\_

Title: James P. Lawler  
Financial Services Officer

LESSEE:

CSX TRANSPORTATION, INC.

By   
\_\_\_\_\_

Title: AVP & TREASURER - EQUIPMENT UNIT

STATE OF Maryland )  
CITY : ss.:  
~~COUNTY~~ OF Baltimore )

On this 23rd day of November, 1988, before me personally appeared Denis J. Vasul, to me personally known, who, being by me duly sworn, says that he is AVP & TREASURER - EQUIPMENT UNIT of CSX TRANSPORTATION, INC., that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

H. Marlene Wendell  
Notary Public

My Commission Expires: July 1, 1990  
[Notary Seal]



DEFINITIONS

"Affiliate" of any Person means any other person controlling, controlled by or under direct or indirect common control with such Person.

"Alterations" has the meaning given in Section 5.01(a) of the Lease.

"Applicable Law" means the federal, state and local statutes, regulations, ordinances and codes and the rules, interpretations and orders of any commissions, boards or other legislative, executive, judicial or other governmental bodies or officers, in each case relating to the Equipment or Lessee's business, including, without limitation, the rules of the United States Department of Transportation, the Interstate Commerce Commission, the current Field Manual of the Interchange Rules, or supplements thereto, as issued by the Mechanical Division of the Association of American Railroads or any successor organization, and the Federal Railway Administration Railroad Freight Car Safety Standards (49 CFR Part 215, as amended), as the same may be in effect from time to time.

"Appraisal Procedure" means the procedure specified in the succeeding sentences for determining the amount of the Fair Market Rental Value or the Fair Market Value of a given Unit or Alteration. The parties shall consult for the purposes of determining such amount by mutual agreement. In the absence of such agreement either party may give written notice (the "Notice") to the other, requesting determination of such amount by appraisal and in such event the parties shall consult for the purpose of appointing a mutually acceptable qualified independent appraiser, who shall determine the Fair Market Value or Fair Market Rental Value. If the parties are unable to agree on an appraiser within 20 days of the giving of the Notice, the Fair Market Value or Fair Market Rental Value shall be determined by each of two independent appraisers, one of whom shall be selected by Lessee and the other of whom shall be selected by Owner Participant on or before the twenty-first day following the giving of the Notice. The appraisers so selected shall make their determinations within 10 days following their appointment. If the determination made by the appraiser reaching the greater value does not exceed the determination made by the appraiser reaching the lower value by more than ten per-

cent of the lower value, the two values shall be averaged and such determination shall constitute the determination of the appraisers. If such excess is greater than ten percent of the lower value, a third appraiser shall be selected by the two appraisers or by the American Arbitration Association if the other two are unable to agree upon a third appraiser within 10 days. After the third appraiser shall make his determination, the appraisal which differs most from the other two appraisals shall be excluded, the remaining two determinations shall be averaged and such average shall constitute the Fair Market Value or Fair Market Rental Value, as appropriate.

"Assigned Documents" means the Lease, each Bill of Sale and the Car Purchase Agreement.

"Base Rent" means the amounts required to be paid by Lessee under Section 3.02 of the Lease.

"Base Term" means the period beginning on the Base Term Commencement Date and ending on the Expiration Date.

"Base Term Commencement Date" means January 1, 1989.

"Bill of Sale" for any Unit means the warranty bill of sale substantially in the form of Exhibit A to the Car Purchase Agreement for such Unit delivered by Seller to Owner Trustee on the Purchase Date.

"Business Day" means any day other than a Saturday, Sunday or a day on which commercial banking institutions in the States of Delaware, North Carolina, Maryland and New York are authorized or required by law to be closed.

"Called Principal" shall mean, with respect to any Note, the principal of such Note that is to be prepaid pursuant to Section 2.04(b) of the Security Agreement.

"Cancellation Fee" has the meaning given in Section 2.05 of the Participation Agreement.

"Car Purchase Agreement" means the Car Purchase Agreement, dated as of August 1, 1988, between Seller and Lessor, substantially in the form of Exhibit A to the Participation Agreement.

"Cars" means the Units.

"Casualty Event" has the meaning given in Section 10.02 of the Lease.

"Casualty Loss Factor" means the applicable factor set out in Schedule 2 to the Lease, as adjusted in accordance with Section 3.03 of the Lease.

"Casualty Payment Date" means, (i) with respect to a Unit that suffers a Casualty Event prior to the Base Commencement Date, the last day of the Interim Term, or (ii) the Rent Payment Date next following the date a Unit suffers a Casualty Event.

"Casualty Value" means an amount calculated in accordance with Section 10.04 of the Lease.

"Change in Tax Law" means a change in the Code, the issuance of new or revised Treasury Regulations, revenue procedures, revenue rulings or other administrative publications or any change in judicial interpretation of existing law, not including any such amendment, modification, deletion or change affecting a minimum tax or alternative minimum tax relating generally to the income of Owner Participant.

"Code" means the Internal Revenue Code of 1986, as amended, or any successor tax code thereto.

"Collateral" has the meaning given in Section 3.01 of the Security Agreement.

"Comfort Letter" shall mean the letter executed by NCNB National Bank of North Carolina in substantially the form of Exhibit H hereto.

"Debt Commitment" means, in respect of all Lenders in the aggregate, \$2,340,800, and in respect of each Lender, the percentage thereof set forth on Schedule 1 to the Participation Agreement for such Lender.

"Debt Commitment Percentage" means, in respect of all Lenders in the aggregate, eighty percent (80%), and in respect of each Lender, the percentage thereof set forth on Schedule 1 to the Participation Agreement for such Lender.

"Debt Portion" means, with respect to any Unit, the Debt Commitment Percentage multiplied by the Lessor's

Cost of such Unit, provided that the aggregate Debt Portion of the Equipment shall not exceed the Debt Commitment.

"Declaration of Default" has the meaning given in Section 14.01 of the Lease.

"Default" means an event or circumstances which, with the passage of time or the giving of notice, or both, would become an Event of Default.

"Default Rate" means the lesser of (x) the higher of (i) the interest rate announced by Morgan Guaranty Trust Company of New York from time to time as its prime lending rate for preferred borrowers within the United States, plus 2% per annum or (ii) the interest rate provided for in the Notes plus 2% per annum or (y) such maximum contract rate as is permitted by law.

"Delayed Takedown Fee" has the meaning given in Section 2.06 of the Participation Agreement.

"Discounted Value" shall mean, with respect to the Called Principal of any Note, the amount calculated by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on a semiannual basis) equal to the Reinvestment Yield with respect to such Called Principal.

"Equipment" means all of the Units that are subject to the Lease.

"Event of Default" means any of the events or circumstances described in Section 13 of the Lease.

"Equity Commitment" means \$585,200.

"Equity Commitment Percentage" means twenty percent (20%).

"Equity Portion" means, with respect to any Unit, the Equity Commitment Percentage multiplied by Lessor's Cost of such Unit, provided that the aggregate Equity Portion of the Equipment shall not exceed the Equity Commitment.

"Excepted Payments and Rights" means all of Lessor's and Owner Participant's estate, right, title and in-

terest, whether now owned or hereafter acquired, in and to the following:

(i) all rights to any indemnity payment or any other payment payable to Lessor (in its individual capacity or as Owner Trustee) or Owner Participant pursuant to Sections 6 and 7 of the Participation Agreement or under the Tax Indemnity Agreement and the rights to demand, collect, sue for or otherwise obtain such amounts from Lessee or any other Person and to seek legal or equitable remedies with respect thereto subject to Section 4.08 of the Security Agreement;

(ii) all rights to any payment under (A) any insurance maintained by Lessor or Owner Participant (other than insurance so maintained to the extent that such insurance provides coverage Lessee is required under the Lease to provide and which Lessee fails so to provide or maintain) or (B) liability insurance policies (whether maintained by Lessee as required under the Lease or otherwise) to or for the benefit of Lessor (both in its individual capacity and as Owner Trustee) or Owner Participant on account of any loss suffered by Lessor (both in its individual capacity and as Owner Trustee) or Owner Participant with respect to any matter for which it is indemnified under Section 6 or 7 of the Participation Agreement; and

(iii) all amounts of interest or late charges on any amounts payable pursuant to clause (i) above.

"Expiration Date" means the tenth anniversary of the Base Term Commencement Date.

"Fair Market Value" means, with respect to a given Unit or Alteration, an amount determined in accordance with the Appraisal Procedure as of a given time, which amount equals the value which would be obtained in an arms's length purchase and sale transaction between an informed and willing buyer (other than a buyer currently in possession), and an informed and willing seller under no compulsion to sell, without regard to the costs and expenses that are reasonably anticipated would be incurred in connection with such a transaction.

"Fair Market Rental Value" means, with respect to a given Unit, an amount determined in accordance with the Appraisal Procedure as of a given time, which amount equals the value which would be obtained in an arm's length lease

transaction between an informed and willing lessee (other than a party currently in possession), and an informed and willing lessor under no compulsion to lease, without regard to the costs and expenses that are reasonably anticipated would be incurred in connection with such a transaction.

"Impositions" has the meaning given in Section 7.01 of the Participation Agreement.

"Indebtedness" has the meaning given in Section 3.01(a) of the Security Agreement.

"Indemnitee" means Lenders, Lessor (both in its individual capacity and as Owner Trustee), Seller, Owner Participant and their respective successors, assigns, agents, officers, directors and employees.

"Insurance Broker's Certificate" has the meaning given in Section 7.05 of the Lease.

"Insurance Requirements" means the requirements of insurance policies, if any, which Lessee is obligated to maintain pursuant to Section 7 of the Lease.

"Interim Rent" means, with respect to each Unit, the amount required to be paid by Lessee under Section 3.01 of the Lease.

"Interim Term" means, with respect to each Unit, the period commencing on the Purchase Date and ending on December 31, 1988.

"Lease" means the Equipment Lease Agreement, dated as of August 1, 1988, between Lessor and Lessee, substantially in the form of Exhibit B to the Participation Agreement, together with each Lease and Security Agreement Supplement entered into pursuant to the applicable provisions thereof and of the Security Agreement.

"Lease Default" means an event or circumstances which, with the passage of time or the giving of notice, or both, would become a Lease Event of Default.

"Lease Event of Default" means the event or circumstances described in Section 13 of the Lease.

"Lease and Security Agreement Supplement" means a Lease and Security Agreement Supplement, to be entered into among Lessor, Lessee and Lenders and dated the Purchase

Date, substantially in the form of Exhibit A to the Lease and Exhibit B to the Security Agreement, and describing the Units leased thereunder and rendered subject to the security interest of the Security Agreement thereby.

"Lease Term" means the Base Term, together with any Renewal Term.

"Lender" means each of The Prudential Insurance Company of America, a New Jersey mutual insurance company, Prudential Property and Casualty Insurance Company, a New Jersey corporation, and Pruco Life Insurance Company, an Arizona corporation and their respective successors and assigns.

"Lessee" means CSX Transportation, Inc., a Virginia corporation.

"Lessor" means Owner Trustee, not in its individual capacity but solely as trustee under the Trust Agreement.

"Lessor's Cost" means, with respect to a given Unit, the amount set out as Lessor's Cost thereof in the Lease and Security Agreement Supplement dated the Purchase Date.

"Lessor's Liens" means any Liens arising as a result of (i) claims against or affecting Lessor or Owner Participant, not related to the transactions contemplated by any of the Operative Documents, or (ii) acts or omissions of Lessor or Owner Participant not related to the transactions contemplated by, or not permitted under, any of the Operative Documents or (iii) Impositions or Losses imposed against Lessor which are not indemnified against by Lessee pursuant to any of the Operative Documents.

"Lien" means any lien, mortgage, encumbrance, charge, pledge, lease, security interest or claim of any kind (including without limitation any conditional sale or other title retention agreement).

"Loan Default" means any of the events described in Section 4.01 of the Security Agreement.

"Loan Value" has the meaning given in Section 2.04(a) of the Security Agreement.

"Loss" or "Losses" has the meaning given in Section 6.01 of the Participation Agreement.

"Net Earnings" means net profit after taxes, as determined in accordance with generally accepted accounting principles consistently applied.

"Note" or "Notes" means one or more of the non-recourse promissory note or notes issued by Lessor to Lenders pursuant to the Security Agreement substantially in the form of Exhibit A to the Security Agreement.

"Note Payment Date" means each of the 20 semi-annual dates on which payments of principal and interest are due under the Notes as set out in the Notes.

"Note Rate" means 10.30% per annum computed on the basis of a 360-day year of twelve 30-day months.

"Officer's Certificate" means, with respect to Lessee, a certificate delivered pursuant to Section 7.05 of the Lease signed by the Chairman of the Board of Directors, the President, a Vice President, the Treasurer of Lessee or Lessee's Equipment Unit, the Secretary or any Assistant Secretary, or any person holding one or more such offices.

"Operative Documents" means, collectively, the Participation Agreement, the Car Purchase Agreement, the Lease, each Lease and Security Agreement Supplement, the Security Agreement, the Trust Agreement, the Tax Indemnity Agreement, the Comfort Letter and the Notes.

"Owner Participant" means NCNB Lease Investments, Inc., a North Carolina corporation, and its permitted successors and assigns.

"Owner Participant's Net Return" means Owner Participant's net after-tax return on investment and the periodic net after-tax cash flow and timing thereof anticipated by Owner Participant from entering into the transactions contemplated by the Operative Documents.

"Owner Trustee" means Wilmington Trust Company, a Delaware banking corporation in its individual capacity as expressly provided herein and otherwise solely as trustee under the Trust Agreement, and its successors and assigns as trustee thereunder.

"Participant" means any of Owner Participant, Owner Trustee both in its individual capacity and as trustee, Lenders, Seller and Lessee.

"Participation Agreement" means the Participation Agreement, dated as of August 1, 1988, among Lenders, Lessor, Owner Participant, Seller and Lessee.

"Payment Date" has the meaning given in Section 14.01 of the Lease.

"Permitted Contest" means a contest, including an appeal, with respect to a Lien or an Imposition, or the provisions of any Applicable Law which:

(i) is made in good faith by appropriate proceedings timely commenced and diligently prosecuted, and as to which adequate reserves have been maintained;

(ii) in the reasonable opinion of Lessor and, if the Security Agreement is then in effect, Lenders, does not involve significant risk of: (A) civil or criminal liability to an Indemnitee; or (B) material reduction in the value or utility of the Equipment; and

(iii) is not a conflict with any Insurance Requirement.

"Permitted Investments" means investments in bonds or other obligations which as to principal and interest constitute direct obligations of the United States of America or are issued or guaranteed by any person controlled or supervised by and acting as an agent or instrumentality of the United States pursuant to authority granted by the Congress of the United States and for which the full faith and credit of the United States Government is pledged to provide for the payment of principal and interest.

"Permitted Liens" means, (i) the security interest created by the Security Agreement; (ii) liens for taxes either not yet due or being contested by a Permitted Contest; (iii) undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or employees' liens or other like liens arising in the ordinary course of business and securing obligations which are not delinquent or which shall have been bonded or the enforcement of which shall have been suspended.

"Person" means an individual, a corporation, a partnership, an unincorporated organization, an association, a joint stock company, a joint venture, a trust, an estate, a government or any agency or political subdivision thereof, or other entity, whether acting in an individual, fiduciary or other capacity.

"Purchase Date" means the date on which Units are purchased pursuant to the Car Purchase Agreement, provided that such date shall not occur later than December 30, 1988.

"Reinvestment Yield" shall mean, with respect to the Called Principal of any Note, the yield to maturity implied by the Treasury Constant Maturity Series yields reported by Telerate System, Incorporated or any comparable successor financial reporting service for actively traded U.S. Treasury securities having a constant maturity equal to the remaining Weighted Average Life to Final Maturity (calculated in accordance with accepted financial practice) of such Called Principal as of such Settlement Date. Such implied yield shall be determined (a) by calculating the remaining Weighted Average Life to Final Maturity of such Called Principal and (b) if necessary, by interpolating linearly between Treasury Constant Maturity Series yields.

"Remaining Scheduled Payments" shall mean, with respect to the Called Principal of any Note, all payments of such Called Principal and interest thereon that would be due on or after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its scheduled due date.

"Renewal Term" has the meaning given in Section 12.02 of the Lease.

"Rent Amount" means each amount of Base Rent, Supplemental Rent or other amount which Lessee is obligated to pay under any Operative Document to which it is a party.

"Rent Assumptions" has the meaning given in Section 3.03(a) of the Lease.

"Rent Factor" for each Unit for each Rent Payment Date means the percentage of Lessor's Cost for such Unit set forth on Schedule 1 to the Lease opposite such Rent Payment Date.

"Rent Payment Date" means each June 30 and December 31 during the Base Term, commencing June 30, 1989.

"Responsible Officer" means any officer or employee of Lessee who, in the ordinary course of fulfilling his duties, would have knowledge of the obligation to notify Lessor in writing of the happening of a Casualty Event pursuant to Section 10.03 of the Lease, or a Loss under Section 6.01 of the Participation Agreement.

"Security Agreement" means the Loan and Security Agreement, dated as of August 1, 1988, among Lenders and Lessor, substantially in the form of Exhibit C to the Participation Agreement, together with each Lease and Security Agreement Supplement entered into pursuant to the applicable terms thereof and of the Lease.

"Security Equipment" has the meaning given in Section 3.01 of the Security Agreement.

"Seller" means Raceland Car Corporation, a Delaware corporation.

"Settlement Date" shall mean, with respect to the Called Principal of any Note, the date on which such Called Principal is to be prepaid pursuant to Section 2.04(b) of the Security Agreement.

"Supplemental Rent" means the amounts described in Section 3.04 of the Lease.

"Tax Indemnity Agreement" means the Tax Indemnity Agreement, dated as of August 1, 1988, between Owner Participant and Lessee, substantially in the form of Exhibit E to the Participation Agreement.

"Transfer" has the meaning given in Section 9 of the Participation Agreement.

"Transferee" has the meaning given in Section 9(a) of the Participation Agreement.

"Trust Agreement" means the Trust Agreement, dated as of August 1, 1988, between Owner Participant and Owner Trustee in its individual capacity, substantially in the form of Exhibit D to the Participation Agreement.

"Trust Estate" has the meaning given in Section 2.01 of the Trust Agreement.

"Unit" means an item of Equipment described on Schedule 1 to a Lease and Security Agreement Supplement.

dated the Purchase Date and which is purchased by Owner Trustee and leased to Lessee pursuant to the Lease and Participation Agreement.

"Weighted Average Life to Final Maturity" of any indebtedness for borrowed money means at the time of the determination thereof the number of years obtained by dividing the then Remaining Dollar-Years of such indebtedness by the then outstanding principal amount of such indebtedness; for purposes of the foregoing definition, the "Remaining Dollar-Years" of any indebtedness shall mean the sum of the products obtained by multiplying the amount of each scheduled payment (or part thereof), including payment at final maturity, by the number of years (calculated to the nearest one-twelfth) which will elapse between the date as of which such determination is made and the date of each such required payment.

"Yield-Maintenance Premium" shall mean, with respect to any Note, a premium equal to the excess, if any, of the Discounted Value of the Called Principal of such Note over the sum of such Called Principal plus interest accrued thereon as of (including interest due on) the Settlement Date with respect to such Called Principal. The Yield-Maintenance Premium shall in no event be less than zero.

EXHIBIT A  
TO LEASE AGREEMENT

LEASE AND SECURITY AGREEMENT SUPPLEMENT NO. \_\_\_\_\_

Dated \_\_\_\_\_, 1988

Among

WILMINGTON TRUST COMPANY,  
not in its individual capacity but solely as trustee  
Lessor/Owner Trustee,

CSX TRANSPORTATION, INC.,  
Lessee

and

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,  
PRUDENTIAL PROPERTY AND CASUALTY INSURANCE COMPANY and  
PRUCO LIFE INSURANCE COMPANY,  
Lenders

OPEN TOP HOPPER RAILCARS

Note: This Lease and Security Agreement Supplement and certain rights of Lessor hereunder and in the Units covered hereby have been assigned to, and are subject to a security interest in favor of Lenders. To the extent, if any, that this Lease and Security Agreement Supplement shall constitute chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Lease and Security Agreement Supplement may be created except through the transfer or possession of the original counterpart which the parties shall mark "Counterpart Number 1". This is Counterpart Number \_\_\_\_.

FILED WITH THE INTERSTATE COMMERCE COMMISSION  
PURSUANT TO 49 U.S.C. § 11303 ON \_\_\_\_\_, 1988  
AT \_\_\_\_:\_\_\_\_ RECORDATION NUMBER \_\_\_\_.

THIS LEASE AND SECURITY AGREEMENT SUPPLEMENT NO. \_\_\_\_\_, dated \_\_\_\_\_, 1988, among WILMINGTON TRUST COMPANY, a Delaware banking corporation, not in its individual capacity but solely as Owner Trustee ("Lessor" or "Owner Trustee") under that certain Trust Agreement dated as of August 1, 1988 (the "Trust Agreement") with NCNB LEASE INVESTMENTS, INC., CSX TRANSPORTATION, INC., a Virginia corporation ("Lessee") and THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey mutual insurance company, PRUDENTIAL PROPERTY AND CASUALTY INSURANCE COMPANY, a New Jersey corporation and PRUCO LIFE INSURANCE COMPANY, an Arizona corporation (each a "Lender" and collectively, "Lenders").

W I T N E S S E T H:

WHEREAS, Lessor, Lessee and Lenders have, with the other parties thereto, heretofore entered into a Participation Agreement (the "Participation Agreement"), Lessor and Lessee have heretofore entered into an Equipment Lease Agreement (the "Lease"), and Lenders and Owner Trustee have heretofore entered into a Loan and Security Agreement (the "Security Agreement"), each dated as of August 1, 1988 (capitalized terms used herein without definitions having the respective meanings set forth in Appendix I to each of the Lease and the Security Agreement);

WHEREAS, the Participation Agreement and the Lease provide that on the Purchase Date Seller shall deliver to Owner Trustee a Bill of Sale dated such date by which Seller bargains, conveys, assigns, sets over, sells and delivers to Owner Trustee, and Owner Trustee purchases and accepts from the Seller, the Units to be conveyed on such Purchase Date, and said Bill of Sale has been delivered by Seller and accepted by Owner Trustee on such Purchase Date;

WHEREAS, the Participation Agreement, the Lease, and the Security Agreement provide for the execution of a Lease and Security Agreement Supplement substantially in the form hereof for the purposes of leasing the Units under the Lease as and when delivered by Lessor to Lessee in accordance with the terms thereof and subjecting such Units to the lien of the Security Agreement;

NOW, THEREFORE, in consideration of the premises and for good and sufficient consideration, Lessor, Lessee and Lenders hereby agree as follows:

1. Lessor hereby delivers and leases to Lessee, and Lessee hereby accepts and leases from Lessor, under the Lease as hereby supplemented, the Units listed on Schedule 1 hereto.

2. Lessee hereby confirms to Lessor that Lessee has accepted such Units for all purposes hereof and of the Lease.

3. The Lessor's Cost of each Unit leased hereunder is \$22,000 and the aggregate Lessor's Cost of the Units leased hereunder is \$\_\_\_\_\_.

4. Lessee hereby confirms its agreement, in accordance with the Lease as supplemented by this Lease and Security Agreement Supplement, on the last day of the Interim Term to pay Interim Rent to Lessor for the Units, in the amount of \$\_\_\_\_\_/, and on each Rent Payment Date to pay Base Rent to Lessor for each Unit as provided for in the Lease.

5. In order to secure the prompt payment of the principal of and Yield Maintenance Premium, if any, and interest on the Notes issued on the date hereof and on the other Notes, Lessor has granted, conveyed, pledged, sold, mortgaged, assigned, transferred and set over a security interest unto Lenders in (i) the Units listed on Schedule 1 hereto and (ii) this Lease and Security Agreement Supplement, in each case excluding Excepted Payments and Rights, to have and to hold unto Lenders and their successors and assigns for their and their own use and benefit forever.

6. All of the provisions of the Lease and the Security Agreement are hereby incorporated by reference in this Lease and Security Agreement Supplement to the same extent as if fully set forth herein.

7. This Lease and Security Agreement Supplement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

1/ Aggregate amount of accrued interest paid on the Notes on the last day of the Interim Term.

8. This Lease and Security Agreement Supplement is being delivered in the State of New York and shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance.

IN WITNESS WHEREOF, Lessor, Lessee and Lenders have caused this Lease and Security Agreement Supplement to be duly executed on the date and year set forth in the opening paragraph hereof.

Lessor/Owner Trustee

WILMINGTON TRUST COMPANY  
not in its individual capacity  
but solely as Owner Trustee

By: \_\_\_\_\_  
Title:

Lessee

CSX TRANSPORTATION, INC.

By: \_\_\_\_\_  
Title:

Lenders

THE PRUDENTIAL INSURANCE  
COMPANY OF AMERICA  
by PruCapital Management, Inc.,  
its Agent

By: \_\_\_\_\_  
Title:

PRUDENTIAL PROPERTY AND CASUALTY  
INSURANCE COMPANY

By \_\_\_\_\_  
Title:

PRUCO LIFE INSURANCE COMPANY

By \_\_\_\_\_  
Title:











SCHEDULE 1  
to Lease and Security Agreement Supplement

Identification  
Number

SCHEDULE 1 TO LEASE

RENT FACTORS

<u>Rent Payment Date</u>	<u>Rent Factors</u>
6/30/89	7.46181
12/31/89	5.89976
6/30/90	4.61881
12/31/90	8.74275
6/30/91	4.40643
12/31/91	8.93514
6/30/92	4.17217
12/31/92	9.18939
6/30/93	3.91378
12/31/93	9.44778
6/30/94	13.47624
12/31/94	2.85456
6/30/95	13.70121
12/31/95	2.62959
6/30/96	14.34984
12/31/96	1.98096
6/30/97	15.61347
12/31/97	0.71733
6/30/98	15.76925
12/31/98	0.56155

SCHEDULE 2 TO LEASE

CASUALTY LOSS FACTORS AS A PERCENTAGE OF LESSOR'S COST

<u>Rental Date</u>	<u>Casualty Loss Factors</u>
12/31/88	106.64387
6/30/89	104.58063
12/31/89	103.74123
6/30/90	103.97233
12/31/90	99.94974
6/30/91	99.94621
12/31/91	95.30699
6/30/92	95.14591
12/31/92	89.91422
6/30/93	89.65328
12/31/93	83.81171
6/30/94	73.61869
12/31/94	73.53484
6/30/95	62.62027
12/31/95	62.26893
6/30/96	50.23903
12/31/96	50.06760
6/30/97	36.35235
12/31/97	36.95226
6/30/98	23.00000
12/31/98	23.00000