

# PREMIER EQUIPMENT LEASING COMPANY

1325 W. Irving Park Road, Suite 301, Bensenville, IL 60106

Telephone: 312/595-0009

RECORDATION NO **16481** FILED 1425

#26

AUG 17 1989 - 11 45 AM

August 16, 1989

NEW NUMBER

**INTERSTATE COMMERCE COMMISSION**

Office of the Secretary  
Interstate Commerce Commission  
12th Street and Constitution  
Avenue, N.W.  
Room 2303  
Washington, D.C. 20423

RECORDATION NO **16481** FILED 1425 **9-229A010**

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AUG 17 1989 - 11 45 AM

Dear Secretary:

**INTERSTATE COMMERCE COMMISSION**

Enclosed herewith are (a) three originally executed originals and three photocopies of the Master Railroad Equipment Lease more particularly described below, and (b) one originally executed and five photocopies of the Lease Agreement more particularly described below, each to be recorded pursuant to Section 11303 of Title 49 of the United States Code.

The Master Railroad Equipment Lease dated as of August 17, 1989 and the Lease Agreement dated as of June 27, 1989 are each primary documents.

The names and addresses of the parties to the Master Railroad Equipment Lease are:

Lessor: The CIT Group/Equipment  
Financing, Inc.  
1400 Renaissance Drive  
Suite 312  
Park Ridge, IL. 60068

Lessee: Premier Equipment Leasing  
Company  
1325 W. Irving Park Road  
Suite 301  
Bensenville, IL. 60106

The names and addresses of the parties to the Lease Agreement are:

Sublessor: Premier Equipment Leasing  
Company  
1325 W. Irving Park Road  
Suite 301  
Bensenville, IL. 60106

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*C. Owen Kaplan*

Office of the Secretary  
Interstate Commerce Commission

August 16, 1989  
Page Two

Sublessee: Burlington Northern Railroad  
Company  
2900 Continental Plaza  
777 Main Street  
Ft. Worth, TX. 76102

A description of the equipment covered by the Master  
Railroad Equipment Lease and Lease Agreement is as follows:

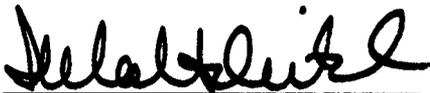
46 100-ton 4750 cubic-foot CFC covered hopper cars  
bearing car reporting marks BN 464950 through BN  
464995, both inclusive.

Enclosed is Rosenthal and Schanfield check no.  
42491 in the amount of \$26.00 in payment of the filing and  
recordation fee. Please return (a) all originals and two  
photocopies of the Master Railroad Equipment Lease and (b)  
the original and four photocopies of the Lease to the bearer,  
or if that is not possible, to:

Mr. I. Walter Deitch  
Rosenthal and Schanfield  
55 East Monroe Street  
Suite 4620  
Chicago, Illinois 60603

Very truly yours,

PREMIER EQUIPMENT LEASING  
COMPANY

By:   
Assistant Secretary

RECORDATION NO 16481 FILED 1425

AUG 17 1989 - 11 45 AM

INTERSTATE COMMERCE COMMISSION

MASTER RAILROAD EQUIPMENT LEASE

THIS MASTER RAILROAD EQUIPMENT LEASE, dated as of August 17, 1989 is entered into by and between The CIT Group/Equipment Financing, Inc., a New York corporation ("Lessor"), and Premier Equipment Leasing Company, an Illinois corporation ("Lessee").

1. Lease.

(a) Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor hereunder, those items of personal property (the "Equipment") which are described generally on Exhibit A hereto and which are more specifically defined in each Supplement (as hereinafter defined) executed from time to time by the parties hereto. Each item of Equipment shall be subjected to this Lease by the execution by the parties hereto of an Acceptance Supplement in substantially the form of Exhibit B hereto (a "Supplement"). Lessee's execution and delivery to Lessor of a Supplement with respect to any item of Equipment shall constitute Lessee's irrevocable acceptance of such item of Equipment for all purposes of this Lease. Each Supplement shall incorporate therein all of the terms and conditions of this Lease and shall constitute a part of this Lease to the same extent as if the provisions thereof were set forth in full herein.

Each Supplement shall be executed and all Equipment subjected to this Lease on or before September 15, 1989. Lessor shall have no obligation after such date to accept any Supplement hereunder or to purchase or commence the lease of any Equipment. Lessor shall have no obligation to accept more than one (1) Supplement hereunder.

(b) The total Lessor's Cost of all items of Equipment leased pursuant hereto shall not exceed

(c) Lessee shall arrange for delivery of each item of Equipment and Lessor shall have no responsibility or obligation whatsoever with respect to such arrangement.

(d) Lessor shall not be obligated to accept or execute a Supplement with respect to any item of Equipment unless all of the conditions set forth in Section 24 hereof shall have been fulfilled to the satisfaction of Lessor.

2. Definitions.

(a) As used in this Lease, the following terms shall have the following meanings (such definitions to be equally applicable to both the singular and plural forms of the terms defined):

"AAR" shall mean the Association of American Railroads.

"Acknowledgment" shall mean that certain Acknowledgment and Consent to Assignment executed by BNR substantially in the form attached hereto as Exhibit C.

"Amortization Deductions" as defined in clause (i)(A) of subsection 10(b) hereof.

"Assumptions" shall mean the assumptions set forth in Subsection 10(b)(i) hereof as adjusted pursuant to Subsection 10(b)(iv) hereof.

"Bill of Sale" shall mean a bill of sale in the form attached hereto as Exhibit D whereby the Equipment will be sold by Lessee to Lessor.

"BNR" shall mean Burlington Northern Railroad Company.

"Business Day" shall mean a day other than a Saturday, Sunday or legal holiday under the laws of the States of Illinois or New York.

"Change in Tax Law" shall mean any change in Federal tax law or regulations in effect as of the date of this Lease, which change occurs or becomes effective at any time after the date of this Lease, including without limitation, any technical corrections to the Reform Act.

"Code" shall mean the Internal Revenue Code of 1986, as it may be amended hereafter, or any comparable successor law.

"Commencement Date" as defined in Section 3 hereof.

"Default" shall mean any event or condition which after the giving of notice or lapse of time or both would become an Event of Default.

"Depreciation Deductions" as defined in clause (i)(A) of Subsection 10(b) hereof.

"DOT" shall mean the United States Department of Transportation.

"Equipment" as defined in Subsection 1(a) hereof.

"Event of Default" as defined in Section 17 hereof.

"Event of Loss" shall mean, with respect to any item of Equipment, the actual or constructive total loss of such item of Equipment or the use thereof, due to theft, destruction, damage beyond repair or rendition thereof permanently unfit for normal use from any reason whatsoever, or the condemnation, confiscation or seizure of, or requisition of title to or use of, such item of Equipment.

"Fair Market Sale Value" shall, at any time with respect to any item of Equipment, be equal to the sale value of such item of Equipment which would be obtained in an arm's-length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer-user (other than a lessee currently in possession or a used equipment or scrap dealer). For purposes of Subsection 18(c) hereof, Fair Market Sale Value shall be determined (at Lessee's expense) by an independent appraiser selected by Lessor, on an "as-is, where-is" basis; provided, that, if Lessor shall have sold any item of Equipment pursuant to Subsection 18(b) hereof prior to giving the notice referred to in Subsection 18(c) hereof, Fair Market Sale Value of such item of Equipment shall be the net proceeds of such sale after deduction of all costs and expenses incurred by Lessor in connection therewith.

"FRA" shall mean the Federal Railway Administration.

"ICC" shall mean the United States Interstate Commerce Commission.

"Imposition" as defined in Subsection 10(a) hereof.

"Indemnitee" as defined in Section 16 hereof.

"Indemnity Event" as defined in Subsection 10(b)(ii) hereof.

"Interchange Rules" shall mean the rules of DOT, the ICC and the current Interchange Rules or supplements thereto of the Mechanical Division of the AAR as the same may be in effect from time to time, or rules then in effect in substitution therefor, with respect to the use and maintenance of each item of Equipment subject to this Lease.

"Late Charge Rate" shall mean an interest rate per annum equal to the higher of two percent (2%) over the Reference Rate or fourteen percent (14%), but not to exceed the highest rate permitted by applicable law.

"Lease" and the terms "hereof", "herein", "hereto" and "hereunder", when used in this Master Railroad Equipment Lease shall mean and include this Master Railroad Equipment Lease and each supplement hereto, as the same may from time to time be amended, modified or supplemented.

"Lease Term" shall mean, with respect to any item of Equipment, the Primary Term, and if renewed, each Renewal Term

"Lessee" as defined in the introductory paragraph of this Lease.

"Lessor" as defined in the introductory paragraph of this Lease.

"Lessor's Cost" shall mean, with respect to any item of Equipment, the total amount paid by Lessor for such item of Equipment, which amount shall be set forth in the Supplement pertaining to such item of Equipment.

"Lessor's Economics" shall mean the after-tax yield and periodic after-tax cash flow anticipated by Lessor as of the date of this Lease, in connection with the transactions contemplated by this Lease, as determined by Lessor.

"Lessor's Lien" shall mean any mortgage, pledge, lien, security interest, charge, encumbrance, financing statement, title retention or any other right or claim of any person claiming through or under Lessor.

"Lien" shall mean any mortgage, pledge, lien, security interest, charge, encumbrance, financing statement, title retention or any other right or claim of any person, other than any Lessor's Lien or any Permitted Liens.

"Loss Payment Date" shall mean with respect to any item of Equipment the date on which payment, as described in Subsection 15(b) hereof, is made to the Lessor by the Lessee as the result of an Event of Loss with respect to such item. The Loss Payment Date shall be within fifty (50) days of the said Event of Loss.

"Permitted Liens" shall mean (a) liens for taxes payable by or attributable to Lessee which are either not yet due or are being contested in good faith and by appropriate proceedings, so long as, in the reasonable opinion of Lessor, such proceedings do not involve any material danger of the sale, forfeiture or loss of any item of Equipment, title thereto or any interest therein and do not interfere with the use of any item of Equipment, (b)

materialmens', mechanics', workers', repairers', employees' or other like liens arising in the ordinary course of business of Lessee for amounts either not yet overdue or being contested in a manner which complies with clause (a) above, (c) liens arising out of judgements, awards or provisional remedies against Lessee with respect to which at the time an appeal or proceeding for review is being prosecuted in good faith and which have been either stayed or bonded, and (d) Permitted Subleases.

"Permitted Sublease" shall mean that certain Lease Agreement, dated as of June 27, 1989 between Lessee, as lessor, and BNR, as lessee, and any sublease agreement entered into by BNR as lessor or sublessor pursuant to Section 13A of the Permitted Sublease.

"Permitted Sublessee" shall mean BNR, or any sublessee of BNR pursuant to Section 13A of the Permitted Sublease.

"Primary Term" as defined in Section 3(a) hereof.

"Reference Rate" shall mean the rate of interest publicly announced by Manufacturers Hanover Trust ("MHT") in New York, New York from time to time as its reference rate. The Reference Rate is not intended to be the lowest rate of interest charged by MHT in connection with extensions of credit to debtors. The Reference Rate shall be determined at the close of business on the 15th day of each calendar month (if the 15th day is not a Business Day then on the first preceding Business Day) and shall become effective as of the first day of the calendar month succeeding such determination and shall continue in effect to, and including, the last day of said calendar month.

"Reform Act" shall mean the Tax Reform Act of 1986.

"Rent Payment Date" shall mean each date on which an installment of rent is due and payable pursuant to Section 4 hereof.

"Renewal Term" shall mean, with respect to any item of Equipment, the period during which the term of the lease of such item of Equipment is extended pursuant to Subsection 3(b) hereof.

"Stipulated Loss Value" shall mean, with respect to any item of Equipment, the amount determined by multiplying the Lessor's Cost of such item of Equipment by the percentage set forth in Schedule A hereto opposite the applicable Rent Payment Date; provided, that for purposes of Subsections 15(b) and 18(c) hereof, any determination of Stipulated Loss Value as of a date occurring after the final Rent Payment Date with respect to such item of Equipment, shall be made as of such final Rent Payment Date.

"Supplement" as defined in Subsection 1(a) hereof.

"Tax Benefits" shall mean such deductions and other benefits as are provided by the Code to an owner of property, including Depreciation Deductions and Amortization Deductions.

(b) All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles.

3. Term.

(a) Primary Term. The Primary Term of the lease of each item of Equipment hereunder shall commence on the Commencement Date specified in the Supplement pertaining thereto ("Commencement Date") and, unless earlier terminated pursuant to the provisions hereof, shall terminate on September 30, 2004.

(b) Renewal Option. So long as no Default or Event of Default shall have occurred and be continuing, Lessee may, by written notice delivered to Lessor at least 180 days (but not more than 360 days) prior to the expiration of the Primary Term, extend the lease term of any item of Equipment for a period of seven (7) years (a "Renewal Term") from the expiration of the Primary Term, as shall be specified in such notice. All provisions of this Lease shall be applicable during such Renewal Term except that the Stipulated Loss Value of each item of Equipment during such Renewal Term shall be determined as of the last Rent Payment Date occurring in the Primary Term.

4. Rent; Unconditional Obligations.

(a) Lessee shall pay to Lessor rent for each item of Equipment as follows:

(i) On October 1, 1989, an amount equal to the pro-rated quarterly rental for each item of Equipment from the Commencement Date with respect to such item of Equipment to and through September 30, 1989; and

(ii) On January 1, 1990, and on the 1st day of each April, July, October and January thereafter through and including July 1, 2004, and on September 30, 2004, an amount equal to \_\_\_\_\_ per \_\_\_\_\_ of the total Lessor's Cost of the items of Equipment, as set forth in the Supplement covering such Equipment.

Each installments of rent shall be payable at such address as Lessor may designate to Lessee.

(b) Lessee shall also pay to Lessor, on demand, interest at the Late Charge Rate on any installment of rent and on any other amount owing hereunder which is not paid when due, for any period for which the same shall be overdue. Each payment made under this Lease shall be applied first to the payment of interest then owing and then to rent or other amounts owing hereunder. Interest shall be computed on the basis of a 360-day year and actual days elapsed.

(c) This Lease is a net lease, and Lessee's obligation to pay all rent and all other amounts payable hereunder is ABSOLUTE AND UNCONDITIONAL under any and all circumstances and shall not be affected by any circumstances of any character whatsoever, including, without limitation, (i) any set-off, counterclaim, recoupment, defense, abatement or reduction or any right which Lessee may have against Lessor, the manufacturer or supplier of any of the Equipment or anyone else for any reason whatsoever; (ii) any defect in the title, condition, design, or operation of, or lack of fitness for use of, or any damage to, or loss of, all or any part of the Equipment from any cause whatsoever; (iii) the existence of any Liens with respect to the Equipment; (iv) the invalidity, unenforceability or disaffirmance of this Lease or any other document related hereto; or (v) the prohibition of or interference with the use or possession by Lessee of all or any part of the Equipment, for any reason whatsoever, including, without limitation, by reason of (1) claims for patent, trademark or copyright infringement; (2) present or future governmental laws, rules or orders; (3) the insolvency, bankruptcy or reorganization of any person; and (4) any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. Lessee hereby waives, to the extent permitted by applicable law, any and all rights which it may now have or which may at any time hereafter be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any Equipment. If for any reason whatsoever this Lease or any Supplement, other than pursuant to Subsection 15(b) hereof, shall be terminated in whole or in part by operation of law or otherwise, Lessee will nonetheless pay to Lessor an amount equal to each installment of rent at the time such installment would have become due and payable in accordance with the terms hereof. Each payment of rent or other amount paid by Lessee hereunder shall be final and Lessee will not seek to recover all or any part of such payment from Lessor for any reason whatsoever.

5. Disclaimer; Assignment of Warranties.

(a) LESSOR NEITHER MAKES NOR SHALL BE DEEMED TO HAVE MADE AND LESSEE HEREBY EXPRESSLY WAIVES ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE EQUIPMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR REPRESENTATION AS TO THE DESIGN, QUALITY OR CONDITION OF THE EQUIPMENT OR ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR PURPOSE OR AS TO THE TITLE TO OR LESSOR'S OR LESSEE'S INTEREST IN THE EQUIPMENT OR AS TO ANY OTHER MATTER RELATING TO THE EQUIPMENT OR ANY PART THEREOF.

LESSEE CONFIRMS THAT IT HAS SELECTED THE EQUIPMENT AND EACH PART THEREOF ON THE BASIS OF ITS OWN JUDGMENT AND EXPRESSLY DISCLAIMS RELIANCE UPON ANY STATEMENTS, REPRESENTATIONS OR WARRANTIES MADE BY LESSOR, AND LESSEE ACKNOWLEDGES THAT LESSOR IS NOT A MANUFACTURER OR VENDOR OF ANY PART OF THE EQUIPMENT.

LESSOR NEITHER MAKES NOR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY AS TO THE ACCOUNTING TREATMENT TO BE ACCORDED TO THE TRANSACTIONS CONTEMPLATED BY THIS LEASE OR AS TO ANY TAX CONSEQUENCES AND/OR TAX TREATMENT THEREOF.

(b) Lessor hereby assigns to Lessee such rights as Lessor may have (to the extent Lessor may validly assign such rights) under all manufacturers' and suppliers' warranties with respect to the Equipment; provided, however, that the foregoing rights shall automatically revert to Lessor upon the occurrence and during the continuance of any Event of Default hereunder, or upon the return of the Equipment to Lessor. Lessee agrees to settle all claims with respect to the Equipment directly with the manufacturers or suppliers thereof, and to give Lessor prompt notice of any such settlement and the details of such settlement.

6. Return. Lessee shall, upon the expiration of the Lease Term of each item of Equipment, return such item of Equipment to Lessor at such place within the continental United States of America as Lessor shall designate in writing to Lessee, provided, however, that Lessee shall not be required to return the Equipment to Lessor in any place or manner that does not comply with or is contemplated by Section 15 of the Permitted Sublease. Until such item of Equipment is returned to Lessor pursuant to the provisions of this Section, all of the provisions of this Lease with respect thereto shall continue in full force and effect. Lessee shall pay all the costs and expenses in connection with or incidental to the return of the Equipment, including, without limitation, the cost of removing, assembling, packing, insuring and transporting the Equipment. At the time of such return, the Equipment shall be in the condition and repair required to be maintained by Section 11 hereof and free and clear of all Liens.

7. Representations and Warranties; Covenants of Lessee.

In order to induce Lessor to enter into this Lease and to lease the Equipment to Lessee hereunder, Lessee represents and warrants to Lessor (other than with respect to Subsections (n), (p), (q) and (s) of this Section 7), and/or covenants (only with respect to Subsections (n), (p), (q) and (s) of this Section 7) with Lessor that:

(a) Organization. Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois.

(b) Power and Authority. Lessee has full power, authority and legal right to execute, deliver and perform this Lease, the Bill of Sale and the Permitted Sublease, and the execution, delivery and performance hereof and thereof has been duly authorized by all necessary corporate action of Lessee.

(c) Enforceability. This Lease, the Bill of Sale and the Permitted Sublease have been duly executed and delivered by Lessee and constitute legal, valid and binding obligations of Lessee enforceable in accordance with their terms.

(d) Consents and Permits. The execution, delivery and performance of this Lease, the Bill of Sale and the Permitted Sublease does not require any stockholder approval or approval or consent of any trustee or holders of any indebtedness or obligations of Lessee, and will not contravene any law, regulation, judgment or decree applicable to Lessee, or the certificate of incorporation or by-laws of Lessee, or contravene the provisions of, or constitute a default under, or result in the creation of any Lien upon any property of Lessee under any mortgage, instrument or other agreement to which Lessee is a party or by which Lessee or its assets may be bound; and no authorization, approval, license, filing or registration with any court or governmental agency or instrumentality is necessary in connection with the execution, delivery, performance, validity and enforceability of this Lease, the Bill of Sale or the Permitted Sublease.

(e) No Defaults. Lessee is not in default, and no event or condition exists which after the giving of notice or lapse of time or both would constitute an event of default, under any mortgage, indenture, contract, agreement, judgment or other undertaking to which Lessee is a party or which purports to be binding upon Lessee or upon any of its assets, except for any such default, event or condition which, individually or in the aggregate, would not affect Lessee's ability to perform its obligations under this Lease and the Permitted Sublease or any such mortgage, indenture, contract, agreement, judgment or other undertaking.

(f) Title to Equipment. On each Commencement Date, Lessor shall have good and marketable title to the items of Equipment being subjected to this Lease on such date, free and clear of all Liens.

(g) No Litigation. There is no action, suit, investigation or proceeding by or before any court, arbitrator, administrative agency or other governmental authority pending or, to Lessee's knowledge, threatened against or affecting Lessee (A) which involves the Equipment or the transactions contemplated by this Lease, the Permitted Sublease or the Equipment; or (B) which, if adversely determined, would have a material adverse effect on the financial condition, business or operations of Lessee.

(h) Financial Condition of the Lessee. The financial statements of Lessee heretofore furnished to Lessor are complete and correct and fairly present the financial condition of Lessee and the results of its operations for the respective periods covered thereby, there are no known contingent liabilities or liabilities for taxes of Lessee which are not reflected in said financial statements and since the date thereof, there has been no material adverse change in such financial condition or operations.

(i) Principal Place of Business. Lessee's principal place of business is located at 1325 West Irving Park Road, Suite 301, Bensenville, Illinois 60106.

(j) Recovery Period. Each item of Equipment has a recovery period of seven (7) years within the meaning of Section 168(c) of the Code.

(k) Reform Act. Each item of Equipment is property to which the amendments made to the Code by Section 201 of the Reform Act apply.

(l) Estimated Useful Life. The estimated useful life of the Equipment is equal to at least 125% of the Lease Term (assuming no renewal).

(m) Residual Value. The estimated fair market value of each item of Equipment at the end of the Lease Term (assuming no renewal) will be at least 20% of the Lessor's Cost thereof (without including in such value any increase or decrease for inflation or deflation, and after subtracting from such value any cost for removal and delivery of possession of such item of Equipment to Lessor at the end of the Lease Term).

(n) United States Source Income. Throughout the Lease Term thereof, no item of Equipment shall be used in a way that results in the creation of an item of income, gain, deduction, loss or credit to or for Lessor, the source of which for Federal income tax purposes is without the United States.

(o) Limited Use Property. No item of Equipment is "limited use property" within the meaning of IRS Revenue Procedure 76-30.

(p) U.S. Use. The items of Equipment will not be used predominantly outside the United States within the meaning of Section 48(a) (2) or 168(g) (1) (A) of the Code during any taxable year (or portion thereof) of Lessor beginning or ending within the Lease Term.

(q) Public Utility Property. At all times during the Lease Term, none of the Equipment will constitute "public utility property" within the meaning of Section 167(1)(3)(A) or 46(f)(5) of the Code.

(r) Fair Market Value. On the Commencement Date, the fair market value of each item of Equipment will be equal to the Lessor's Cost thereof and the Lessor's unadjusted tax basis in such item of Equipment will not be less than the Lessor's Cost thereof.

(s) Non-Permitted Use. Lessee will not permit any item of Equipment to be used by a tax-exempt organization, a governmental unit or a foreign person within the meanings of Sections 48(a)(4), 48(a)(5), or 168(h)(2) of the Code.

(t) Solvency; Fair Consideration. Lessee is not insolvent within the meaning of applicable state and federal laws. The sale of any item of Equipment by Lessee to Lessor and Lessee's undertaking of the obligations contained herein shall not cause Lessee to be insolvent within the meaning of applicable state and federal laws. The payment by Lessor to Lessee of the Lessor's Cost of any item of Equipment as set forth in the Supplement is fair consideration for such item of Equipment within the meaning of applicable state and federal laws.

(u) Sale by Lessee. Without limiting the generality of any of the foregoing representations and warranties, the sale by Lessee to Lessor of any item of Equipment does not require any stockholder approval or consent of any trustees or holders of any indebtedness or obligations of Lessee, and will not contravene any law, statute, regulation, judgment or decree applicable to Lessee, including, but not limited to, laws or statutes regarding fraudulent conveyances, bankruptcy, creditor's rights or bulk

transfers, or the articles of incorporation or by-laws of Lessee, or contravene the provisions of, or constitute a default under, or violate any restrictive covenants or other agreement to which Lessee is a party or which Lessee or its assets may be bound or affected; and any authorization, approval, license, filing or registration with any court or governmental agency or instrumentality which is necessary in connection with such sale has been effected and a written copy thereof has been delivered to Lessor.

8. Prohibition Against Liens; Markings.

(a) Prohibitions Against Liens. Lessee, at its own expense, will promptly pay or cause to be paid, or otherwise satisfy and discharge, any and all sums claimed by any party by, through or under Lessee or its successors or assigns which if unpaid, might become a Lien upon any item of Equipment, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not adversely affect the title, property or rights of Lessor created hereunder.

(b) Markings.

(i) Duty to Number and Mark Equipment. Lessee will cause each item of Equipment to be kept numbered with the identifying number set forth in the applicable Supplement, and will cause to be kept and maintained permanently and conspicuously marked on each side of each item of Equipment, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO DOCUMENTS FILED WITH THE INTERSTATE COMMERCE COMMISSION," with applicable changes thereof and additions thereto as from time to time may be required by law in order to protect the title of Lessor to such item of Equipment. Lessee will not change the identifying number of any item of Equipment unless a statement of new numbers shall be delivered to Lessor and filed, recorded and deposited by Lessee in all public offices where this Lease shall have been filed, recorded and deposited.

(ii) Prohibition Against Certain Designations. The Equipment may be lettered with the names or initials or other insignia customarily use by Lessee or any Permitted Sublessee or their affiliates, but Lessee will not allow the name of any other person, association or corporation to be placed on any item of Equipment as a designation that might reasonably be interpreted as a claim of legal ownership.

9. Insurance. Lessee shall at all times during the Lease Term, carry and maintain or cause to be carried and maintained on the Equipment, at its or any Permitted Sublessees cost and expense, "all-risk" physical damage insurance and comprehensive general liability insurance (covering bodily injury and property damage exposures, including but not limited to, contractual liability and product liability) in such amounts, against such risks, in such form and with such insurers as shall be satisfactory to Lessor; provided, that the amount of "all-risk" physical damage insurance shall not on any date be less than the greater of the full replacement value or the Stipulated Loss Value of the Equipment as of such date. In no event shall Lessor be responsible for premiums, warranties or representations to any insurer or any agent thereof. At Lessor's option, Lessee shall furnish to Lessor a certificate or other evidence satisfactory to Lessor that such insurance coverage is in effect, provided, however, that Lessor shall be under no duty to ascertain the existence or adequacy of such insurance. The insurance maintained by Lessee shall be primary without any right of contribution from insurance which may be maintained by Lessor.

10. Taxes.

(a) General Tax Indemnity. Lessee hereby agrees to pay and to indemnify and hold Lessor harmless from and against, all fees, taxes (whether sales, use, excise, personal property or other taxes), imposts, duties, withholdings, assessments and other governmental charges of whatever kind or character, however designated (together with any penalties, fines or interest thereon), all of the foregoing being herein collectively called "Impositions", which are at any time levied or imposed against Lessor, Lessee, this Lease, the Equipment or any part thereof by any federal, state or local government or taxing authority in the United States or by any foreign government or any subdivision or taxing authority thereof upon, with respect to, as a result of or measured by (i) the Equipment (or any part thereof), or this Lease or the interest of the Lessor therein; or (ii) the purchase, ownership, delivery, leasing, possession, maintenance, use, operation, return, sale or other disposition of the Equipment or any part thereof; or (iii) the rentals, receipts or earnings payable under this Lease or otherwise arising from the Equipment or any part thereof; excluding, however, taxes based on or measured by the net income of Lessor that are imposed by (1) the United States of America, or (2) any State of the United States of America or any political subdivision of any such State in which Lessor is subject to Impositions as the result (whether solely or in part) of business or transactions unrelated to this Lease. Notwithstanding the above, Lessee shall not be required to indemnify and hold Lessor harmless under this Subsection 10(a) for any Imposition levied or imposed after the return of the Equipment to Lessor and which Impositions do not relate back to

any time during the Lease Term. Lessor shall pay, and, promptly upon receipt of Lessor's invoice therefore, Lessee shall reimburse Lessor for paying, the Impositions, unless Lessor and Lessee shall agree in writing that Lessee will pay any Impositions directly. In case any report or return is required to be filed with respect to any obligation of Lessee under this Subsection 10(a) or arising out of this Subsection 10(a), Lessor shall make such report or return in such manner as well show the ownership of the Equipment in Lessor, unless Lessor and Lessee shall agree in writing that Lessee shall pay any Impositions directly or shall file any reports or returns. The obligations of Lessee under this Subsection 10(a) shall survive the expiration or earlier termination of this Lease.

(b) Special Tax Indemnities.

(i) Lessor has calculated the periodic rentals and Stipulated Loss Values based in part on Lessee's representations and warranties herein and on the following assumptions:

(a) that Lessor will be entitled to depreciation deductions ("Depreciation Deductions") under Section 168(a) of the Code for each item of Equipment in an amount determined, commencing with the taxable year in which such item is accepted hereunder, by using (i) the method described in Section 168(b)(1) of the Code, (ii) an applicable recovery period of seven years and (iii) an initial adjusted basis equal to the Lessor's Cost of such item of Equipment; and that Lessor will be entitled to amortization of expenses (the "Amortization Deductions") paid or to be paid by Lessor, if any, in connection with this Lease at a rate no less rapid than straight line over the Lease Term;

(b) that the rate of tax imposed on the Federal taxable income of Lessor will be 34%; that the rate of state and local income taxes imposed on Lessor will be 7.5%; that the rate of state and local taxes imposed on or measured by the net income of Lessor (after benefit of the deduction for such state and local taxes for Federal income tax purposes) will be 5.0%; and that the net income upon which such state and local taxes will be imposed will equal Lessor's Federal taxable income, so that Lessor's Federal taxable income will be subject to an overall effective rate of 39%;

(c) that Lessor will have sufficient gross income within the meaning of Section 61(a) of the Code to fully benefit from the Depreciation Deductions and the Amortization Deductions.

(d) that, for Federal income tax purposes, Lessor shall be entitled to treat each item of income, gain, loss, deduction and credit with respect to the Equipment as derived from, or allocable to, sources within the United States.

(ii) Except as set forth in Subsection 10(b)(iii) below, if on any one or more occasions, (1) under any circumstances or for any reason whatsoever including, without limitation, any Change in Tax Law, Lessor shall lose, shall not have or shall lose the right to claim or counsel for Lessor shall determine that Lessor does not have substantial authority (within the meaning of Section 6661 of the Code and the regulations promulgated thereunder) for claiming, or there shall be disallowed, recalculated, or recaptured all or any portion of the Tax Benefits, or (2) Lessor is required to include in its gross income an amount of rent prior to the period(s) for which such amounts are payable in accordance with the terms of this Lease, or (3) there shall occur any Change in Tax Law which, in the sole judgment of Lessor, would otherwise adversely affect Lessor's Economics, or (4) any item of income, gain, loss, deduction or credit with respect to the Equipment shall be treated as derived from, or allocable to, sources without the United States and as a consequence thereof Lessor shall be able to utilize as a credit against its Federal income tax liability in any year, a smaller amount of foreign taxes than it would have been able to utilize had such item of income, gain, loss, deduction or credit not been treated as derived from, or allocable to, sources without the United States (hereinafter each of the events described in the foregoing clauses (1), (2), (3) and (4) of this Subsection 10(b)(ii) shall be referred to individually as an "Indemnity Event"), then, in connection with each such occasion Lessee agrees to pay Lessor from time to time upon demand an amount which (after deduction of all taxes required to be paid by Lessor in respect of the receipt of said indemnity amount under the laws of any Federal, state or local government or taxing authority of the United States or of any taxing authority or government subsidiary of any foreign country, provided, that for purposes of determining the amount of taxes required to be paid by Lessor in respect of the receipt of said indemnity amount, it shall be assumed that Federal, state and local taxes are payable by Lessor at the highest marginal statutory rates in effect for the relevant period) shall be equal to the sum of (A) the amount of additional income taxes paid or payable by Lessor (computed in accordance with Subsection 10(b)(v) hereof) as a result of such Indemnity Event; (B) the amount, as calculated by Lessor, of any other diminution in Lessor's Economics resulting from a Change in Tax Law, with respect to the entire portion of the Lease Term affected by such change; and (C) any interest or penalty which may be assessed in connection with any of the foregoing, including, without limitation, any addition to tax due to the underpayment of estimated taxes assessed against Lessor in connection therewith.

(iii) Lessee shall not be required to pay Lessor the amount provided for in subsection (ii) above of this Subsection 10(b) if the Indemnity Event shall result solely because of the occurrence of any of the following events:

(a) Lessee is required by the terms hereof to pay and shall have paid the Stipulated Loss Value for said item of Equipment;

(b) A voluntary transfer or other voluntary disposition by Lessor of any interest in this Lease or any item of Equipment for Federal income tax purposes, but only if (1), such voluntary transfer or other voluntary disposition shall be the direct cause of the loss of the Tax Benefits, and (2), such voluntary transfer or other voluntary disposition shall occur at a time when no Event of Default has occurred and is continuing;

(c) The failure of Lessor to claim the Tax Benefits unless (1) Lessor for any reason shall lose, shall not have, or shall lose the right to claim, the Tax Benefits or (2) counsel for Lessor shall determine that Lessor does not have substantial authority (within the meaning of Section 6661 of the Code and the regulations promulgated thereunder) to claim the Tax Benefits; or

(d) The failure of Lessor to have sufficient gross income within the meaning of Section 61(a) of the Code to benefit from the Depreciation Deductions or the Amortization Deductions, as the case may be.

(iv) If for any reason Lessor is required to include in its gross income for Federal, state or local income tax purposes at any time with respect to any item of Equipment (unless entitled to an equal deduction in the same taxable year) any part or all of the cost of (A) any repairs and maintenance of any item of Equipment, (B) any alterations, modifications, improvements or additions to any item of Equipment, or (C) any other expenditures by Lessee with respect to any item of Equipment, then Lessee shall pay Lessor, upon demand, the sum of (1) the amount of any increase in Lessor's Federal, state and local income taxes resulting from the inclusion of such costs in the gross income of Lessor, such amount to be decreased by any savings by Lessor in such taxes resulting from such costs, (2) the amount of any interest or penalties, including any addition to tax due to the underpayment of estimated taxes, assessed against Lessor in connection therewith, and (3) the amount of any taxes required to

be paid by Lessor in respect of the receipt of amounts specified in clauses (1) and (2) above and this clause (3), provided, that for purposes of determining the amount of taxes required to be paid by Lessor in respect of the receipt of said indemnity amounts, it shall be assumed that Federal, state and local taxes are payable by Lessor at the highest marginal statutory rates in effect for the relevant period.

(v) Calculation by Lessor of any indemnity amounts payable by Lessee under this Subsection 10(b) shall be made by Lessor on a pro-forma basis, holding constant the Assumptions, except those Assumptions which are themselves affected by the Indemnity Event or any previous Indemnity Event, and measuring the impact of those changed Assumptions on the original pricing model, and on the basis of the following additional assumptions: that in computing its Federal state and local income tax liability (1) Lessor can concurrently fully utilize the Tax Benefits that are the subject of an Indemnity Event against Federal income taxes payable at the highest marginal Federal corporate income tax rates then in effect and against state and local taxes at the weighted average of the highest marginal rates (computed on the assumption that Lessor has sufficient taxable income for state and local tax purposes to be subject to tax at the highest marginal corporate rates) to which Lessor is then subject (the over-all effective rate of tax so determined being hereinafter called the "Effective Rate"), (2) in the event Lessor is required to include in its gross income any amount described in clause (ii)(2) or paragraph (iv) of this Subsection 10(b), Lessor will be subject to Federal, state and local taxes on any such amount at the Effective Rate, and (3) each Indemnity Event will result in state and local income tax consequences to Lessor that mirror Lessor's Federal income tax consequences. Indemnity payments with regard to a given Indemnity Event shall be made in a single, lump-sum payment. Stipulated Loss Values shall be adjusted by Lessor to those values determined by Lessor as necessary to maintain Lessor's Economics, and in a manner consistent with the calculation of indemnity payments. In no event will Lessee be entitled to inspect the tax returns of Lessor, or any other document which Lessor deems to be confidential. Upon request of Lessee made within a reasonable time following the delivery to Lessee by Lessor of a notice that an indemnity payment is due pursuant to this Subsection 10(b), the amount of such indemnity payment, shall be verified by Lessor's independent public accountants or by a nationally

recognized independent accounting firm mutually acceptable to Lessor and Lessee. In order to facilitate such verification Lessor shall make available to such accountants all information reasonably necessary for such verification, including any computer program used by Lessor to calculate any such amounts. Such information shall be for the confidential use of such accountants and shall not be disclosed to Lessee or any other person. The costs of such verification shall be borne by Lessee, unless the independent accounting firm determines that no indemnity payment is due, in which case the costs of such verification shall be borne by Lessor. If the independent accounting firm determines that an indemnity payment is due, but not in the amount originally requested by Lessor, then the costs of such verification shall be borne by Lessor and Lessee pro-rate in an amount that bears the same relationship that the indemnity payment amount verified by the independent accounting firm bears to the indemnity payment amount originally requested by Lessor.

(vi) If any indemnity payments shall be made by Lessee under this Subsection 10(b), then for purposes of calculating any indemnity payments required to be made by reason of any subsequent Indemnity Event, the Assumptions shall be revised, if necessary, to reflect the altered tax consequences which gave rise to indemnity payments required to be made pursuant to this Subsection 10(b).

(vii) For the purposes of this Subsection 10(b) only, the term "Lessor" shall include the "common parent" and all other corporations included in the affiliated group, within the meaning of Section 1504 of the Code (or any other successor section thereto), of which Lessor is or becomes a member.

(viii) The provisions of this Subsection 10(b) shall survive the expiration or earlier termination of this Lease.

11. Compliance with Laws; Operation and Maintenance; Additions.

(a) Lessee will comply with all applicable DOT, ICC, FRA and all other governmental laws, regulations, requirements and rules, and with the applicable rules of the AAR, with respect to the 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 on any item of Equipment in order to comply with such laws, regulations, requirements and rules (including, without limitation, the Interchange Rules), Lessee agrees to make, or cause to be made, such alterations, additions, replacements and/or modifications at its own expense and title thereto shall be immediately vested in Lessor.

(b) Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear; provided that in no event shall the Lessee knowingly permit such item of Equipment to be exposed to or be used to carry, whether as consignments for common carrier shipment or otherwise, any toxic or explosive materials. Lessee shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, but in all cases usable in the manner for which it was designed and intended and in compliance with the Interchange Rules for railcars operating on the railroads, and in any event at the same level of maintenance at which Lessee keeps equipment which it owns or leases similar in nature to the Equipment.

(c) Lessee will not make or authorize any improvement, change, addition or alteration to the Equipment (i) if such improvement, change, addition or alteration will impair the originally intended function or use of the Equipment or materially adversely affect the value of the Equipment as it existed immediately prior to such improvement, change, addition or alteration; or (ii) if any parts installed in or attached to or otherwise becoming a part of the Equipment as a result of any such improvement, change, addition or alteration shall not be readily removable without material damage to the Equipment. Any part which is added to the Equipment without violating the provisions of the immediately preceding sentence and which is not a replacement or substitution for any property which was a part of the Equipment, shall remain the property of Lessee and may be removed by Lessee at any time prior to the expiration or earlier termination of the Lease Term. All such parts shall be and remain free and clear of any Liens. Any such part which is not so removed prior to the expiration or earlier termination of the Lease Term shall, without further act, become the property of Lessor.

12. Inspection. Lessor or its authorized representatives may at any reasonable time or times inspect the Equipment and the books and records of Lessee.

13. THIS SECTION INTENTIONALLY LEFT BLANK.

14. THIS SECTION INTENTIONALLY LEFT BLANK.

15. Loss or Damage.

(a) All risk of loss, theft, damage or destruction to the Equipment or any part thereof, however incurred or occasioned, shall be borne by Lessee and, unless such occurrence constitutes an Event of Loss pursuant to Subsection (b) of this

Section 15, Lessee shall promptly give Lessor written notice thereof and shall promptly cause the affected part or parts of the Equipment to be replaced or restored to the condition and repair required to be maintained by Section 11 hereof.

(b) If an Event of Loss with respect to any item of Equipment shall occur, Lessee shall promptly give Lessor written notice thereof, and Lessee shall pay to Lessor within fifty days of said Event of Loss an amount equal to the sum of (i) the Stipulated Loss Value of such item of Equipment computed as of the Rent Payment Date with respect to such item of Equipment on or immediately preceding the date of the occurrence of such Event of Loss; and (ii) all rent and other amounts due and owing hereunder for such item of Equipment on or prior to the Loss Payment Date. Upon payment of such amount to Lessor, the lease of such item of Equipment hereunder shall terminate, and Lessor will transfer to Lessee, Lessor's right, title and interest in and to such item of Equipment, on an "as-is, where-is" basis, without recourse and without representation or warranty, express or implied, other than a representation and warranty that such item of Equipment is free and clear of any Lessor's Liens.

(c) Any payments received at any time by Lessor or Lessee from any insurer with respect to loss or damage to the Equipment shall be applied as follows: (i) if such payments are received with respect to an Event of Loss they shall be paid to Lessor, but to the extent received by Lessor, they shall reduce or discharge, as the case may be, Lessee's obligation to pay the amounts due to Lessor under Subsection 15(b) hereof with respect to such Event of Loss; or (ii) if such payments are received with respect to any loss of or damage to the Equipment other than an Event of Loss, such payments shall, unless a Default or Event of Default shall have occurred and be continuing, be paid over to Lessee to reimburse Lessee for its payment of the costs and expenses incurred by Lessee in replacing or restoring pursuant to Subsection 15(a) hereof the part or parts of the Equipment which suffered such loss or damage.

16. General Indemnity. Lessee assumes liability for, and shall indemnify, protect, save and keep harmless Lessor and its agents, servants, successors and assigns (an "Indemnatee") from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses, on, incurred by or asserted against any Indemnatee, in any way relating to or arising out of this Lease or the enforcement hereof, or the manufacture, purchase, acceptance, rejection, ownership, possession, use, selection, delivery, lease, operation, condition, sale, return or other disposition of the Equipment or any part thereof (including, without limitation, latent or other defects, whether or not discoverable by Lessee or any other person, any claim in tort for strict liability and any

claim for patent, trademark or copyright infringement); provided, however, that Lessee shall not be required to indemnify any Indemnitee for loss or liability arising from acts or events which occur after the Equipment has been returned to Lessor in accordance with this Lease, or for loss or liability resulting solely from the willful misconduct or gross negligence of such Indemnitee. Any payments made by Lessee under this Section 16 shall be made on an after-tax basis. The provisions of this Section 16 shall survive the expiration or earlier termination of this Lease.

17. Events of Default. The following events shall each constitute an event of default (herein called "Event of Default") under this Lease:

(a) Lessee shall fail to make any payment of rent or other amount owing hereunder within 15 Business Days after the same is due; or

(b) Lessee shall fail to maintain the insurance required by Section 9 hereof or to perform or observe any of the warranties or covenants contained in Subsection 7(n), Subsection 20(a) or Section 21 hereof; or

(c) Lessee shall fail to perform or observe any other warranty, covenant, condition or agreement to be performed or observed by it with respect to this Lease and such failure shall continue unremedied for 30 days after the earlier of (a) the date on which Lessee obtains, or should have obtained knowledge of such failure; or (b) the date on which notice thereof shall be given by Lessor to Lessee; or

(d) any representation or warranty made by Lessee herein or in any document, certificate or financial or other statement now or hereafter furnished Lessor in connection with this Lease shall prove to have been untrue or misleading in any material respect as of the time when made; or

(e) the entry of a decree or order for relief by a court having jurisdiction in respect of Lessee, adjudging Lessee a bankrupt or insolvent, or approving as properly filed a petition seeking a reorganization, arrangement, adjustment or composition of or in respect of Lessee in an involuntary proceeding or case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal, state or foreign bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee or sequestrator (or similar official) of Lessee or of any substantial part of its property, or ordering the winding-up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 30 days; or

(f) the institution by Lessee of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the commencement by Lessee of a voluntary proceeding or case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal, state or foreign bankruptcy, insolvency or other similar law, or the consent by it to the filing of any such petition or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian or sequestrator (or other similar official) of Lessee or of any substantial part of its property, or the making by it of any assignment for the benefit of creditors or the admission by it of its inability to pay its debts generally as they become due or its willingness to be adjudicated a bankrupt or the failure of Lessee generally to pay its debts as they become due or the taking of corporate action by Lessee in furtherance of any of the foregoing; or

(g) any Event of Default (as defined in the Permitted Sublease) shall have occurred and be continuing.

18. Remedies. If an Event of Default described in Subsections 17(e) or (f) above shall occur, then, and in any such event, this Lease shall automatically, without any notice or other action by Lessor, be deemed to be in default, and if any other Event of Default shall occur and be continuing, then, and in any such event, Lessor may, at its option, declare this Lease to be in default; and at any time after this Lease shall be deemed to be in default pursuant to this sentence or be declared to be in default, Lessor may, subject to the leasehold rights of any Permitted Sublessee, do any one or more of the following with respect to all of the Equipment or any part thereof as Lessor in its sole discretion shall elect, to the extent permitted by applicable law then in effect:

(a) demand that Lessee, and Lessee shall at its expense upon such demand, return the Equipment promptly to Lessor at such place in the continental United States of America as Lessor shall specify, or Lessor, at its option, may enter upon the premises where the Equipment is located and take immediate possession of the Equipment and remove the same by summary proceedings or otherwise, all without liability for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by such taking or otherwise;

(b) sell the Equipment at public or private sale, with or without notice, advertisement or publication, as Lessor may determine, or otherwise dispose of, hold, use, operate, lease to

others or keep idle the Equipment as Lessor in its sole discretion may determine, all free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or inaction or for any proceeds with respect thereto;

(c) by written notice to Lessee specifying a payment date which shall be not earlier than 20 days after the date of such notice, demand that Lessee pay to Lessor, and Lessee shall pay to Lessor, on the payment date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty, all accrued and unpaid rent for the Equipment due on all Rent Payment Dates up to and including the payment date specified in such notice plus an amount (together with interest on such amount at the Late Charge Rate, from the payment date specified in such notice to the date of actual payment) equal to the excess, if any, of the Stipulated Loss Value of the Equipment as of the payment date specified in such notice over the Fair Market Sale Value of the Equipment as of such date;

(d) by written notice to Lessee specifying a payment date which shall be not earlier than 20 days after the date of such notice, demand that Lessee pay to Lessor, and Lessee shall pay to Lessor, on the payment date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty, all accrued and unpaid rent for the Equipment due on all Rent Payment Dates up to and including the payment date specified in such notice, plus an amount (together with interest on such amount at the Late Charge Rate, from the payment date specified in such notice to the date of actual payment) equal to the Stipulated Loss Value for the Equipment computed as of the payment date specified in such notice; and upon such payment of liquidated damages and the payment of all other amounts then due hereunder, Lessor shall proceed to exercise its best efforts promptly to sell the Equipment and shall pay over to Lessee the net proceeds of such sale (after deducting from such proceeds all costs and expenses whatsoever incurred by Lessor in connection therewith and all other amounts which may become payable to Lessor) up to the amount of the Stipulated Loss Value actually paid;

(e) Lessor may exercise any other right or remedy which may be available to it under applicable law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof or to rescind this Lease.

In addition, Lessee shall be liable for any and all unpaid rent and other amounts due hereunder before or during the exercise of any of the foregoing remedies and for all legal fees and other costs and expenses incurred by reason of the occurrence

of any Event of Default or the exercise of Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the placing of the Equipment in the condition required by Section 11 hereof.

No remedy referred to in this Section 18 is intended to be exclusive but each shall be cumulative and in addition to any other remedy referred to herein or otherwise available to Lessor at law or in equity; and the exercise or beginning of exercise by Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by Lessor of any or all such other remedies. No express or implied waiver by Lessor of an Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default. To the extent permitted by applicable law, Lessee hereby waives any rights now or hereafter conferred by statute or otherwise which may require Lessor to sell, or lease or otherwise use the Equipment in mitigation of Lessor's damages or losses or which may otherwise limit or modify any of Lessor's rights or remedies under this Lease.

19. Lessor's Right to Perform. If Lessee fails to make any payment required to be made by it hereunder or fails to perform or comply with any of its other agreements contained herein, Lessor may itself make such payment or perform or comply with such agreement, and the amount of such payment and the amount of the reasonable expenses of Lessor incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the Late Charge Rate, shall be deemed to be additional rent, payable by Lessee on demand.

20. Possession; Subleasing; Assignment of Subleases.

(a) Except as permitted in Subsection 20(b) hereof, the Equipment shall at all times be in the sole possession and control of Lessee, and Lessee will not, without the prior written consent of Lessor, except as otherwise provided in this Lease, sell, transfer, assign or encumber this Lease or any interest herein or sublease, or otherwise transfer its interest in the Equipment, and any attempted assignment, sublease or other transfer by Lessee in violation of this Section 20 shall be void.

(b) So long as no Default or Event of Default shall have occurred and be continuing, Lessee may, with the prior written consent of Lessor, which consent shall not be unreasonably withheld, and which determination will be made within five (5) Business Days, sublease (or permit a Permitted Sublessee to further sublease) any item of Equipment provided that any such sublease or further sublease (a "Permitted Sublease") must satisfy the following conditions: (i) such Permitted Sublease

shall be in compliance with all applicable laws and governmental regulations; (ii) such Permitted Sublease shall not affect or reduce any of the obligations of Lessee hereunder and this Lease and all obligations of Lessee hereunder shall continue in full force and effect as the obligations of a principal and not the obligations of a surety; (iii) the rights of a Permitted Sublessee under a Permitted Sublease shall be subject and subordinate to all the terms of, and all the rights of Lessor under, this Lease, except that such Permitted Sublessee shall have the right of possession, use and quiet enjoyment with respect to the subleased Equipment pursuant to the terms of such Permitted Sublease so long as such Permitted Sublessee is not in default under its Permitted Sublease; (iv) the insurance required to be maintained pursuant to Section 9 hereof shall continue in full force and effect irrespective of such Permitted Sublease; and (v) the Permitted Sublessee must be a company incorporated, or a partnership organized, under the laws of the United States, any state thereof, or the District of Columbia.

(c) To secure the payment and performance of Lessee's obligations under this Lease, Lessee does hereby assign and grant a security interest to Lessor in all of the right, title and interest of Lessee in, to, and under any and all Permitted Subleases for any item of Equipment in effect from time to time including, without limitation, all right, title and interest of Lessee in and to all rents, issues, profits, revenues, and other income of the items of Equipment and other moneys due and to become due to Lessee under, all proceeds of, and all claims for damages arising out of, the breach of any such Permitted Sublease, the right of Lessee to terminate the same, to perform thereunder, and to compel performance of the terms thereof. Lessee covenants (i) that any and all Permitted Subleases described above shall contain a provision permitting the Lessee to assign the Permitted Sublease and a provision obligating the Permitted Sublessee, upon notice from the Lessor, to immediately make payment of all monies due and to become due under or arising out of said Permitted Sublease to Lessor; (ii) that Lessee shall stamp Lessee's record copy and each and every other copy, which Lessee has in its possession, of the Permitted Sublease, to show that such Permitted Subleases have been assigned to Lessor; and (iii) Lessee shall immediately cause any Permitted Sublease to be recorded with the ICC. Lessee will specifically authorize and direct each person liable therefore to make payments of all monies due and to become due under or arising out of the Permitted Subleases directly to Lessor and upon such demand irrevocably authorizes and empowers Lessor to ask, demand, receive, receipt and give acquittance for any and all such amounts which are to become due or payable or remain unpaid at any time or times to Lessor by each such person under or arising out of any Permitted Sublease, to endorse any checks, drafts, or other orders for the payment of money payable to Lessee in

payment therefor; and in its discretion to file any claims or take any action or proceeding either in its own name or in the name of Lessee or otherwise which Lessor may reasonably deem to be necessary or advisable in the premises. Lessee hereby irrevocably authorizes Lessor after any such demand has been made, in its own name and in the name and on behalf of Lessee, to give notification to persons obligated under a Permitted Sublease of this Lease that payment is to be made to Lessor as provided above.

21. No Changes in Lessee. Lessee will not (a) enter into any transaction of merger or consolidation unless it is the surviving corporation and after giving effect to such merger or consolidation its tangible net worth equals or exceeds that which existed prior to such merger or consolidation; or (b) liquidate or dissolve; or (c) other than in the ordinary course of business, sell, transfer or otherwise dispose of all or substantially all of its assets; or (d) change the form of organization of its business; or (e) without thirty (30) days prior written notice to Lessor, change its name or its chief place of business.

22. Further Assurances; Financial Information.

(a) Lessee will, at its expense, promptly and duly execute and deliver to Lessor such further documents and assurances and take such further action as Lessor may from time to time request in order to more effectively carry out the intent and purpose of this Lease and to establish and protect the rights, interests and remedies created or intended to be created in favor of Lessor hereunder.

(b) Lessee will furnish to Lessor (i) as soon as available, but in any event not later than 120 days after the end of each fiscal year of Lessee, a consolidated balance sheet of Lessee as at the end of such fiscal year, and consolidated statements of income and changes in financial position of Lessee for such fiscal year, together with equivalent information for the prior fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved and certified by Lessee's chief financial officer; and (ii) promptly, such additional financial and other information as Lessor may from time to time reasonably request.

23. Notices. All notices, demands and other communications hereunder shall be in writing, and shall be deemed to have been given or made when delivered in person or two (2) Business Days after being deposited in the United States mail, certified mail, return receipt requested, addressed as follows or to such other address as any of the following persons may from time to time designate in writing to the other persons listed below:

Lessor: The CIT Group/Equipment Financing, Inc.  
1400 Renaissance Drive  
Suite 312  
Park Ridge, IL 60068  
Attention: Vice President - Credit

and

The CIT Group/Equipment Financing, Inc.  
270 Park Avenue  
New York, New York 10017  
Attention: Senior Vice President - Credit

Lessee: Premier Equipment Leasing Company  
1325 West Irving Park Road  
Suite 301  
Bensenville, IL 60106

with a copy to

Walter Deitch, Esq.  
Rosenthal & Schanfield  
55 East Monroe  
Suite 4620  
Chicago, Illinois 60603

24. Conditions Precedent:

(a) Lessor shall not be obligated to accept and execute the first Supplement or to lease any Equipment to Lessee hereunder unless:

(i) Lessor shall have received a copy of resolutions of the Board of Directors of Lessee, certified by the Secretary or an Assistant Secretary of Lessee as of the date of the first Supplement, authorizing the execution, delivery and performance by Lessee of this Lease, the Supplements, and any Permitted Sublease;

(ii) Lessor shall have received an incumbency and signature certificate of Lessee, dated the date of the first Supplement and in form and substance satisfactory to Lessor, setting forth the names and signatures of each officer of Lessee authorized to sign this Lease, the Supplements, any Permitted Sublease and all other instruments and documents relating thereto, which certificate may be relied on by Lessor until it receives written notice to the contrary;

(iii) Lessor shall have received an opinion of counsel for Lessee, substantially in the form attached hereto as Exhibit E, dated the date of the first Supplement;

(iv) Lessor shall have received evidence satisfactory to it as to the due compliance by Lessee with the provisions regarding insurance contained in Section 9 hereof;

(v) Lessor shall have received the original of the Permitted Sublease, which Permitted Sublease must be satisfactory to Lessor;

(vi) Lessor shall have received an executed original of the Acknowledgment, and

(vii) Lessor shall have received an appraisal satisfactory to Lessor regarding the commercial reasonableness of the Lessor's Cost of the Equipment.

(b) Lessor shall not be obligated to accept and execute any supplement or to lease the items of Equipment described therein to Lessee hereunder unless:

(i) Lessor shall have received good and marketable title to such Equipment, free and clear of Liens;

(ii) Lessor shall have received evidence satisfactory to it as to the proper calculation of the amount of Lessor's Cost of such items of Equipment and shall be satisfied that all amounts included in Lessor's Cost have been, or concurrently with Lessor's acceptance of such Supplement will be, paid in full;

(iii) Such Uniform Commercial Code financing statements as Lessor shall deem necessary or desirable in order to perfect and protect its interests therein shall have been duly executed and filed, at Lessee's expense, in such public offices as Lessor shall direct;

(iv) All representations and warranties of Lessee contained herein or in any document or certificate furnished Lessor in connection herewith shall be true and correct on and as of the date of such Supplement with the same force and effect as if made on and as of such date; no Event of Default or Default shall be in existence on such date or shall occur as a result of the lease by Lessee of the Equipment specified in such Supplement;

(v) In the sole judgment of Lessor, there shall have been no material adverse change in the financial condition or business of Lessee or any Permitted Sublease from December 31, 1988;

(vi) All proceedings to be taken in connection with the transactions contemplated by this Lease, and all documents incidental thereto, shall be satisfactory in form and substance to Lessor and its counsel;

(vii) Lessor shall have received from Lessee, in form and substance satisfactory to it, such other documents and information as Lessor shall reasonably request; and

(viii) All legal matters in connection with the transactions contemplated by this Lease shall be satisfactory to Lessor's counsel.

(ix) No Change in Tax Law, or state tax law or regulation, which in the sole judgment of Lessor would adversely affect Lessor's Economics, shall have occurred or shall appear, in Lessor's good faith judgment, to be imminent.

25. Commitment Fee; Purchase Price.

(a) Commitment Fee. Lessor acknowledges receipt from Lessee of a non-refundable commitment fee in the amount of \$5000.00.

(b) Purchase Price. Lessor acknowledges that upon satisfaction by Lessee of the conditions precedent set forth in Section 24 hereof, Lessor shall execute the Supplement tendered to it by Lessee and shall pay Lessee the sum of \_\_\_\_\_ by wire transfer of immediately available funds to such accounts as designated by Lessee.

26. Miscellaneous.

(a) Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be 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 provision in any other jurisdiction. To the extent permitted by applicable law, Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

(b) No term or provision of this Lease may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No delay or failure on the part of Lessor to exercise any power or right hereunder shall operate as a waiver thereof, nor as an acquiescence in any default, nor shall any single or partial exercise of any power or right preclude any other or further exercise thereof, or the exercise of any other power or right. After the occurrence of any Default or Event of Default, the acceptance by Lessor of any payment of rent or other sum owed by Lessee pursuant hereto shall not constitute a waiver by Lessor of such Default or Event of Default, regardless of Lessor's knowledge or lack of knowledge thereof at the time of acceptance of any such payment, and shall not constitute a reinstatement of this Lease if this Lease shall have been declared in default by Lessor pursuant to Section 18 hereof or otherwise, unless Lessor shall have agreed in writing to reinstate the Lease and to waive the Default or Event of Default.

(c) Whether or not any of the transactions contemplated hereby shall be consummated, Lessee agrees to pay all out-of-pocket expenses of Lessor in connection with this Lease, including, without limitation, the reasonable fees and disbursements of counsel for Lessor, in connection with the preparation, execution and delivery of this Lease and related documents.

(d) This Lease contains the full, final and exclusive statement of the agreement between Lessor and Lessee relating to the lease of the Equipment .

(e) This Lease shall constitute an agreement of lease, and nothing herein shall be construed as conveying to Lessee any right, title or interest in the Equipment except as lessee only.

(f) This Lease and the covenants and agreements contained herein shall be binding upon, and inure to the benefit of, Lessor and its successors and assigns and Lessee and, to the extent permitted by Section 20 hereof, its successors and assigns.

(g) The headings of the sections are for convenience of reference only, are not a part of this Lease and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

(h) This Lease may be executed by the parties hereto on any number of separate counterparts, each of which when so executed and delivered shall be an original, fully enforceable counterpart for all purposes except that only the counterpart marked "Counterpart Number 1" shall constitute "chattel paper" within the meaning of the Uniform Commercial Code in effect in any jurisdiction.

(i) THIS LEASE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS.

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

THE CIT GROUP/EQUIPMENT  
FINANCING, INC.

By: *John Rossi*

Title: *Vice President*

PREMIER EQUIPMENT LEASING COMPANY

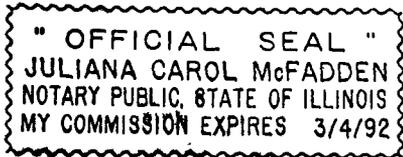
By: *[Signature]*

Title:            President

ACKNOWLEDGMENT EXECUTED BY A CORPORATION

STATE OF ILLINOIS )  
 )  
 ) SS.  
 )  
COUNTY OF COOK )

On this 16<sup>th</sup> day of August, in the year 1989, before me personally appeared Juliana Carol McFadden to me personally known, who being by me duly sworn says that such person is President of Premier Equipment Leasing Company, that the foregoing Acceptance Supplement No. \_\_\_\_\_ to Master Railroad Equipment Lease No. \_\_\_\_\_ was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

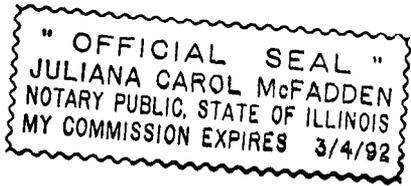


Juliana Carol McFadden  
Notary Public

STATE OF ILLINOIS )  
 )  
 ) SS.  
 )  
COUNTY OF COOK )

On this 16<sup>th</sup> day of August, 1989, before me personally appeared Juliana Carol McFadden, to me personally known, who being by me duly sworn says that ~~no~~ such person is President of The CIT Group/Equipment Financing, Inc., that the foregoing Acceptance Supplement No. \_\_\_\_\_ to Master Railroad Equipment Lease No. \_\_\_\_\_ was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*[Handwritten initials]*



Juliana Carol McFadden  
Notary Public

EXHIBIT A, attached to and forming a part of the Master Railroad Equipment Lease dated as of August \_\_\_\_, 1989 entered into by and between Premier Equipment Leasing Company, an Illinois corporation ("Lessee") and The CIT Group/Equipment Financing, Inc., a New York corporation ("Lessor").

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General Equipment Description

Forty-six (46) 4750 Cubic Foot, 100  
Ton Covered Hopper Cars, with identifying  
numbers "BN 464950 through and including  
464995".

EXHIBIT B, attached to and forming a part of the Master Railroad Equipment Lease dated as of August 17, 1989 entered into by and between Premier Equipment Leasing Company, an Illinois corporation ("Lessee") and The CIT Group/Equipment Financing, Inc., a New York corporation ("Lessor").

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ACCEPTANCE SUPPLEMENT NO. \_\_\_\_\_

TO MASTER RAILROAD EQUIPMENT LEASE NO. \_\_\_\_\_

Commencement Date: \_\_\_\_\_  
Expiration Date: September 30, 2004  
First Rent Payment Date: October 1, 1989  
Last Rent Payment Date: September 30, 2004  
First Payment Rental \$ \_\_\_\_\_  
No. of Consecutive Quarterly Rent Payments After  
First Payment: 60  
Sixty Subsequent Payments Quarterly Rental: \_\_\_\_\_  
Total Rental: \_\_\_\_\_  
Lessor's Cost of Equipment: \_\_\_\_\_

THIS ACCEPTANCE SUPPLEMENT is executed and delivered by The CIT Group/Equipment Financing, Inc., ("Lessor") and Premier Equipment Leasing Company ("Lessee") pursuant to and in accordance with the Master Railroad Equipment Lease dated as of August 17, 1989 between Lessor and Lessee (the "Lease", the defined terms therein being used herein with their defined meanings).

1. The Equipment covered by this Supplement consists of the items described in the Schedule attached hereto.

2. Lessee hereby: (i) confirms that the items of Equipment covered hereby have been inspected by Lessee, have been delivered in good working order and condition and are of the size, design, capacity and manufacture selected by it and meet the provisions of the purchase orders with respect thereto; (ii) confirms that no Default or Event of Default is in existence as of the Commencement Date set forth above, nor shall any Default or Event of Default occur as a result of the lease by Lessee of the Equipment specified herein; (iii) confirms that all representations and warranties of Lessee contained in the Lease or in any document or certificate furnished Lessor in connection herewith, are true and correct as of the Commencement Date set

forth above with the same force and effect as if made on such date; (iv) irrevocably accepts said items of Equipment "as-is, where-is" for all purposes of the Lease as of the Commencement Date set forth above; and (v) confirms that each item of Equipment has been marked in accordance with Section 8 of the Lease.

3. All of the terms, provisions and conditions of the Lease are hereby incorporated herein and made a part hereof as if such terms, provisions and conditions were set forth in full in this Supplement. By their execution and delivery of this Supplement, the parties hereto reaffirm all of the terms, provisions and conditions of the Lease.

IN WITNESS WHEREOF, Lessee has caused this Acceptance Supplement to be duly executed by its duly authorized officer as of the Commencement Date set forth above.

PREMIER EQUIPMENT LEASING COMPANY

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

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

ACCEPTED AS OF THE COMMENCEMENT DATE SET FORTH ABOVE.

THE CIT GROUP/EQUIPMENT  
FINANCING, INC.

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

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

SCHEDULE 1, attached to and forming a part of the Acceptance Supplement No. \_\_\_\_\_ to the Master Railroad Equipment Lease dated as of August 17, 1989 entered into by and between Premier Equipment Leasing Company, an Illinois corporation ("Lessee") and The CIT Group/Equipment Financing, Inc., a New York corporation ("Lessor").

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EQUIPMENT DESCRIPTION

<u>QTY.</u>	<u>MANUFACTURER</u>	<u>DESCRIPTION</u>	<u>SERIAL NOS.</u>	<u>LESSOR'S COST</u>
46	Pullman	4750 Cubic Foot, 100 Ton Covered Hopper Cars	Identifying Numbers on the 46 cars will be "BN 464950 through and including 464995"	per car

TOTAL LESSOR'S COST

ACKNOWLEDGMENT EXECUTED BY A CORPORATION

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

On this \_\_\_\_ day of August, in the year 1989, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn says that such person is \_\_\_\_\_ of Premier Equipment Leasing Company, that the foregoing Acceptance Supplement No. \_\_\_\_\_ to Master Railroad Equipment Lease No. \_\_\_\_\_ was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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

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

On this \_\_\_\_\_ day of August, 1989, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn says that no such person is \_\_\_\_\_ of The CIT Group/Equipment Financing, Inc., that the foregoing Acceptance Supplement No. \_\_\_\_\_ to Master Railroad Equipment Lease No. \_\_\_\_\_ was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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

EXHIBIT C, attached to and forming a part of the Master Railroad Equipment Lease dated as of August 17, 1989 entered into by and between Premier Equipment Leasing Company, an Illinois corporation ("Lessee") and The CIT Group/Equipment Financing, Inc., a New York corporation

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ACKNOWLEDGMENT AND CONSENT TO ASSIGNMENT ("CONSENT")

The CIT Group/Equipment Financing, Inc.  
1400 Renaissance Drive  
Suite 312  
Park Ridge, IL 60068  
Attention: Vice President-Credit

Gentlemen:

Reference is made to that certain Lease Agreement dated as of June 27, 1989, (the "Lease"), between Premier Equipment Leasing Company ("Lessor"), as lessor and Burlington Northern Railroad Company (The "Company"), as lessee.

The Company understands that Lessor and The CIT Group/Equipment Financing, Inc. ("CIT") have entered into a Master Railroad Equipment Lease, dated \_\_\_\_\_ (the "Master Equipment Lease"), and that pursuant to the Master Equipment Lease, CIT shall purchase the Cars from, and lease the Cars back to Lessor. In consideration of CIT's purchasing the Cars and leasing them to Lessor, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Company hereby covenants and agrees with CIT as follows:

1. The Company acknowledges and consents to the assignment by Lessor to CIT of all of Lessor's right, title, and interest in, to and under Equipment Schedule No. 1 to the Lease (the "Assigned Schedule"), and in, to and under the Lease to the extent it relates to the Assigned Schedule, including without limitation the right to receive all remaining rental payments payable under the Assigned Schedule and all other monies from time to time payable to or receivable by Lessor under any of the provisions of the Lease to the extent it relates to the Assigned Schedule (all such amounts hereinafter referred to as the "Monies"). The railroad cars subject to the Assigned Schedule are referred to hereinafter as the "Cars".

2. The Company confirms that as of the date hereof, the remaining lease term of Equipment Schedule No. 1 is at least 180 months, and the Company's remaining rental obligation thereunder is as follows: (i) to pay a rental installment in an amount equal to the pro-rated quarterly rental from the date of delivery of each Car to the date such pro-rata rental is due, namely October 1, 1989; and (ii) to pay the sum of \_\_\_\_\_ in 60 consecutive quarterly installments commencing January 1, 1990, each in the amount of \_\_\_\_\_

3. The Company represents and warrants that: (i) the documents attached hereto as Exhibit A are true and correct copies of the Lease and the Assigned Schedule together with all exhibits, attachments and schedules thereto; (ii) all dates, amounts, equipment descriptions and other facts set forth in the documents attached as Exhibit A are correct; (iii) the Cars are in its possession and control; and (iv) there are no agreements between Lessor and the Company relative to the Cars or the lease thereof other than the Lease and the Assigned Schedule.

4. The Company agrees, without limiting any provision of the Lease or the Assigned Schedule, (i) to remit and deliver all Monies directly to CIT at the above address (or at such other address as maybe specified in writing by CIT), and that its obligation to make such payments to CIT is absolute and unconditional under any and all circumstances, including without limitation, any breach of the Lease by, or any bankruptcy, insolvency or similar event with respect to, Lessor, and that all such payments shall be made without abatement, reduction, counterclaim or offset, for any cause or reason whatsoever, (ii) that all of its indemnities as set forth in the Lease, shall be deemed incorporated herein and shall run in favor of CIT, and (iii) to deliver copies of all notices and other communications given or made by it pursuant to the Lease to CIT, at the address shown above. The Company further agrees that it shall not enter into any agreement amending, modifying, or terminating the Lease or the Assigned Schedule without the prior written consent of CIT, and that any attempt to amend, modify or terminate the Lease or the Assigned Schedule without such consent shall be void.

5. The Company affirms that all representations and warranties made by it in the Lease and/or in documents ancillary thereto are true and correct on the date hereof with the same force and effect as if made on the date hereof, and the CIT may rely upon the same. The Company hereby further represents and warrants to CIT as follows: (i) the Lease is not a "Security" as defined in 49 U.S.C. Section 11301; and (ii) no authorization, approval, license, filing or registration with any governmental agency or instrumentality (including, without limitation, the ICC) is necessary in connection with the execution, delivery, performance, validity and enforceability of the Lease, except for filings of the Lease with the ICC and UCC financing statements.

6. The Company affirms its understanding that CIT has not assumed any duties or obligations whatsoever as lessor under the Lease, and shall not, now or hereafter, have any duty or obligation as lessor under the Lease, and agrees that it shall not now or hereafter look to CIT for performance or satisfaction of any such duties or obligations.

7. The Company will furnish to CIT (a) as soon as available, but in any event not later than 120 days after the end of each fiscal year, (i) its consolidated statements of income and consolidated statements of cash flows for such fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved and certified by independent public accountants selected by the Company and acceptable to CIT, and (ii) a copy of the Company's Annual Report ("10K Report") under Section 13 or 15(d) of the Securities Exchange Act of 1934, certified by the Company's chief financial officer; (b) as soon as available, but in any event not later than 90 days after the end of each of the first three quarterly periods of each fiscal year, (i) its consolidated balance sheet as at the end of such quarterly period and a consolidated statement of its income and consolidated statement of cash flows for such quarterly period and for the portion of the fiscal year then ended, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved and certified by the Company's chief financial officer, and (ii) a copy of the Company's Quarterly Report ("10Q Report") under Section 13 or 15(d) of the Securities Exchange Act of 1934, certified by the Company's chief financial officer; (c) with respect to the Company's parent corporation, Burlington Northern, Inc. ("BNI") the same financial statements and reports as required for the Company in clauses (a) and (b) of this Section 7; and (d) promptly, such additional financial and other information as CIT may from time to time reasonably request.

8. The Company hereby covenants with CIT that it will comply with all applicable Department of Transportation, Interstate Commerce Commission and Federal Railway Commission laws, regulations, requirements and rules, and with the applicable rules (including the Interchange Rules) of the AAR with respect to the use and maintenance of the Cars. In case any equipment or appliance is required to be altered, added, replaced or modified on any Car in order to comply with such laws, regulations, requirements and rules the Company agrees to make such alterations, additions, replacements and/or modifications at its own expense and title there to shall be immediately vested in CIT.

9. The Company hereby agrees that the last sentence of Section 8 of the Lease is hereby deleted in its entirety, and the following inserted in lieu thereof:

"Any injury, death or property damage arising out of such entry, occupancy and inspection shall be the entire responsibility of Premier, provided that such injury, death or property damage occurs as a result of Premier's gross negligence or willful misconduct."

10. In consideration of the covenants and agreements made by the Company herein, CIT agrees that so long as no Event of Default (as defined in the Lease) shall have occurred and be continuing, and the Company shall not be in default of its obligations hereunder to CIT, neither CIT nor any party claiming through or under CIT, will disturb the Company's quiet and peaceful possession of the Cars and its unrestricted use thereof for its intended purpose under the terms of the Lease.

11. Any failure of the Company to observe its agreements hereunder or any representation or warranty made by the Company herein proving at any time to have been incorrect or untrue when made shall be additional Events of Default under the Lease.

12. This Consent may not be changed, waived, discharged or terminated orally, but only by a writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. This Consent shall be binding upon and inure to the benefit of CIT and the Company and their respective successors and assigns, and shall be governed by, and construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, the Company has executed this Consent as of the \_\_\_ day of \_\_\_\_\_, 1989.

Burlington Northern Railroad Company

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

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

ACKNOWLEDGED AND AGREED:

The CIT Group/Equipment Financing, Inc.

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

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

EXHIBIT D, attached to and forming a part of the Master Railroad Equipment Lease dated as of August 17, 1989 entered into by and between Premier Equipment Leasing Company, an Illinois corporation ("Lessee") and The CIT Group/Equipment Financing, Inc., a New York corporation ("Lessor").

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BILL OF SALE  
TO  
THE CIT GROUP/EQUIPMENT FINANCING, INC.

KNOW ALL MEN BY THESE PRESENTS THAT: The Undersigned, Premier Equipment Leasing Company, an Illinois corporation with a principal place of business at 1325 W. Irving Park Road, Suite 301, Bensenville, Illinois 60106 (herein called the "Seller"), for and in consideration of the sum of One Dollar (\$1) and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby grant, sell, assign, transfer, and set over unto The CIT Group/Equipment Financing, Inc., a New York corporation (herein called the "Buyer"), its successors, and assigns, all right, title, and interest of the Seller in and to the personal property described below (and, if any additional page is annexed hereby as Exhibit A, listed and described in said Exhibit A) together with all parts and accessories attached thereto (all such personal property, parts, and accessories being herein collectively called the "Equipment"), TO HAVE AND TO HOLD for its and their own use and benefit forever.

<u>QUANTITY</u>	<u>MANUFACTURER/MODEL</u>	<u>DESCRIPTION</u>	<u>CAR REPORTING MARKS</u>
46	Pullman	4750 Cubic Foot, 100 Ton Covered Hopper Cars	BN 464950 through and including 464995

The Seller hereby (a) represents and warrants to the Buyer, its successors, and assigns, that (i) the Seller has legal title to the Equipment and the good and lawful right to sell the same, and (ii) the legal title to the Equipment sold and transferred to Buyer pursuant hereto is free and clear of all Liens (as defined in that certain Master Railroad Equipment Lease dated as of August 17, 1989 between Buyer, as Lessor, and Seller, as lessee); and (b) covenants and agrees to defend such title against all claims and demands whatsoever. EXCEPT AS EXPRESSLY STATED HEREIN, SELLER NEITHER MAKES NOR SHALL BE DEEMED TO HAVE MADE, AND BUYER BY ITS ACCEPTANCE OF THIS BILL OF SALE

EXPRESSLY WAIVES AND SHALL BE DEEMED TO HAVE WAIVED, ANY AND ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, AS TO THE EQUIPMENT, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OR REPRESENTATION AS TO THE DESIGN, QUALITY OR CONDITION OF THE EQUIPMENT OR ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR PURPOSE OR USE. THE EQUIPMENT IS SOLD AS-IS-WHEREAS-IS AND WITH ALL FAULTS.

IN WITNESS WHEREOF, the Seller has caused this Bill of Sale to be executed and delivered by its duly authorized officer this \_\_\_\_\_ day of August, 1989.

(CORPORATE SEAL)

Premier Equipment Leasing Company

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

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

August \_\_, 1989

The CIT Group/Equipment  
Financing, Inc.  
1400 Renaissance Drive  
Suite 312  
Park Ridge, Illinois 60068  
Attention: Vice President -  
Credit

The CIT Group/Equipment  
Financing, Inc.  
270 Park Avenue  
New York, New York 10017  
Attention: Senior Vice  
President - Credit

Gentlemen:

We have acted as counsel to Premier Equipment Leasing Company, an Illinois corporation (the "Company"), in connection with the execution and delivery of (a) that certain Master Railroad Equipment Lease dated as of August \_\_, 1989 between the Company, as lessee, and The CIT Group/Equipment Financing, Inc., as lessor (the "Lessor"), providing for the sale by the Company to Lessor of 46 100-ton covered hopper cars bearing car reporting marks BN464950 through and including BN464995 (the "Equipment"), and the lease of the Equipment by Lessor, as lessor, to the Company, as lessee; and (b) that certain Bill of Sale dated the date hereof (the "Bill of Sale") from the Company, as seller, to Lessor, as purchaser, covering the Equipment. Capitalized terms not otherwise expressly defined herein shall have the meanings set forth in the Lease.

In connection with our opinion, we have examined and are familiar with originals or copies, certified or otherwise identified to our satisfaction, of the Lease, the Bill of Sale, the Supplement, the Permitted Sublease, the Acknowledgment, those certain bills of sale dated the date hereof (the "UPA Bills of Sale") from Farmers Cooperative Company ("Farmers") and Albert City Elevator Company (together with

Farmers, the "UPA Sellers") to the Company covering the Equipment, and such other documents and things as we have deemed necessary or appropriate as a basis for the opinions set forth below. In our examination, we have assumed (a) the due authorization, execution and delivery of (i) the Lease by the Lessor, (ii) the Permitted Sublease and the certificates of acceptance referred to therein covering the Equipment by BNR, and (iii) the UPA Bills of Sale by the UPA Sellers; (b) the corporate power of each of the Lessor, BNR and the UPA Sellers to execute and deliver the documents above mentioned and perform their obligations thereunder; and (c) the genuineness of all signatures, the legal competence of all individuals, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified or photostatic copies, and the authenticity of the originals of such latter documents.

As to any facts material to this opinion, we have relied exclusively upon the statements and representations of officers of the Company, and we have relied upon the representations, warranties and covenants contained in the Lease, Bill of Sale, Supplement and Permitted Sublease, as well as certain representations and warranties contained in certificates of the Company and officers thereof, none of which representations, warranties or covenants has been independently verified by us. Whenever our opinion herein with respect to the existence or absence of fact is qualified by the phrase "to our knowledge" or "known to us," it is intended to indicate that during the course of our representation, no information has come to our attention which would give us actual knowledge of the existence or absence (as the case may be) of such facts. However, except to the extent expressly set forth herein, we have not undertaken any independent investigation to determine the existence or absence of such facts, and no inference as to our knowledge of the existence or absence of such facts should be drawn from the fact of our representation of the Company.

In rendering the opinions expressed in Paragraph 6 below, we have relied and base our opinions (a) with respect to matters of title to the Equipment, solely upon the UPA Bills of Sale, the Bill of Sale, and the opinion of Messrs. Brick, Seckington, Swartz, Bowers & Gentry, Des Moines, Iowa, counsel to the UPA Sellers, a copy of which is attached hereto; and (b) with respect to matters of record with the Interstate Commerce Commission ("ICC"), solely upon the opinions of Messrs. Alvord and Alvord, Washington, D.C., copies of which are attached hereto.

Based upon and subject to the foregoing, we are of the opinion that:

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

2. The Company has full power, authority and legal right to execute, deliver and perform the Lease, the Bill of Sale and the Permitted Sublease, and the execution, delivery and performance of each thereof have been duly authorized by all necessary corporate action of the Company.

3. The Lease, the Bill of Sale and the Permitted Sublease have been duly executed and delivered by the Company and constitute the legal, valid and binding obligations of the Company enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally from time to time in effect and to applicable principles of equity if equitable remedies are sought.

4. The execution, delivery and performance by the Company of the Lease, Bill of Sale and Permitted Sublease do not require any stockholder approval or approval or consent of any trustee or holder of any indebtedness or obligation of the Company known to us, and will not contravene any law, regulation, judgment or decree applicable to the Company, or the articles of incorporation or by-laws of the Company, or contravene the provisions of, or constitute a default under, or result in the creation of any Lien upon, any property of the Company under any mortgage, instrument or other agreement known to us to which the Company is a party or by which the Company or its assets may be bound; and no authorization, approval, license, filing or registration with any court or governmental agency or instrumentality is necessary in connection with the execution, delivery, performance, validity and enforceability of the Lease, Bill of Sale or Permitted Sublease, except for filing and recordation of the Lease and Permitted Sublease with the ICC.

5. To our knowledge, the Company is not in default, and no event or condition exists which after the giving of notice or lapse of time or both would constitute an event of default under any mortgage, indenture, contract, agreement,

judgment or other undertaking known to us to which the Company is a party or which purports to be binding upon the Company or upon any of the Company's assets, except for any such default, event or condition which individually or in the aggregate would not affect the Company's ability to perform its obligations under the Lease and the Permitted Sublease, or any such mortgage, indenture, contract, agreement, judgment or other undertaking known to us.

6. The Lessor has legal title to the Equipment free and clear of all Liens.

7. To our knowledge, there is no action, suit, investigation or proceeding by or before any court, arbitrator, administrative agency or other governmental authority pending or threatened against or affecting the Company which (a) involves the Equipment or the transactions contemplated by the Lease or the Permitted Sublease, or (b) if adversely determined, would have a material adverse effect on the financial condition, business or operations of the Company.

We are members of the Bar of the State of Illinois and express no opinion as to the laws of any jurisdiction other than the laws of the State of Illinois and the United States of America. This opinion is limited to the matters expressly set forth herein, and no other opinions are implied or may be inferred. This opinion is rendered solely for Lessor's benefit, and no other person or entity shall be entitled to rely on any matter set forth herein without our express written consent.

Very truly yours,

SCHEDULE A, attached to and forming a part of the Master Railroad Equipment Lease, dated as of August \_\_, 1989 entered into by and between Premier Equipment Leasing Company, an Illinois corporation ("Lessee") and The CIT Group/Equipment Financing, Inc., a New York corporation ("Lessor").

STIPULATED LOSS VALUE

<u>RENT PAYMENT DATE</u>	<u>STIPULATED LOSS VALUE PERCENTAGE</u>
10/ 1/89	106.035619
1/ 1/90	106.193363
4/ 1/90	106.283102
7/ 1/90	106.290615
10/ 1/90	106.229838
1/ 1/91	106.099518
4/ 1/91	105.905906
7/ 1/91	105.648695
10/ 1/91	105.337111
1/ 1/92	104.970163
4/ 1/92	104.551879
7/ 1/92	104.086571
10/ 1/92	103.576507
1/ 1/93	103.020878
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1/ 1/94	100.403884
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1/ 1/95	97.164331
4/ 1/95	96.250679
7/ 1/95	95.297272
10/ 1/95	94.299903
1/ 1/96	93.257784
4/ 1/96	92.173804
7/ 1/96	91.062985
10/ 1/96	89.917371
1/ 1/97	88.736349
4/ 1/97	87.522531
7/ 1/97	86.297342
10/ 1/97	85.047344
1/ 1/98	83.772110
4/ 1/98	82.470026
7/ 1/98	81.156863
10/ 1/98	79.817405
1/ 1/99	78.451205
4/ 1/99	77.056622
7/ 1/99	75.649404
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7/ 1/ 0	69.749659
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7/ 1/ 1	63.430673
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1/ 1/ 2	60.105724
4/ 1/ 2	58.393707
7/ 1/ 2	56.663753
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1/ 1/ 3	53.103504
4/ 1/ 3	51.270900
7/ 1/ 3	49.418360
10/ 1/ 3	47.530530
1/ 1/ 4	45.606820
4/ 1/ 4	43.660369
7/ 1/ 4	41.752189
10/ 1/ 4	39.690000