

3479200  
John Heckenluth



**BURLINGTON NORTHERN RAILROAD**<sup>361</sup>

LAW DEPARTMENT

1 6132, X

3800 Continental Plaza  
777 Main Street  
Ft. Worth, Texas 76102

817/878-2366

DEC 8 1988 1 40 PM

8-365A016

December 28, 1988

INTERSTATE COMMERCE COMMISSION

Date DEC 30 1988

1 6132

Fee \$ 26<sup>00</sup>

BY MESSENGER

ICC Washington, D.C. DEC 8 1988 1 40 PM

INTERSTATE COMMERCE COMMISSION

Secretary  
Interstate Commerce Commission  
Twelfth Street & Constitution Avenue  
Washington, D.C. 20423

TOO OFFICE OF  
STORAGE  
NOV 30 1 05 PM '88  
MOTOR OPERATOR UNIT

Attn: Ms. Mildred Lee, Room 2303

Re: Documents for Recordation

Dear Ms. Lee:

In accordance with the provisions of Section 11303 of the Interstate Commerce Act, as revised, and Rules and Regulations of the Interstate Commerce Commission ("ICC") thereunder, enclosed herewith for filing and recordation are the following documents:

1. Three (3) executed originals of a Trust Indenture and Security Agreement, a primary document, dated as of December 1, 1988, between Wilmington Trust Company, as trustee (Debtor), whose address is Rodney Square North, Wilmington, Delaware 19890, and Meridian Trust Company (Security Trustee), whose address is 35 North Sixth Street, Reading, Pennsylvania 19601; and

2. Three (3) executed originals of an Equipment Lease, a primary document, dated as of December 1, 1988, between Wilmington Trust Company, as trustee (Lessor), whose address is Rodney Square North, Wilmington, Delaware 19890, and Burlington Northern Railroad Company (Lessee), whose address is 2900 Continental Plaza, 777 Main Street, Fort Worth, Texas 76102.

The railroad equipment covered by the Trust Indenture and Security Agreement and the railroad equipment covered by the Lease are the identical equipment and is described in Exhibit A attached hereto.

*Foster King*

*C. Andrew*

Interstate Commerce Commission  
Page Two

Enclosed is a certified check in the amount of \$26.00 to cover the recordation fee.

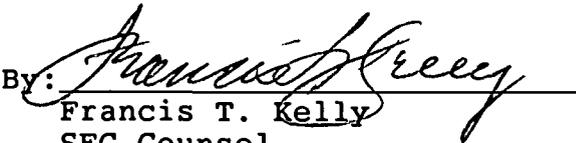
You are hereby authorized to deliver any unneeded copies of the Trust Indenture and Security Agreement and the Equipment Lease, with filing date noted thereon, following recordation thereof, to the representative of Gardner, Carton & Douglas, who is delivering this letter with enclosures to you.

A short summary of the documents to appear in the index follows:

- (a) Trust Indenture and Security Agreement, a primary document, dated as of December 1, 1988, between Wilmington Trust Company, as trustee (Debtor), and Meridian Trust Company (Security Trustee), covering various railroad cars, and
- (b) Equipment Lease, a primary document, dated as of December 1, 1988, between Wilmington Trust Company, as trustee (Lessor), and Burlington Northern Railroad Company (Lessee), covering various railroad cars.

Very truly yours,

BURLINGTON NORTHERN RAILROAD COMPANY

By:   
Francis T. Kelly  
SEC Counsel  
817/878-2366

FTK/ma  
enclosures

EXHIBIT A

DESCRIPTION OF ITEMS OF EQUIPMENT

<u>IDENTIFYING MARKS AND NUMBERS*</u>	<u>NUMBER OF CARS</u>	<u>DESCRIPTION</u>	<u>PURCHASE PRICE EACH</u>
BN376750 through BN376959	210	100-ton High Cube Boxcars	\$58,511.75

---

All Cars Manufactured by Gunderson Inc.

\*All numbers inclusive

RECORDATION NO. 1 6132 *A*  
FILED 1988

DEC 30 1988 - 1 42 PM

INTERSTATE COMMERCE COMMISSION

EXECUTION COPY

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EQUIPMENT LEASE

Dated as of December 1, 1988

Between

WILMINGTON TRUST COMPANY,  
not in its individual capacity but solely as Trustee  
under a Trust Agreement  
dated as of the date hereof

LESSOR

And

BURLINGTON NORTHERN RAILROAD COMPANY

LESSEE

---

Filed with the Interstate  
Commerce Commission on  
December \_\_, 1988 at  
\_\_\_\_\_ and given  
Recordation No. \_\_\_\_\_.

This Equipment Lease and certain  
of the sums due and to become due  
hereunder have been assigned to,  
and are subject to a security  
interest in favor of, Meridian  
Trust Company, as Security Trustee,  
pursuant to a Trust Indenture and  
Security Agreement dated as of  
December 1, 1988, from Wilmington  
Trust Company, not in its individ-  
ual capacity but solely as Trustee  
under Trust Agreement dated as of  
December 1, 1988, as debtor, to  
said Security Trustee.

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TO EQUIPMENT LEASE

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## EQUIPMENT LEASE

THIS EQUIPMENT LEASE dated as of December 1, 1988 between WILMINGTON TRUST COMPANY, a Delaware banking corporation, not in its individual capacity but solely as trustee (together with any successors or assigns, the "Lessor") under the Trust Agreement dated as of December 1, 1988 (the "Trust Agreement") for the benefit of FIRST CHICAGO LEASING CORPORATION, a Delaware corporation (together with any successors or assigns, the "Trustor"), and BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation (together with any successors or assigns, the "Lessee");

### R E C I T A L S:

A. The Lessee has entered into a purchase agreement dated July 20, 1988 (the "Purchase Agreement") with Gunderson, Inc. (the "Manufacturer"), giving it the right to acquire the Items of Equipment hereinafter described. The Lessee desires to lease rather than own such Equipment, and for such purpose to enter into an Assignment of Purchase Agreement dated as of December 1, 1988 (the "Assignment of Purchase Agreement") providing for the assignment by the Lessee to the Lessor of all of the Lessee's right, title and interest in, to and under the Purchase Agreement.

B. The Lessee and the Lessor intend to enter into a Participation Agreement dated as of December 1, 1988 (the "Participation Agreement") with the Trustor, Meridian Trust Company, as security trustee (together with any successors or assigns, the "Security Trustee"), and Principal Mutual Life Insurance Company (together with any successors or assigns, the "Note Purchaser") providing for the commitment of the Note Purchaser which, together with funds provided by the Trustor, will permit the Lessor to obtain the funds necessary to purchase from the Manufacturer the equipment (collectively the "Equipment" or "Items of Equipment" and individually an "Item" or "Item of Equipment") described in Schedule A hereto and made a part hereof. The Trustor will commit to advance to the Lessor an amount equal to 22.8665% of the Purchase Price of each Item of Equipment and the Note Purchaser will commit to purchase the 10.25% Secured Notes (the "Notes") of the Lessor in an amount equal to 77.1335% of the Purchase Price of each Item of Equipment. It is contemplated that the Participation Agreement will provide that the Notes will be secured by, among other things, an assignment of certain of the Lessor's rights, title and interest in and to this Lease and any rentals under Permitted Subleases (as hereinafter defined) and in and to the Equipment pursuant to a Trust Indenture and Security Agreement dated as of December 1, 1988 (the "Trust Indenture") from the

Lessor to the Security Trustee. Any capitalized term not defined herein shall have the meaning specified in the Participation Agreement.

SECTION 1. LEASE AND DELIVERY OF EQUIPMENT.

1.1 Intent to Lease. The Lessor shall lease to the Lessee and the Lessee shall lease from the Lessor all Items of Equipment, which are delivered and accepted pursuant to Section 1.3 hereof, for the rental and on and subject to the terms and conditions herein set forth.

1.2 Inspection and Acceptance. On the Closing Date with respect to any Item of Equipment, whether or not any such Item has heretofore been delivered to and accepted by the Lessee, the Lessee shall cause an inspector (who may be an employee of the Lessee) designated and authorized by the Lessee to inspect the same, and, if such Item of Equipment is found to be in good order and condition in accordance with the requirements of Section 1.3 hereof, the Lessee shall accept such Item of Equipment hereunder by executing and delivering to the Lessor thereof a Certificate of Acceptance (the "Certificate of Acceptance") in the form attached hereto as Schedule B with respect to such Item of Equipment; provided, however, that the Lessee shall not accept and the Lessor shall have no obligation to lease any Item of Equipment delivered after December 30, 1988.

1.3 Certificate of Acceptance. The Lessee's execution and delivery of a Certificate of Acceptance with respect to an Item of Equipment pursuant to Section 1.2 hereof shall conclusively establish that, as between the Lessor and the Lessee, but without limiting or otherwise affecting the Lessee's or the Lessor's rights, if any, against the Manufacturer, such Item of Equipment is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and that such Item of Equipment is in good order and condition and conforms to the specifications applicable thereto and to all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and to all standards recommended by the Association of American Railroads applicable to new railroad equipment of the character of the Equipment as of the Closing Date on which such Items of Equipment are delivered. By execution and delivery of such Certificate of Acceptance, the Lessee represents that it has no knowledge of any such defect.

SECTION 2. RENTALS AND PAYMENT DATES.

2.1 Rent for Equipment. The Lessee agrees to pay the following rent for each Item of Equipment:

(a) No Interim Rental. Except as provided in Section 2.1(c) hereof, there shall be no rent payable by the Lessee for the period from the Closing Date for such Item to, but not including, May 30, 1989 (the "Term Lease Commencement Date");

(b) Fixed Rental. For each Item of Equipment, the Lessee shall pay to the Lessor 40 semiannual installments of fixed rental (the "Fixed Rental"), payable in arrears, on May 30 and November 30 in each year, commencing November 30, 1989 in the amounts (expressed as a percentage of the Purchase Price thereof) set forth on Schedule C hereto; provided that, anything in this Lease to the contrary notwithstanding, the Fixed Rental payable on each May 30 and November 30, on and after November 30, 1989, shall be in an amount at least sufficient to pay in full the principal and interest coming due on the Notes on such date without acceleration; and

(c) Supplemental Rent. As supplemental rent hereunder (the "Supplemental Rent"), the Lessee shall pay to the person entitled to receive the same, an amount or amounts equal to (i) any fees and expenses of the Lessor, (other than the initial fees and expenses referred to in Section 2.6(g) of the Participation Agreement) including, without limitation, reasonable attorneys' fees and any other fees and expenses incurred in connection with an Event of Default under any of the Operative Documents, (ii) all fees and expenses of the Security Trustee and its successors (other than the initial fees and expenses payable by the Lessor pursuant to Section 2.6(h) of the Participation Agreement) incurred in connection with its services as Security Trustee under the Trust Indenture, including, without limitation, reasonable attorney's fees and any other fees and expenses incurred in connection with an Event of Default under any of the Operative Agreements, (iii) all taxes, if any, in connection with any issuance and sale of the Notes other than taxes on the original issuance and sale thereof which are payable by the Lessor pursuant to Section 2.6(f) of the Participation Agreement, (iv) interest on any part of any installment of Fixed Rental or amounts expended by the Lessor on behalf of the Lessee not paid when due for any period for which the same shall be overdue pursuant to Section 20 hereof, (v) any Casualty Value or any interest due thereon, (vi) any amounts required to be paid by the Trustor pursuant to Section 2.8 of the Participation Agreement to the extent not so paid when due by the Trustor; and (vii) all additional amounts, liabilities and obligations (other than Fixed Rental) which Lessee assumes or agrees to pay to Lessor (both in its individual capacity and as trustee) or

others hereunder or under any of the other Operative Agreements.

2.2 Rent Payment Dates. The installments of Fixed Rental for each Item of Equipment shall be due and payable on the dates specified in Section 2.1(b). Each payment of Supplemental Rent shall be due and payable on the date on which the related fees and expenses are due and payable in accordance with the terms of the applicable Operative Agreement or other applicable agreements. If any of the rent payment dates is not a business day, the rent payment otherwise payable on such date shall be payable on the next succeeding business day. For purposes of this Lease, the term "business day" means calendar days, excluding Saturdays, Sundays and holidays, on which banks in the States of Pennsylvania or Delaware are authorized or required to close.

2.3 Place and Manner of Rent Payment. The payments to be made by the Lessee under this Lease shall be made as follows:

(a) Each installment of Fixed Rental shall be paid to the Lessor by wire transfer to the principal office of the Lessor at the address thereof provided for payments in Section 21.1 hereof; provided that so long as the Trust Indenture shall not have been fully discharged Lessor hereby directs and Lessee agrees that all payments of Fixed Rental shall be paid directly to the Security Trustee at its Corporate Trust Office (as defined in the Trust Indenture) (or such other office of the Security Trustee in the continental United States or such other account as the Security Trustee shall direct in a notice to Lessee); provided, further that in the event either the Lessor or the Security Trustee shall notify the Lessee in writing that the right to receive payment of such installment shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment by wire transfer to the place designated in such notice or as otherwise designated from time to time in writing by such assignee; and provided, further that in the event such notice shall direct the Lessee to divide such installment into not more than two portions and to pay each portion by wire transfer separately to not more than two parties, the Lessee agrees to do so;

(b) The entire amount of any payment of Casualty Value pursuant to Section 11 hereof shall be paid to the Lessor by wire transfer to the principal office of the Lessor at the address thereof provided for payments in Section 21.1 hereof (identifying the same as a payment of Casualty Value relating to this Lease); provided that so long as the Trust Indenture shall not have been discharged

Lessor hereby directs and Lessee agrees that all payments of Casualty Value shall be paid directly to the Security Trustee at its Corporate Trust Office (or such office of the Security Trustee in the continental United States or such other account as the Security Trustee shall direct in a notice to Lessee); and provided further that in the event either the Lessor or the Security Trustee shall notify the Lessee in writing that the right to receive payment of such Casualty Value shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment by such wire transfer in the manner designated in such notice or as otherwise designated from time to time in writing by such assignee;

(c) The amount of any payment owing to the Lessor or any other person pursuant to Sections 6, 10.2, 11.1 (with respect to public liability insurance) and 21.2 hereof shall be made directly to the party to receive the same without regard to the assignment of this Lease pursuant to Section 16 hereof;

(d) The amount of any interest due in respect of the late payment of rentals shall be paid to the party and in the manner herein provided to receive said rental or other amount; and

(e) All payments other than those above specified shall be made by the Lessee directly to the party to receive the same unless any such payment has previously been made by the Lessor or its assignee, in which case the Lessee shall reimburse the Lessor or its assignee, as the case may be, directly for such payment.

The Lessee agrees that it will make all reasonable efforts to cause those payments due hereunder by wire transfer where specified above to be so wired as soon as practicable after the opening of business in St. Paul, Minnesota on the due date of such payment in Federal or otherwise immediately available funds to the party to whom such payment is to be made, and where not so specified, such payment shall be made by check of the Lessee drawn on a bank located in the continental United States and mailed to the party to receive the same at the address herein provided or at such other address as the Lessee shall have been previously advised in writing.

2.4 Net Lease. This Lease is a net lease and the Lessee's obligation to pay all Fixed Rental, Supplemental Rent and other amounts payable hereunder shall be absolute and unconditional under any and all circumstances and, without limiting the generality of the foregoing, the Lessee shall not be entitled to any abatement of rent or reduction thereof or setoff against

rent, including, but not limited to, abatements, reductions or setoffs due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise or against any assignee of the Lessor pursuant to Section 16 hereof; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss or destruction of or requisitioning of all or any Item of Equipment by condemnation or otherwise, the prohibition of Lessee's use of the Equipment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, the insolvency of the Lessee, the commencement of any proceeding by or against the Lessee for relief under any bankruptcy or similar law for the relief of debtors, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until, pursuant to Section 13 hereof, the Equipment has been returned to the possession of the Lessor (for all purposes of this Lease any Item of Equipment shall not be deemed to have been returned to the Lessor's possession until all of the Lessee's obligations with respect to the return, transportation and storage thereof have been performed). To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Items of Equipment except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor or any assignee pursuant to Section 16 hereof for any reason whatsoever.

2.5 Adjustment of Rentals. The installments of Fixed Rental and the Casualty Value table attached hereto as Schedule E have been calculated on the assumptions that:

(i) Items of Equipment having a Purchase Price equal to the amounts set forth below shall have been or shall be delivered and accepted and settled for pursuant to the Participation Agreement on the following dates:

<u>Closing Date</u>	<u>Purchase Price</u>	<u>Items of Equipment</u>
December 29, 1988	\$12,287,467.50	210

(ii) No change in any tax law, regulation or tax rate shall be enacted or promulgated on or prior to the Closing Date with respect to any Item of Equipment which alters or eliminates any of the Tax Benefits (as defined in the Tax Indemnification Agreement);

(iii) The Notes bear interest at 10.25% per annum computed on the basis of a 360-day year of twelve 30-day months, and payments of principal and interest on the Notes will be made as provided in Section 2.2 of the Participation Agreement; and

(iv) The aggregate of all fees and expenses listed in Section 2.6 of the Participation Agreement equal 1.0% of the Purchase Price of the Equipment.

If any such assumption shall prove to be incorrect, then the Lessor acting in good faith shall, prior to April 30, 1989, recompute such installments of Fixed Rental and the Casualty Value table, higher or lower, in order to provide the Lessor with the same nominal after-tax book yield and after-tax cash flow as would have been realized by the Lessor if such assumptions had proved to be correct in entering into the Lease; provided, that such adjustments shall comply with the Guidelines (as hereinafter defined), Treasury Regulations and any other published or announced position of the Internal Revenue Service; and provided, further, that each installment of Fixed Rental shall be in an amount sufficient to pay on each installment date on and after the Term Lease Commencement Date, the principal of and interest on the Notes due on such date without acceleration, and the Casualty Value as of any date shall be sufficient to pay the aggregate unpaid principal amount of, and interest and premium, if any, on, the Notes outstanding as of such date. Such recomputation shall be based upon the same assumptions, including tax rates, and methods of calculation as were utilized by the Lessor in originally computing the amounts set forth in this Lease other than the changed assumption giving rise to such adjustment. If the installments of Fixed Rental or the Casualty Value table are recomputed pursuant to this Section 2.5, then on or before April 30, 1989, the Lessor and the Lessee shall execute and deliver a Lease Supplement, substantially in the form of Schedule D hereto, reflecting any revisions to the percentages set forth in Section 2.1(b) hereof and to Schedule E hereof. The term "Guidelines" as used herein shall mean the written guidelines that are applied by the Internal Revenue Service in determining, for advance ruling purposes, whether leveraged

lease transactions are leases for Federal income tax purposes.

SECTION 3. TERM OF THE LEASE.

The term of this Lease as to each Item of Equipment shall begin on the date of the delivery to and acceptance by the Lessee of such Item of Equipment and, subject to the provisions of Sections 11 and 14 hereof, shall terminate 20 years following the Term Lease Commencement Date.

SECTION 4. OWNERSHIP AND MARKING OF EQUIPMENT.

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

4.2 Duty to Number and Mark Equipment. The Lessee will cause each Item of Equipment to be kept numbered with its identifying number as set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height (i) at all times on or prior to the first time after the Closing Date with respect to such Item that such Item is scheduled for maintenance in a car shop as follows:

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT  
FILED WITH THE INTERSTATE COMMERCE  
COMMISSION"

and (ii) at all times after such Item is first scheduled for maintenance in a car shop after the Closing Date as follows:

"OWNED BY WILMINGTON TRUST COMPANY, NOT IN  
ITS INDIVIDUAL CAPACITY BUT SOLELY AS  
TRUSTEE, AND OWNERSHIP SUBJECT TO A SECURITY  
AGREEMENT FILED WITH THE INTERSTATE COMMERCE  
COMMISSION"

in each case with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease, the rights of the Security Trustee as assignee of all Lessor's right, title and interest in and to the Lease and the Equipment, and the rights of any assignee under Section 16 hereof. The Lessee will replace promptly any such names and word or words which may be removed, obliterated,

defaced or destroyed. The Lessee will not change the identifying number of any Item of Equipment unless and until (i) a statement of new identifying numbers to be substituted therefor shall have been delivered to the Lessor and the Security Trustee by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited and (ii) the Lessee shall have furnished the Security Trustee and the Lessor an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Security Trustee's and the Lessor's interests in such Equipment and no filing, recording, deposit or giving or notice with or to any other federal, state or local government or agency thereof is necessary to protect the interests of the Security Trustee and the Lessor in such Equipment while operating in any jurisdiction wherein the Trust Indenture or any instrument in respect thereof has been or is required to be filed, registered, deposited or recorded as provided in the Trust Indenture. The Lessor agrees, upon written request, to execute all amendments hereto necessary to accomplish such filings, recordings and deposits.

4.3 Prohibition Against Certain Designations. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates or any sublessees under Permitted Subleases on railroad equipment used by any of them of the same or a similar type for convenience of identification of the right of the Lessee to use the Equipment under this Lease or of any sublessee to use the Equipment under any Permitted Sublease.

#### SECTION 5. DISCLAIMER OF WARRANTIES.

THE LESSEE LEASES THE EQUIPMENT, AS-IS, IN WHATEVER CONDITION IT MAY BE, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, BY THE LESSOR, THE SECURITY TRUSTEE, ANY HOLDER OF NOTES OR THE TRUSTOR, AND THE LESSOR, THE SECURITY TRUSTEE, EACH HOLDER OF NOTES AND THE TRUSTOR EACH EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT, (B) THE LESSOR'S TITLE THERETO, (C) THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF (EXCEPT TO THE EXTENT SPECIFICALLY PROVIDED IN SECTION 17 HEREOF), (D) THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT, OR (E) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH

RISKS ARE TO BE BORNE BY THE LESSEE. The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against the Manufacturer thereof, provided however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Item of Equipment or by an inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Item of Equipment or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Item of Equipment. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that all Items of Equipment described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

SECTION 6. [RESERVED]

SECTION 7. RULES, LAWS AND REGULATIONS.

The Lessee agrees, for the benefit of the Lessor, to comply with all governmental laws, regulations, requirements and rules (including, without limitation, the rules of the United States Department of Transportation, the Interstate Commerce Commission and the current Interchange Rules or supplements thereto of the Mechanical Division, Association of American Railroads as the same may be in effect from time to time) (the "Interchange Rules") with respect to the title, operation, possession, use and maintenance of each Item of Equipment subject to this Lease. In case any equipment or appliance is required to be altered, added, replaced or modified (the "Alterations") on any Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such Alterations at its own expense.

SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.

8.1 Use and Maintenance. The Lessee shall use the Equipment only in the manner for which it was designed (which

is carriage of general commodities) and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Equipment in good working order, operating condition and repair as when delivered, ordinary wear and tear excepted:

(a) in accordance with prudent Class 1 Railroad industry maintenance practices;

(b) in a manner consistent with maintenance practices used by the Lessee in respect of equipment owned or leased by the Lessee similar in nature to the Equipment;

(c) in compliance with any and all applicable laws and regulations;

(d) in compliance with standards sufficient to satisfy the applicable Manufacturer's requirement for warranty; and

(e) in compliance with any applicable insurance policy.

The Lessee will not permit the Equipment to be used or operated in violation of any law, or of any rule, regulation or order of any governmental authority having jurisdiction, unless Lessee shall be contesting the validity thereof in good faith and by appropriate proceedings, but only so long as such proceedings shall not involve any risk of the sale, forfeiture or loss of the Equipment or interest therein, and shall not result in the creation of any lien on or with respect to such Equipment or interest therein, which is not permitted under the provisions of the Lease or the Participation Agreement. The Lessee will maintain or cause to be maintained any records, logs and other materials required by, and will prepare and file any reports required by, any governmental authority having jurisdiction to be maintained or filed in respect of the Equipment. The Lessee, at its own expense, will procure or cause to be procured and pay or cause to be paid for all permits, franchises, inspections and licenses necessary or appropriate in connection with the Equipment, the use or operation thereof or any repair, restoration, replacement, renewal, addition or improvement with respect thereto.

8.2 Additions and Accessions. (a) In addition to the requirements of Sections 7 and 8.1 hereof, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Equipment during the term of this Lease as are readily removable without causing material damage to the Equipment and do not adversely and materially affect the value, utility or remaining useful

life of the Equipment. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee if removed from the Items of Equipment prior to the time such Items of Equipment are returned as provided in Section 13, except to the extent such additions, modifications or improvements are made as described in Section 8.2(b) hereof or are purchased by Lessor pursuant to Section 8.2(c) hereof.

(b) Any and all parts installed on and additions and replacements made to any Item of Equipment (i) which are not readily removable without causing material damage to such Item of Equipment or (ii) the cost of which is included in the Purchase Price of such Item of Equipment, or (iii) in the course of ordinary maintenance of the Equipment or (iv) which are required for the operation or use of such Item of Equipment by the Interchange Rules or by any other applicable law, rule or regulation, shall constitute accessions to such Item of Equipment and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Trust Indenture and any general obligation mortgage liens on Lessee's leasehold estate which in all events are subordinate to those created by the Trust Indenture) shall immediately be vested in the Lessor.

(c) If the Lessee has not exercised any of its purchase or lease renewal options under Section 18 or an Item of Equipment is otherwise to be returned to the Lessor, Lessee shall, not less than 60 days prior to the expiration of the term of the Lease, advise Lessor as to the nature and condition of all severable parts (other than liners) which Lessee has or intends to remove from any Item of Equipment in accordance with Section 8.2(a) above. Lessor may, at its option, upon 30 days written notice to Lessee, purchase any or all of such parts from the Lessee upon the expiration of the term at the fair market value of such parts.

#### SECTION 9. LIENS ON THE EQUIPMENT.

The Lessee shall pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien or a charge upon any Item of Equipment, and any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease and any other liens or charges which arise by virtue of claims against, through or under any other party other than the Lessor, other than any liens or charges the Lessor is obligated to discharge pursuant to Section 2.2 of the Trust Indenture or which the Trustor is obligated to discharge pursuant to

Section 6 of the Participation Agreement (the "Lessor's Liens") and any general obligation mortgage liens on Lessee's leasehold estate which in all events are subordinate to those created by the Trust Indenture, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor or the security interest of the Security Trustee or other rights of any assignee under Section 16 hereof in and to the Equipment. The Lessee's obligations under this Section 9 shall survive the termination of this Lease.

SECTION 10. FILING.

Prior to the delivery and acceptance of the first Item of Equipment hereunder, the Lessee will cause this Lease and the Trust Indenture to be duly filed, registered or recorded with the Interstate Commerce Commission in accordance with Section 11303 of the Interstate Commerce Act and to be deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette) pursuant to the Railway Act of Canada and to be filed, registered or recorded in such other places within or without the United States as the Lessor or the Security Trustee may reasonably request and will furnish the Lessor and the Security Trustee proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister or rerecord whenever required) any and all further instruments required by law (including, without limitation, Uniform Commercial Code financing statements and continuation statements) or reasonably requested by the Lessor or the Security Trustee (including, without limitation, all such acts required pursuant to Sections 6.10 and 6.11 of the Trust Indenture), for the purpose of protecting the Lessor's title to, or the Security Trustee's security interest in, any Item of Equipment to the satisfaction of the Lessor or the Security Trustee or their respective counsel or for the purpose of carrying out the intentions of this Lease, and in connection with any such action, will deliver to the Lessor and the Security Trustee proof of such filings and an opinion of the Lessee's counsel reasonably satisfactory to the Lessor and the Security Trustee that such action has been properly taken. The Lessee will pay all costs, charges and expenses incident to any such filing, refiling, recording and rerecording or depositing and redepositing of any such instruments or incident to the taking of such action. The Lessee will not, without thirty days' prior written notice to the Trustee, the Trustor, the Security Trustee and each holder of a Note, change the location of its chief executive office.

SECTION 11. INSURANCE; PAYMENT FOR CASUALTY OCCURRENCE.

11.1 Insurance. The Lessee will, at all times prior to the return of the Equipment to the Lessor, at its own expense, cause to be carried and maintained (i) property insurance in respect of the Items of Equipment at the time subject hereto and (ii) public liability insurance with respect to third party personal and property damage, and the Lessee will continue to carry such insurance in such amounts and for such risks and with such insurance companies and subject to such self-insurance as is consistent with prudent railroad industry practice taking into account, among other things, Lessee's financial condition but in any event at least, not less comprehensive in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Equipment, in each case reasonably satisfactory to the Lessor. The proceeds of any property insurance shall be payable to the Security Trustee, the Lessor and the Lessee, as their interests may appear, so long as any interest, principal or premium, if any, on the Notes shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear. Except with respect to any change in coverage occurring within 30 days of the initial Closing Date of which the Lessee shall give the Lessor and the Security Trustee prompt notice, the Lessee shall give 30 days' prior notice to the Lessor and the Security Trustee of any cancellation or material change in coverage.

The Lessor or the Trustor may at its own expense (but shall have no duty or obligations to) carry insurance with respect to its interest in the Equipment, provided that such insurance does not prevent the Lessee from carrying insurance required by this Section 11.1 or adversely affect such insurance or the cost thereof. Any insurance payments received from policies maintained by the Lessor or the Trustor at its own expense shall be retained by the Lessor or the Trustor, respectively, without reducing or otherwise affecting the Lessee's obligations hereunder.

11.2 Duty of Lessee to Notify Lessor. In the event that (i) any Item of Equipment shall be or become lost, stolen or destroyed, (ii) in the reasonable opinion of the Lessee, irreparably damaged or damaged such that it is not economic to repair during the term of this Lease or thereafter while such Item of Equipment is in the possession of the Lessee pursuant to Section 13 or 15 hereof, (iii) any Item of Equipment shall have been permanently returned to the Manufacturer by the Lessee as a result of an irreparable defect in such Item of Equipment, or (iv) title to any Item of Equipment shall be taken by any governmental entity by condemnation or otherwise, or use of such Item of Equipment shall be taken or

requisitioned (a) by the United States Government (1) for a stated period which shall equal or exceed the then remaining term of this Lease or (2) for a period which has exceeded two years, or (b) by any other governmental entity (1) for a stated period which shall equal or exceed the then remaining term of this Lease or (2) for a period which has exceeded 180 consecutive days, or (v) as a result of any rule, regulation, order or other action by the United States Government or any agency or instrumentality thereof, the use of such Item of Equipment in the normal course of interstate rail transportation shall have been prohibited for a continuous period of six months or for a period equal to or exceeding the remaining term of this Lease (any such occurrence being hereafter called a "Casualty Occurrence"), the Lessee shall fully (as soon as practical after it has knowledge of such Casualty Occurrence, but in no event later than 30 days after the date of such occurrence) inform the Trustor, the Lessor, the Security Trustee and each Holder of a Note and any assignee of the Lessor pursuant to Section 16 hereof in regard thereto and shall pay the Casualty Value (as defined in Section 11.6 hereof) of such Item in accordance with the terms of Section 11.3 hereof.

11.3 Sum Payable for Casualty Loss. The Lessee, on the next succeeding rent payment date following its notice of a Casualty Occurrence with respect to any Item or Items of Equipment or within 30 days after such notice in respect of any Casualty Occurrence which occurs within 30 days preceding a rent payment date or after the expiration of the term of this Lease while such Item of Equipment is in the possession of the Lessee pursuant to Section 13 or 15 hereof, shall pay to the Lessor an amount equal to the sum of (i) any rentals or other sums with respect to such Item due on or prior to such date then remaining unpaid plus (ii) the Casualty Value of such Item of Equipment as of the date of such payment.

11.4 Rent Termination. Upon (and not until) payment of all sums required to be paid pursuant to Section 11.3 hereof in respect of any Item or Items of Equipment, the obligation to pay rent for such Item or Items of Equipment accruing subsequent to the date of payment of all sums pursuant to Section 11.3 hereof, shall terminate, but the Lessee shall continue to pay rent for all other Items of Equipment.

11.5 Disposition of Equipment. The Lessee shall, as agent for the Lessor, dispose of such Item or Items of Equipment having suffered a Casualty Occurrence as soon as it is able to do so for the fair market value thereof. Any such disposition shall be on an "as-is", "where-is" basis without representation or warranty, express or implied. As to each separate Item of Equipment so disposed of, so long as no Event of Default, or any event which with the lapse of time or the giving of notice

or both would constitute such an Event of Default, shall have occurred and be continuing, the Lessee may retain all amounts arising from such disposition plus any insurance proceeds and damages received by the Lessee by reason of such Casualty Occurrence up to the amount of the Casualty Value attributable thereto which the Lessee has previously paid to the Lessor pursuant to Section 11.3. In disposing of such Item of Equipment, the Lessee shall take such action as the Lessor shall reasonably request to terminate any contingent liability which the Lessor might have arising after such disposition of or connected with such Item of Equipment and Lessor shall execute such documents as Lessee shall reasonably request to effect the conveyance to Lessee or any designee of Lessee of all right, title and interest to such Item of Equipment, without any representation or warranty, express or implied.

11.6 Casualty Value. The Casualty Value of each Item of Equipment shall be an amount determined as of the date the Casualty Value is paid as provided in this Section 11 (and not the date of the Casualty Occurrence) equal to the sum of that percentage of the Purchase Price of such Item of Equipment set forth in the Schedule of Casualty Value applicable to Items of Equipment purchased on the Closing Date on which such Item of Equipment was purchased attached hereto as Schedule E opposite such date of payment (or, if such date of payment is not a rental payment date, the immediately preceding rental payment date) plus, if the Casualty Value is paid on a date other than a rent payment date, an amount equal to the rental, per diem, from the date of the immediately preceding rental payment date to and including the date of the payment of the Casualty Value and provided that, anything in this Lease to the contrary notwithstanding, the Casualty Value as of any date shall be sufficient to pay the aggregate unpaid principal amount of Notes in an amount equal to the original principal amount of all Notes times a fraction the numerator of which is the Purchase Price of such Item of Equipment and the denominator of which is the Purchase Price of all Equipment, together with any accrued interest thereon.

11.7 Risk of Loss. The Lessee shall bear the risk of loss and, except as hereinabove in this Section 11 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Item of Equipment from and after the date hereof and continuing until payment of the Casualty Value and all rental installments and other sums due on and prior to the date of payment of such Casualty Value in respect of such Item of Equipment has been made, such Item or the salvage thereof has been disposed of by the Lessee and the title to such Item or the salvage thereof and all risk of loss and liabilities incident to ownership have been transferred to the purchaser of such Item or the salvage thereof.

11.8 Eminent Domain. In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period which does not exceed the term of this Lease and such requisition or taking does not constitute a Casualty Occurrence, the Lessee's obligation to pay all installments of rental and other sums shall continue for the duration of such requisitioning or taking. So long as no Event of Default, or event which with the lapse of time or giving of notice, or both, shall have occurred and be continuing, the Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession; provided, however, that any sums payable by such governmental authority as compensation for requisition or taking of possession of any Item of Equipment for any period after the termination of the Lease shall be payable to the Lessor and if received by the Lessee shall be remitted promptly to the Lessor, except to the extent that the right to receive any such sums accrues during any period after the Lessee purchases or acquires title to such Item of Equipment or is with respect to the Lessee's leasehold interest in such Item of Equipment during any renewal period.

## SECTION 12. ANNUAL REPORTS.

12.1 Duty of Lessee to Furnish. On or before April 1, 1989 and on each April 1 thereafter during the term of this Lease, the Lessee will furnish to the Trustor, the Lessor, the Security Trustee, each holder of Notes and any assignee of the Lessor pursuant to Section 16 hereof an accurate statement, as of the preceding December 31 (a) showing the amount, description and numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the 12 months ending on such December 31 (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Lessor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced.

12.2 Lessor's Inspection Rights. The Lessor, the Trustor, the Security Trustee, each holder of a Note and any assignee of the Lessor pursuant to Section 16 hereof, each shall have the right, at their respective sole cost and expense, by their respective authorized representatives, to inspect the Equipment and the Lessee's records with respect thereto, at such time as shall be reasonably necessary to confirm thereto the existence and proper maintenance of the Equipment during the continuance of this Lease.

SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.

Upon the expiration of the term of this Lease with respect to any Item of Equipment, including any optional renewal term pursuant to Section 18 hereof, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Item of Equipment to the Lessor upon such tracks of the Lessee as the Lessor may reasonably designate taking into account, among other things, Lessee's storage capacity, security and access, or, in the absence of such designation, as the Lessee may select (the "Designated Locations") and permit the Lessor to store such Items of Equipment on such tracks for a period not exceeding 30 days, which period shall not commence until at least 90% of the Items of Equipment remaining under lease are located at the Designated Locations. The Lessee will transport each Item of Equipment once at any time within such 30 day period from such Designated Locations to any reasonable place within the continental United States on any railroad lines operated by the Lessee or to any connecting carrier for shipment, f.o.b., all as directed by the Lessor upon not less than 15 days written notice to the Lessee. Lessee shall not be obligated to transport any Item of Equipment more than once at the request of the Lessor, after which the Lessee shall have no further obligation with respect to any Items of Equipment so moved. The storage and movement of each such Item is to be at the risk and expense of the Lessee, and the Lessee agrees to maintain the insurance on such Item required by Section 11.1 hereof until the expiration of such 30 day storage period. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Item, at their own risk, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of gross negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. During any such storage period the Lessee, at its expense, shall in addition to the foregoing, maintain the Equipment in such a manner as the Lessee normally maintains similar units of railroad equipment owned or leased by it in similar storage circumstances, which maintenance shall in no event be to a standard lower than that required by industry standards or by Section 8 hereof.

All amounts earned in respect of the hire of the Equipment after the date of expiration of this Lease, including all car hire and daily rental per diem or other similar charge received for the hire of the Equipment, shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Item of Equipment is not

assembled, delivered and stored as hereinabove provided within 15 days after the expiration of this Lease, the Lessee shall, in addition, pay to the Lessor for each day from and after the expiration date of the Lease an amount equal to the amount, if any, by which the higher of (i) an amount equal to the daily equivalent of the rental in effect immediately prior to the expiration of the Lease for such Item of Equipment, or (ii) the Fair Rental Value (determined in the manner provided in Section 14.2 hereof) for such Item for each such day exceeds the amount, if any, received by the Lessor (either directly or from the Lessee) for such day for such Item pursuant to the preceding sentence.

Each Item returned to the Lessor pursuant to this Section 13 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, (ii) meet the standards then in effect for railroad equipment of the same type and age as the Equipment under the Interchange Rules and/or the applicable rules of any governmental agency or other organization with jurisdiction, (iii) have been maintained in accordance with the provisions of Section 8 hereof and (iv) have attached or affixed thereto any special device considered an accession thereto as provided in Section 7 or 8 hereof and have removed, if the Lessee so desires, therefrom any such device not so considered an accession unless Lessor has exercised its option to purchase such device pursuant to Section 8.2(c) hereof. Lessee shall have no obligation to return the Equipment with new liners but each Item of Equipment shall be returned lined subject to ordinary wear and tear on such existing liner (in no event shall the Lessee discriminate as to the commodity carried by any Item of Equipment in contrast to equipment of a similar nature and similar service which the Lessee owns or leases.)

The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court 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 to so assemble, deliver, store and transport the Equipment.

#### SECTION 14. DEFAULT.

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

- (a) Default shall be made in the payment of any part of the Fixed Rental, Casualty Value, or Fair Market Value provided in Section 2, 11 or 18 hereof and such default shall continue for 5 days after written notice from the Lessor or the Security Trustee to the Lessee;

(b) The Lessee shall make or permit any assignment or transfer of this Lease, or of possession of the Equipment or any portion thereof, not permitted by this Lease;

(c) The Lessee shall default in the maintenance of the insurance, if any, required by Section 11.1 hereof and such default shall continue until the expiration of any period of prior written notice of the expiration or cancellation of any such insurance from the insurance carrier or the Lessee's insurance agent to the Lessee;

(d) Default shall be made in the observance or performance of any other of the covenants, conditions, undertakings and agreements on the part of the Lessee contained herein or in the Participation Agreement and such default shall continue for 30 days after written notice from the Lessor or the Security Trustee to the Lessee specifying the default and demanding that the same be remedied; and provided, that the continuation of a default for longer than 30 days after such written notice shall not constitute an Event of Default if (i) such default cannot be cured by the payment of money, (ii) such default is capable of being cured but cannot be cured within 30 days, (iii) the Lessee is diligently pursuing the cure of such default and (iv) such default does not impair in any material respect the Lessor's interest in the Equipment or the security interest of the Security Trustee created pursuant to the Trust Indenture, and provided further that it shall not be an Event of Default hereunder if the Lessee shall fail to make a payment or perform any obligation which constitutes an Excepted Right in Collateral (as defined in the Trust Indenture) unless and until the Lessor has delivered written notice to the Lessee to the effect that such failure constitutes an Event of Default hereunder.

(e) Any representation or warranty made by the Lessee herein or in the Participation Agreement or in any statement or certificate furnished to the Lessor, the Trustor, the Security Trustee, the Note Purchaser or any of their respective successors or assigns pursuant to or in connection with this Lease or the Participation Agreement is untrue in any material respect as of the date of issuance or making thereof other than any tax representations for which remedies or indemnities are provided in the Operative Agreements or the Tax Indemnity Agreement; or

(f) the commencement of an involuntary case or other proceeding in respect of Lessee in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law in the United

States or seeking the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Lessee or for all or substantially all of its property, or seeking the winding-up or liquidation of its affairs and the continuation of any such case or other proceeding undismissed or unstayed for a period of 60 consecutive days or an order for relief under Chapter 11 of the Bankruptcy Code with respect to Lessee as debtor or any other order, judgment or decree shall be entered in any proceeding by any court of competent jurisdiction appointing, without the consent of Lessee, a receiver, trustee or liquidator of Lessee, or for all or substantially all of its property, or sequestering of all or substantially all of the property of Lessee and any such order, judgment or decree or appointment or sequestration shall be final or shall remain in force undismissed, unstayed or unvacated for a period of 60 consecutive days after the date of entry thereof; or

(g) the commencement by Lessee of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or other similar law in the United States, or the consent by Lessee to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of Lessee or for all or substantially all of its property, or the making by Lessee of any assignment for the benefit of creditors or Lessee shall take any corporate action to authorize any of the foregoing.

14.2 Remedies. If any Event of Default has occurred and is continuing, the Lessor or, in the event this Lease shall have been assigned to an assignee pursuant to Section 16 hereof, such assignee, at its option, may declare this Lease to be in default and thereafter so long as such default is not remedied may exercise all or any of the following remedies:

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

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

and take possession of all or any of the Items of Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use such Items for any purpose whatever, but the Lessor shall nevertheless have a right to recover from the Lessee any and all amounts which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum with respect to each Item of Equipment which represents the excess of the present worth, at the time of such termination, of all rentals for such Item which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over the then present worth of the then Fair Rental Value of such Item for such period computed by discounting from the end of such term to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the use of such Item during such period, such present worth to be computed in each case on a basis of a 10.25% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, or (y) an amount equal to the excess if any of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the amount the Lessor reasonably estimates to be the Fair Market Value thereof at such time; provided, however, that in the event the Lessor shall have sold any Item of Equipment, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (i) with respect thereto may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the net proceeds of such sale, and (ii) any damages and expenses, other than for a failure to pay rental, in addition thereto, including reasonable attorneys' fees, which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental; and/or

(c) Exercise any other right or remedy which may be available to it under applicable law.

For purposes of Section 14.2(b) above, the Fair Rental Value and Fair Market Value for any Item of Equipment shall be determined in the manner provided for appraisal arrangements specified below; provided that any sale in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Market Value of such Item and any rental in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Rental Value of such Item.

The Fair Rental Value or Fair Market Value, as the case may be, of the Items of Equipment shall be determined on the basis of, and shall be equal in amount to, the value which would be obtained in an arm's-length transaction between an informed and willing lessee or buyer, as the case may be, (other than a lessee or buyer, as the case may be, currently in possession) and an informed and willing lessor or seller, as the case may be, neither of which is under any compulsion to lease, sell or buy, as the case may be. The Fair Rental Value shall be calculated without regard to any purchase option and the Fair Market Value shall be calculated without regard to any renewal option. If the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value or the Fair Market Value of such Items of Equipment within 20 days after receipt by Lessee of written notice setting forth the method to be used to calculate damages pursuant to Section 14.2(b), such value shall be determined in accordance with the forgoing definition by a qualified, independent Appraiser. For purposes of this Section 14.2, the term "Appraiser" shall mean any independent, nationally recognized appraiser chosen by the Lessor. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon the Lessor and the Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

14.3 Cumulative Remedies. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims of any right to assert any offset against the rent payments due hereunder, and agrees to make the rent payments regardless of any offset or claim which may be

asserted by the Lessee on its behalf in connection with the lease of the Equipment.

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

14.5 Notice of Event of Default. The Lessee also agrees to furnish to the Lessor, the Trustor, the Security Trustee and each holder of a Note, promptly upon any officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof.

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

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

(a) Forthwith place such Equipment upon such storage tracks of the Lessee or any of its affiliates as the Lessor may reasonably designate taking into account, among other things, Lessee's storage capacity, security and access or, in the absence of such designation, as the Lessee may select;

(b) Permit the Lessor to store such Equipment on such tracks without charge for insurance, rent or storage until such Equipment has been sold, leased or otherwise disposed of by the Lessor and during such period of storage the Lessee shall continue to maintain all insurance required by Section 11.1 hereof; and

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

All amounts earned in respect of the hire of the Equipment after the date of termination of this Lease under Section 14 hereof, including, all car hire and daily rental per diem, or

other similar charge received for the hire of the Equipment, shall be paid to the Lessor or in the event this Lease has been assigned pursuant to Section 16 hereof, to such assignee, and, if received by the Lessee, shall be promptly turned over to the Lessor, or in the case of such assignment, to such assignee. In the event any Item of Equipment is not assembled, delivered and stored as hereinabove provided within 15 days after the termination of this Lease under Section 14 hereof, the Lessee shall, in addition, pay to the Lessor or, in the case of such assignment, to such assignee, for each day thereafter an amount equal to the amount, if any, by which the higher of (i) an amount equal to the daily equivalent of the rental in effect immediately prior to the expiration of the lease for such Item of Equipment, or (ii) 125% of the Fair Rental Value (determined in the manner provided in Section 14.2 hereof) for such Item of Equipment for each such day exceeds the amount, if any, received by the Lessor or such assignee (either directly or from the Lessee) for such day for such Item pursuant to the preceding sentence.

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

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

#### SECTION 16. ASSIGNMENTS BY LESSOR.

16.1 Lessor's Right to Assign Lease. This Lease and all rent and all other sums due or to become due hereunder may be assigned in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. Upon notice to the Lessee of any such assignment, the rent and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to or upon the written order of the assignee. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of any such assignee in and to the sums payable

by the Lessee under any provision of this Lease shall not be subject to any abatement whatsoever and shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever whether by reason of failure of or defect in the Lessor's title, or any interruption from whatsoever cause in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that the Lessee shall be unconditionally and absolutely obligated to pay such assignee all of the rents and other sums which are the subject matter of the assignment, (ii) said assignee shall, if an Event of Default shall have occurred and be continuing, have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of said assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor including, without limitation, the right to proceed pursuant to Section 14.2 hereof (except those rights, privileges and remedies relating to amounts payable to the Lessor or the Trustor pursuant to Sections 6, 10.2, 11.1 (with respect to public liability insurance only) and 21.2 hereof which shall remain enforceable by the Lessor and/or the Trustor, as the case may be, pursuant to Section 14.2(a) only), but if no Event of Default shall have occurred and be continuing, said assignee, the Lessor and the Trustor may each exercise their respective rights, privileges and remedies stated in this Lease to be provided for their respective benefits, and notwithstanding the occurrence of such an Event of Default, the Lessor, the Trustor and said assignee shall each receive all notices and reports to be provided by the Lessee hereunder or under the other Operative Agreements and (iii) all obligations of the Lessor to the Lessee under this Lease shall be and remain enforceable by the Lessee against, and only against, the Lessor.

16.2 Lessor's Assignment pursuant to Trust Indenture. In order to secure the indebtedness evidenced by the Notes, Lessor has agreed in the Trust Indenture, among other things, to assign to the Security Trustee this Lease and any sublease, and to mortgage the Equipment in favor of the Security Trustee, subject to the reservations and conditions therein set forth. 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 any applicable jurisdiction), no security interest in this Lease may be created through the transfer or possession of any counterpart other than the original counterpart, which shall be identified as the counterpart containing the receipt therefor executed by the Security Trustee as mortgagee under

the Trust Indenture on the signature page thereof. Lessee hereby accepts and consents to the assignment of all Lessor's right, title and interest in and to this Lease pursuant to the terms of the Trust Indenture. Lessee agrees to pay directly to the Security Trustee (or, after receipt by Lessee of notice from the Security Trustee of the release of the security interest granted by the Trust Indenture, to Lessor), all amounts of rent due or to become due hereunder and assigned to the Security Trustee and Lessee agrees that the Security Trustee's right to such payments hereunder shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, the circumstances set forth in Section 2.4 hereof. Lessee agrees that it (i) will assign to Lessor as collateral security, pursuant to an assignment in form, scope and substance satisfactory to Lessor, any sublease, (ii) include in such sublease such provisions as are necessary to permit such assignment and to permit Lessor to fulfill its assignment obligations under the Trust Indenture, (iii) deliver to Lessor the original counterpart of the sublease, and (iv) perform such other acts, including the filing of financing statements, as are reasonably necessary to perfect Lessor's (and if Lessor shall have assigned the sublease to Security Trustee, Security Trustee's) security interest in the sublease. Notwithstanding the foregoing assignment of this Lease, the obligations of Lessor to Lessee to perform the terms and conditions of this Lease shall remain in full force and effect. Lessee further acknowledges that the Trust Indenture provides that so long as the Notes are outstanding, the Lessor may not consent to any amendment, modification or waiver to this Lease without the prior consent of the Security Trustee; provided that so long as no Event of Default (as defined in the Trust Indenture) exists and is continuing, Lessor may, without the consent of the Security Trustee, execute and deliver a Lease Supplement, substantially in the Form of Exhibit D hereto, as provided in and pursuant to the provisions of Section 2.5 hereof. The Lessee further agrees to provide to the Security Trustee a copy of all notices, consents, certificates or other information provided hereunder to the Lessor.

16.3 Assignment Subject to Lessee's Interest. It is understood and agreed that the right, title and interest of any such assignee in, to and under this Lease and the rents and other sums due and to become due hereunder shall by the express terms granting and conveying the same be subject to the interest of the Lessee in and to the Equipment.

SECTION 17. ASSIGNMENTS BY LESSEE; USE AND POSSESSION.

17.1 Lessee's Rights to the Equipment. So long as no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event

of Default, shall have occurred and be continuing, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment and the Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment, except to the extent permitted by the provisions of Section 17.2 hereof.

17.2 Use and Possession by Lessee; Permitted Subleases. So long as no Event of Default, or any event which with the lapse of time or giving of notice, or both, would constitute such Event of Default, shall have occurred and be continuing, the Lessee shall be entitled to the possession of the Equipment and to the use of the Equipment by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract and shall be entitled to permit the use of the Equipment upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements (which such interchange or run-through shall not constitute an assignment or sublease hereunder) and shall be entitled to assign or sublease any of the Equipment to others provided that no such assignment or sublease shall relieve the Lessee from any of its obligations hereunder or result in any adverse tax consequences to the Trustor, and only, in each case, upon and subject to all the terms and conditions of this Lease and the Trust Indenture (a "Permitted Sublease"); provided, however, that the Lessee shall not permit the use of any Equipment predominantly outside the United States of America within the meaning of Section 48(a) and 168(g) of the Internal Revenue Code of 1986, as amended to the date hereof; provided, further, that the Lessee shall not assign or permit the assignment of any Item of Equipment to service (including, without limitation, the regular operation and maintenance thereof) in any location which is not a Perfected Jurisdiction; provided, further, all such subleases entered into on or prior to the commencement of the Lease term and the rights and interest of any sublessee thereunder shall in all events be subject and subordinate to this Lease and the rights and interests of the Lessor and its respective successors and assigns hereunder, and shall confirm such subordination by a provision therein satisfactory to the Lessor, the Security Trustee and the holders of the Notes and in no event shall the term of any Permitted Sublease extend beyond the expiration of the term of this Lease. For the purposes of this Section 17.2, a sublease of any Item to the Canadian National Railroad or the

Canadian Pacific Railroad shall mean that such Item has been assigned to service in Canada, a sublease to a provincial railroad shall mean that such Item has been assigned to service in such Province and a Perfected Jurisdiction shall mean the United States and any Canadian jurisdiction with respect to which all instruments required by the laws of any such jurisdiction have been executed, acknowledged, delivered, filed, registered and recorded as required by the laws of that jurisdiction to protect the rights of the Lessor and the Security Trustee under this Lease and the Trust Indenture as evidenced by an opinion of counsel reasonably satisfactory to the Lessor, the Trustor, the holders of the Notes, and the Security Trustee; provided that no more than 50% of the Items of Equipment subject to an assignment or sublease shall be assigned to service outside the continental United States at the same time. No assignment or sublease entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligation hereunder which shall be and remain those of a principal and not a surety.

17.3 Merger, Consolidation or Acquisition of Lessee. Nothing in this Section 17 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any solvent corporation organized under the laws of any state of the United States or the District of Columbia into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all of the property of the Lessee, provided that (i) immediately prior and after giving effect to any such merger, consolidation or acquisition, no Event of Default, or event which with notice or the passage of time, or both, would become an Event of Default, shall have occurred and be continuing, (ii) such assignees, successors or transferees shall have duly assumed the obligations of the Lessee hereunder and under the Participation Agreement and the Tax Indemnification Agreement pursuant to an agreement reasonably satisfactory to the Lessor, the Trustor, the Security Trustee and the holders of the Notes and (iii) such merger, consolidation or acquisition shall not alter in any way the Lessee's obligations to the Lessor hereunder which shall be and remain those of a principal and not a surety.

The Lessee will preserve and keep in full force and effect its corporate existence, rights and franchises and all licenses and permits necessary to the performance of its obligations hereunder, except as otherwise provided in the preceding paragraph.

SECTION 18. PURCHASE OPTION: RENEWAL OPTION.

18.1 Purchase Option. Provided that no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall have the right to purchase all but not less than all of the Items of Equipment then leased hereunder at the expiration of the initial term hereof at a price equal to the lesser of the Fair Market Value of such Items of Equipment or 50% of their Purchase Price and at the expiration of any renewal term at a purchase price equal to the Fair Market Value of such Items of Equipment. The Lessee shall give the Lessor written notice not less than 135 days prior to the end of the initial term or the renewal term, as the case may be, of this Lease of its election to exercise the purchase option provided for in this Section, which notice shall be irrevocable. Payment of the option price shall be made at the place of payment specified in Section 2.3 hereof in funds there current against delivery of a bill of sale transferring and assigning to the Lessee all right, title and interest of the Lessor in and to the Equipment and containing a warranty against Lessor's Liens. The Lessor shall not be required to make any other representation or warranty as to the condition of the Equipment or any other matters, and may specifically disclaim any such representations or warranties.

18.2 Renewal Option. Provided that no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall have the option to renew the Lease once for a term, to be selected by the Lessee, of one, two, three, four or five years and thereafter to renew the Lease for an additional term as the Lessor and the Lessee may mutually agree, as to all, but not less than all, of the Items of Equipment then leased hereunder, as follows:

(a) the Lessee shall give the Lessor written notice not less than 135 days nor more than 180 days prior to the end of the initial or renewal Lease term, as the case may be, of its election to exercise the renewal option provided for in this section, which notice shall be irrevocable, with each semiannual installment of Fixed Rental payable during such renewal term to be in an amount equal to the Fair Rental Value for all such Items of Equipment;

(b) promptly following receipt of Lessee's written election to renew the Lease given pursuant to clause (a), the Lessor shall choose an independent qualified appraiser for the purpose of determining the then remaining estimated useful life, the Uninflated Residual Value and the Fair

Rental Value of the Equipment and shall notify the Lessee in writing of its selection. If for any reason the Lessee does not agree that such appraiser may act as the sole appraiser for purposes of this Section 18, it shall within ten days thereafter designate in writing to the Lessor a second independent qualified appraiser and such appraisers shall mutually agree upon a third qualified independent appraiser. If such appraisers cannot agree on such third appraiser within 20 days, then the American Arbitration Association shall promptly designate a third appraiser. Such party or parties so chosen to act as the appraiser for purposes of this Section 18 is hereinafter referred to as the "Appraiser" and the expenses and fees thereof shall be borne by the Lessee;

(c) promptly following the selection of the Appraiser, and in any event not less than 30 days prior to the end of the Lease term, or renewal term, as the case may be, the Appraiser shall determine the then remaining estimated useful life of the Equipment as of the end of the Lease term or renewal term, as the case may be, the Uninflated Residual Value thereof and the Fair Rental Value thereof;

(d) the Casualty Value payable during any renewal term in respect of any Item of Equipment suffering a Casualty Loss shall be an amount equal to the higher of the Fair Market Value of such Item as of the beginning of such renewal term or 20% of the Purchase Price of such Item; and

(e) each renewal term shall commence immediately upon the expiration of the preceding term.

For purposes of this Section 18.2, Uninflated Residual Value shall mean the value of the Equipment at the relevant date adjusted to eliminate the effect of any inflation or deflation since the commencement of the Lease.

18.3 Determination of Fair Rental Value and Fair Market Value. For purposes of Section 18 hereof, the Fair Rental Value or Fair Market Value for any Item of Equipment shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee or buyer, as the case may be (other than a lessee or buyer, as the case may be, currently in possession) and an informed and willing lessor or seller, as the case may be, neither of which is under any compulsion to lease, sell or buy, as the case may be. The Fair Rental Value shall be calculated without regard to any purchase option and the Fair Market Value shall be calculated without regard to any renewal option. If the Lessor and the Lessee are

unable to agree upon a determination of the Fair Rental Value or the Fair Market Value of such Items of Equipment within 60 days prior to the end of the original Lease term, such value shall be determined in accordance with the foregoing definition by the Appraiser as determined pursuant to Section 18.2 hereof.

18.4 Delivery of Equipment. Unless the Lessee has elected to purchase the Items of Equipment then leased hereunder as provided in this Section 18, all of such Items of Equipment shall be returned to the Lessor at the end of the initial or then applicable renewal term in accordance with Section 13, hereof.

SECTION 19. COLLATERAL ASSIGNMENT BY LESSEE OF RENTALS UNDER PERMITTED SUBLEASES.

19.1 Assignment. As collateral security for the payment of any and all of the obligations and liabilities of the Lessee due hereunder, the Lessee does hereby grant a security interest in and assigns to the Lessor all of the right, title and interest which it has acquired or may have acquired in each and all Permitted Subleases arising from, by virtue of, or in connection with, the Equipment, whether now existing or hereafter entered into, as and only to the extent that any Permitted Sublease relates to the Equipment, including, without limitation, the immediate and continuing right to receive all rental payments now or hereafter payable or receivable under and pursuant to any Permitted Sublease; it being the intent and purpose hereof that the assignment and transfer to the Lessor of said rights shall be effective and operative immediately and shall continue in full force and effect at all times during the period from and after the date of this Lease until the end of the term of this Lease.

19.2 Rights of Lessee in Permitted Subleases; Segregation of Rental Payments. Notwithstanding any other provision hereof, so long as no Event of Default or any event which with the lapse of time or the giving of notice, or both, would constitute an Event of Default under this Lease shall have occurred and be continuing, the Lessee shall have the right to receive all rentals and other sums payable under any Permitted Subleases; provided, however, that if any such Event of Default or event shall have occurred and be continuing, the Lessee shall (i) receive and retain any rental payments under any Permitted Subleases, all or any portion of which payments are attributable to or receivable with respect to the Equipment or any Item or Items thereof, in trust for the benefit of the Lessor or any assignee pursuant to Section 16 hereof, (ii) deposit any such payment in the original form in which received into a separate account established for such purpose, into which no payments other than those described in clause

(i) above shall be deposited, except in the case that the original form of such payment shall include both rentals under any Permitted Sublease attributable to any Item or Items of Equipment and additional rentals not so attributable, then the entire amount of such payment under such Permitted Sublease shall be deposited into such separate account, (iii) remit from such separate account all amounts due and owing to the Lessor or any assignee pursuant to Section 16 in respect of any Item of Equipment, and (iv) only after the full portion required to be remitted to the Lessor or any assignee pursuant to Section 16 pursuant to clause (iii) above shall, at any given time, have been so remitted, remit the balance in such separate account to a general account of the Lessee.

In addition to the rights of the Lessor pursuant to this Section 19, Lessee hereby grants to Lessor or any assignee pursuant to Section 16 Lessee's power of attorney to collect in the event of the occurrence of an Event of Default under Section 14.1 hereof, all rental payments due Lessee under any Permitted Subleases assigned to Lessor pursuant to Section 19.1 hereof. Lessee agrees promptly to furnish Lessor or any assignee pursuant to Section 16 with the names and addresses of all sublessees under Permitted Subleases together with such other information as the Lessor may request. Lessee agrees to cooperate with Lessor or any assignee pursuant to Section 16 in the notification of all sublessees under Permitted Subleases of such power of attorney and to execute any and all documents reasonably requested by Lessor in connection therewith. All funds collected by Lessor pursuant to such power of attorney shall be applied to the payment of amounts due and owing by Lessee under this Lease.

The Lessee agrees that any rental payments received under any Permitted Sublease shall be first applied to, and shall be deemed to be payable in respect of, the Items of Equipment which may be leased under such Permitted Sublease, notwithstanding any default or deficiency in such rental payment by the sublessee under such Permitted Sublease.

19.3 Further Assignment. The Lessee acknowledges and agrees that (i) all rights and interests of the Lessor pursuant to this Section 19 may be assigned by the Lessor to any assignee in accordance with Section 16 hereof, and (ii) the assignment provided for in this Section 19 shall not in any way obligate the Lessor or any of its successors or assigns to perform or satisfy any of the obligations or liabilities of the Lessee under any Permitted Sublease.

19.4 Rights under Uniform Commercial Code. Upon the occurrence of any Event of Default under this Lease, the Lessor shall, in addition to all other rights and remedies provided

for herein, have in connection with the assignment provided for in this Section 19, all the rights of a secured party under the Uniform Commercial Code of Illinois (regardless of whether such Code is the law of the jurisdiction where the rights or remedies are asserted).

19.5 Further Assurance. Without limiting the foregoing, the Lessee hereby agrees that it will deliver to the Lessor the original executed counterpart of each Permitted Sublease and any riders or schedules delivered under any Permitted Subleases in respect of the Equipment or any Item thereof, clearly marked to indicate that such counterpart is the original counterpart for purposes of the Uniform Commercial Code, and shall clearly mark on any multiple executed counterparts of such riders or schedules in its possession that they do not constitute the original counterpart for purposes of the Uniform Commercial Code; provided, the Lessee shall not be required to deliver any such rider or schedule (i) if less than five Items of Equipment are leased thereunder, or (ii) if only rail cars other than the Items of Equipment shown on Schedule A hereto are leased thereunder, provided, further, that the Lessee agrees to the extent practicable to establish procedures for the delivery of separate riders or schedules segregating the Items of Equipment from other rail cars which may be leased to any sublessee thereunder or where not so segregated, noting the security interest granted hereunder in respect of such Items. The Lessee further covenants that it will, upon the written request of the Lessor execute and deliver such further instruments and do and perform such other acts and things as are necessary to effectively invest and secure to the Lessor and its assigns the interests assigned pursuant to this Section 19 or other rights or interests due or hereafter to become due.

19.6 Application of Moneys. All distributions and payments to the Lessor shall be applied by the Lessor to the payment and reduction of the obligations and liabilities of the Lessee under this Lease and in accordance with the terms and provisions of the Trust Indenture.

19.7 Duration. The satisfaction or discharge of any part of the obligations or liabilities of the Lessee under this Lease shall not in any way satisfy or discharge the assignment provided for in this Section 19, but such assignment shall remain in full force and effect so long as any amount remains unpaid on any such obligations or liabilities.

SECTION 20. INTEREST ON OVERDUE RENTALS AND AMOUNT PAID BY LESSOR.

Anything to the contrary herein contained notwithstanding, any nonpayment of rent due hereunder, or amounts expended by

the Lessor on behalf of the Lessee, shall result in the additional obligation on the part of the Lessee to pay also an amount equal to the higher of (i) 12.25% per annum, or (ii) the Prime Rate plus 2% (or the maximum rate of interest permitted by law, whichever is less) on the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid. "Prime Rate" shall mean the per annum rate of interest from time to time announced by The First National Bank of Chicago as its corporate base rate.

SECTION 21. MISCELLANEOUS.

21.1 Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered personally or otherwise actually received or five business days after being deposited in the United States mail, certified, first class, postage prepaid, addressed as follows:

If to the Lessor:           Wilmington Trust Company  
                                  Rodney Square North  
                                  Wilmington, Delaware 19890

                                  Attention: Corporate Trust  
  Administration

                                  with a copy to the Trustor

If to the Trustor:           At the address provided therefor in  
                                  Schedule 1 to the Participation  
                                  Agreement

If to the Security  
Trustee:                       Meridian Trust Company  
                                  35 North Sixth Street  
                                  Reading, Pennsylvania 19601

                                  Attention: Corporate Trust  
  Department

If to the Lessee:           Burlington Northern Railroad  
                                  Company  
                                  2900 Continental Plaza  
                                  777 Main Street  
                                  Fort Worth, Texas 76102

                                  Attention: Vice President Freight  
  Equipment

With a copy to:

Burlington Northern Railroad  
Company  
3800 Continental Plaza  
777 Main Street  
Fort Worth, Texas 76102

Attention: Vice President Law and  
Corporate Counsel

If to any holder  
of Notes:

At its address for notices set  
forth in the Register.

or addressed to any such party at such other address as such party shall hereafter furnish to such other parties in writing.

21.2 Right of Lessor to Perform. If the Lessee shall fail to comply with any of its covenants herein contained, either the Lessor, the Trustor or, in the case of an assignment by the Lessor pursuant to Section 16 hereof, the assignee thereunder (including, without limitation, the Security Trustee and each holder of a Note) may, but shall not be obligated to, make advances to perform the same and to take all such action as may be necessary to obtain such performance. Any payment so made by any such party and all cost and expense (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by the Lessee to the party making the same upon demand as additional rent hereunder, with interest at a rate equal to the higher of (i) 12.25% per annum, or (ii) the Prime Rate plus 2% (or the maximum rate of interest permitted by law, whichever is less).

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

21.4 Law Governing. This Lease shall be construed in accordance with the laws of the State of Illinois without regard to principles of conflicts of law; provided, however, that the parties shall be entitled to all rights conferred by any applicable Federal statute, rule or regulation.

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

21.6 Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be as to

such jurisdiction ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

21.7 Limitations of Liability. It is expressly understood and agreed that this Lease is executed by Wilmington Trust Company, not in its individual capacity or personally but solely as Trustee under the Trust Agreement in the exercise of the power and authority conferred and vested in it as such Trustee, that each and all of the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by Wilmington Trust Company or the Trustor, or for the purpose or with the intention of binding Wilmington Trust Company or the Trustor in its individual capacity or personally, but are made and intended for the purpose of binding only the Trust Estate as defined in the Trust Agreement, that this Lease is executed and delivered by Wilmington Trust Company solely in the exercise of the powers expressly conferred upon Wilmington Trust Company as Trustee under the Trust Agreement, that actions to be taken by the Lessor pursuant to its obligations hereunder may, in certain instances, be taken by the Lessor only upon specific authority of the Trustor, that nothing herein contained shall be construed as creating any liability on Wilmington Trust Company or the Trustor, in its individual capacity or personally, or any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of, Wilmington Trust Company or the Trustor, to perform any covenant either express or implied contained herein, all such liability, if any, being expressly waived by the Lessee and by any person claiming by, through or under the Lessee, provided, however, that nothing contained in this Section 21.7 shall be construed to limit the liability of the Lessor in its individual capacity for any breach of any representations or warranties of the Lessor in its individual capacity set forth herein or to limit the liability of the Lessor for gross negligence or willful misconduct. Any obligation of the Lessor hereunder may be performed by the Trustor and any such performance shall not be construed as revocation of the trust created by the Trust Agreement. Nothing contained in this Lease shall restrict the operation of the provision of the Trust Agreement with respect to its revocation or the resignation or removal of the Trustee thereunder.

21.8 Definitions. All capitalized terms used herein which are not defined herein shall have the meanings ascribed thereto in the Lease and/or the Trust Indenture.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized and the corporate seals to be hereto affixed as of the day and year first above written.

WILMINGTON TRUST COMPANY, not in its individual capacity but solely as trustee under Trust Agreement dated as of December 1, 1988

By *Mary Ann Felt*  
Its A.V.P.

[CORPORATE SEAL]

ATTEST:

*Paul G. Smith*  
Ass't Secretary

BURLINGTON NORTHERN RAILROAD COMPANY

By \_\_\_\_\_  
Its \_\_\_\_\_

[CORPORATE SEAL]

ATTEST:

\_\_\_\_\_  
Secretary

4416W

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized and the corporate seals to be hereto affixed as of the day and year first above written.

WILMINGTON TRUST COMPANY, not in its individual capacity but solely as trustee under Trust Agreement dated as of December 1, 1988

By \_\_\_\_\_  
Its \_\_\_\_\_

(CORPORATE SEAL)

ATTEST:

\_\_\_\_\_  
Secretary

BURLINGTON NORTHERN RAILROAD  
COMPANY

By Meredith McManus  
Its Sr. V.P. - Finance

(CORPORATE SEAL)

ATTEST:

[Signature]  
Secretary





DESCRIPTION OF ITEMS OF EQUIPMENT

<u>IDENTIFYING MARKS AND NUMBERS*</u>	<u>NUMBER OF CARS</u>	<u>DESCRIPTION</u>	<u>PURCHASE PRICE EACH</u>	<u>TOTAL PURCHASE PRICE</u>
BN376750- BN376959	210	100-ton H1- Cube Boxcars	\$58,511.75	\$12,287,467.50

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All Cars Manufactured by Gunderson Inc.  
\*All numbers inclusive

SCHEDULE A  
(to Equipment Lease)

**CERTIFICATE OF ACCEPTANCE  
UNDER EQUIPMENT LEASE**

TO: Wilmington Trust Company, as Trustee under  
Trust Agreement dated as of December 1, 1988 (the  
"Lessor")

I, a duly appointed and authorized representative of  
BURLINGTON NORTHERN RAILROAD COMPANY (the "Lessee") under the  
Equipment Lease dated as of December 1, 1988 between the Lessor  
and the Lessee, do hereby certify that I have inspected,  
received, approved and accepted delivery under the Lease of the  
following Items of Equipment listed on Schedule A attached  
hereto or shown on the face hereof:

EQUIPMENT ACCEPTED:

PLACE ACCEPTED:

DATE ACCEPTED:

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

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT  
FILED WITH THE INTERSTATE COMMERCE  
COMMISSION"

The execution of this Certificate will in no way relieve or  
decrease the responsibility of Gunderson Inc., as manufacturer,  
for any warranties it has made with respect to the Equipment.

Dated: December \_\_, 1988

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Inspector and Authorized  
Representative of the Lessee

SCHEDULE B  
(to Equipment Lease)

SCHEDULE C  
(to Equipment Lease)

SCHEDULE OF RENTAL PAYMENTS

FIXED RENTAL PAYMENT DATE -----	PERCENT OF PURCHASE PRICE PAYABLE -----
May 30, 1989	.0000000%
November 30, 1989	3.9530920%
May 30, 1990	5.3582730%
November 30, 1990	3.8810760%
May 30, 1991	5.4302880%
November 30, 1991	3.8016790%
May 30, 1992	5.5096850%
November 30, 1992	3.7141440%
May 30, 1993	5.5972210%
November 30, 1993	3.6176360%
May 30, 1994	5.6937280%
November 30, 1994	3.5112360%
May 30, 1995	5.8001280%
November 30, 1995	3.3939300%
May 30, 1996	5.9174330%
November 30, 1996	3.2646010%
May 30, 1997	6.0467630%
November 30, 1997	3.1500470%
May 30, 1998	6.1613160%
November 30, 1998	3.0506050%
May 30, 1999	6.2607580%
November 30, 1999	2.9481010%
May 30, 2000	8.4301580%
November 30, 2000	2.7516720%
May 30, 2001	8.6265870%
November 30, 2001	2.5594910%
May 30, 2002	8.8187680%
November 30, 2002	2.3551310%
May 30, 2003	9.0231280%
November 30, 2003	2.1375270%
May 30, 2004	9.2407320%
November 30, 2004	1.8758750%
May 30, 2005	9.5023840%
November 30, 2005	1.4888010%
May 30, 2006	9.8894580%
November 30, 2006	1.0582680%
May 30, 2007	10.3199910%
November 30, 2007	.5836040%
May 30, 2008	10.7946550%
November 30, 2008	.0602860%
May 30, 2009	11.3179710%

LEASE SUPPLEMENT NO. 1

This LEASE SUPPLEMENT NO. 1, dated as of \_\_\_\_\_, between WILMINGTON TRUST COMPANY, a Delaware banking corporation, not individually but solely as Trustee under Trust Agreement dated as of December 1, 1988 (the "Lessor"), and BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation (the "Lessee");

WITNESSETH:

The Lessor and the Lessee have heretofore entered into that certain Equipment Lease dated as of December 1, 1988 (the "Lease"). The terms used herein are used with the meanings specified in the Lease.

The Lease provides for the execution and delivery of a Lease Supplement substantially in the form hereof for, among other things, the purpose of confirming any change in Fixed Rentals and Casualty Value.

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

1. Schedule C to the Lease, setting forth the amounts of Fixed Rental, is hereby amended to read in full as attached hereto.
2. Schedule E to the Lease, showing Casualty Values, is hereby amended to read in full as attached hereto.
3. Any and all notices, requests, certificates and other instruments executed and delivered after the execution and delivery of the Lease Supplement may refer to the "Equipment Lease dated as of December 1, 1988" or "Lease dated as of December 1, 1988" without making specific reference to this Lease Supplement, but nevertheless all such references shall be deemed to include this Lease Supplement unless the context shall otherwise require.
4. This Lease Supplement shall be construed in connection with and as part of the Lease, and all terms, conditions and covenants contained in the Lease, except as herein modified, shall be and remain in full force and effect.

SCHEDULE D  
(to Equipment Lease)

5. This Lease Supplement may be executed in any number of counterparts, each executed counterpart constituting an original but all together one and the same instrument.

IN WITNESS WHEREOF, the Lessor and the Lessee have caused this Lease Supplement to be duly executed as of the day and year first above written and to be delivered as of the date first above written.

WILMINGTON TRUST COMPANY, not individually but solely as trustee under Trust Agreement dated as of December 1, 1988

[SEAL]

ATTEST:

By \_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_  
Its \_\_\_\_\_

BURLINGTON NORTHERN RAILROAD COMPANY

[SEAL]

ATTEST:

By \_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_  
Its \_\_\_\_\_ Secretary

Consented to as of the date first above written.

MERIDIAN TRUST COMPANY, as Security Trustee

[CORPORATE SEAL]

ATTEST:

By \_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_  
Its \_\_\_\_\_