

RECORDATION NO **16481** FILED 1425

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INTERSTATE COMMERCE COMMISSION

LEASE AGREEMENT

LEASE AGREEMENT ("Agreement"), dated as of June 27, 1989 between PREMIER EQUIPMENT LEASING COMPANY, 1325 W. Irving Park Road, Suite 301, Bensenville, Illinois 60106 ("Premier"), as lessor, and BURLINGTON NORTHERN RAILROAD COMPANY, 2900 Continental Plaza, 777 Main Street, Ft. Worth, Texas 76102 ("Lessee"), as lessee.

RECITALS

Premier agrees to lease to Lessee, and Lessee agrees to lease from Premier, those certain railroad freight cars as set forth in the lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The word "Schedule" as herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto, each of which when signed by the parties shall be a part of this Agreement. The railcars listed on the Schedules are hereinafter individually referred to as a "Car" and collectively referred to as the "Cars."

In consideration of the premises and the mutual covenants contained herein, the parties agree as follows:

AGREEMENTS

1. DELIVERY AND ACCEPTANCE OF CARS. Premier will deliver the Cars to the Lessee at the delivery point(s) specified in the Schedule. Upon delivery, Lessee will have the right to inspect each Car and will accept such Car if it: (a) complies with the description set forth in the Schedule, and (b) is in a condition suitable for grain loading and operation in accordance with the Interchange Rules adopted by the Association of American Railroads ("AAR"). Upon delivery and acceptance of all of the Cars set forth in a Schedule, Premier and Lessee shall execute a certificate in the form of the Schedule indicating the delivery of the Cars.

2. COMPENSATION.

A. Lessee agrees to pay Premier the rent specified in the Schedule for each Car. The rent for each Car shall be paid in quarterly installments, payable in arrears, commencing on the first day of the calendar quarter following delivery of such Car. The first payment for any Car shall be equal to the prorated amount for the time from delivery of the Car until the first payment date for such car. If any of the rent payment dates falls on a Saturday, Sunday or legal holiday, the rent shall be due on the next succeeding business day. In the event Premier notifies Lessee in writing that the right to receive rents has been assigned in accordance with Section 13 hereof,

Lessee shall make payment in the manner designated in such notice or as otherwise designated in writing by such assignee.

B. Lessee will, on demand, pay to Premier interest at the higher of (i) 14% per annum, or (ii) the prime rate plus 2% (or the maximum rate permitted by applicable law, whichever is less) on any payment of rent not paid when due for any period during which such rent is overdue.

C. This Lease is a net lease and Lessee's obligation to pay rent and other amounts payable hereunder shall be absolute and unconditional under any and all circumstances and, without limiting the generality of the foregoing, the Lessee shall not be entitled to any abatement of rent or reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due to any existing or future claims of the Lessee against Premier under this Lease or otherwise; nor, except as otherwise expressly provided herein, shall this lease terminate, or the respective obligations of Premier or the Lessee be otherwise affected, by reason of any defect in or damage to or loss or destruction of all or any of the Cars from whatsoever cause or Lessee's inability to use the Cars as a result of condemnation or legal prohibition, it being the intention of the parties that the rents and other amounts payable by Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 7 or 15 hereof, or, until, pursuant to Section 17 hereof, the Cars have been returned to the possession of Premier.

3. **TERM.** The term of this Lease with respect to each Car shall commence on the date of delivery to and acceptance by Lessee of such Car and shall terminate, unless otherwise terminated by any other provision hereof, on the date specified under Lease Term in the applicable Schedule.

4. **DISCLAIMER.** PREMIER 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 CARS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR REPRESENTATION AS TO THE DESIGN, QUALITY OR CONDITION OF THE CARS OR ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE CARS FOR ANY PARTICULAR PURPOSE OR AS TO ANY OTHER MATTER RELATING TO THE CARS OR ANY PART THEREOF. LESSEE CONFIRMS THAT IT HAS SELECTED THE CARS ON THE BASIS OF ITS OWN JUDGMENT AND EXPRESSLY DISCLAIMS RELIANCE UPON ANY STATEMENTS, REPRESENTATIONS OR WARRANTIES MADE BY PREMIER, AND LESSEE ACKNOWLEDGES THAT PREMIER IS NOT A MANUFACTURER OR VENDOR OF ANY OF THE CARS. PREMIER 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.

5. **REPRESENTATIONS AND WARRANTIES.** Lessee represents and warrants that (a) Lessee is a duly organized, validly existing corporation in good standing under the laws of the state of its incorporation and is duly qualified to do business in all jurisdictions in which qualification is required in order for it to carry out the transactions contemplated by this Lease; (b) Lessee has full corporate power, authority and legal right to execute, deliver and perform this Lease, and the

execution, delivery and performance hereof has been duly authorized by all necessary corporate action of Lessee; and (c) there is no action, suit, investigation or proceeding by or before any court, arbitrator, administrative agency or other governmental authority pending or threatened against Lessee which involves the Cars or the transactions contemplated by this Lease.

6. USE AND MAINTENANCE; RECORD KEEPING.

A. The Lessee shall use the Cars only in the manner for which they were designed and intended and so as to subject them only to ordinary wear and tear. So long as the Cars shall be leased hereunder and until the Cars are returned to Premier in accordance with the provisions of Sections 15 or 17 hereof, the Lessee shall, at its own cost and expense, maintain and keep the Cars in good order, condition and repair, ordinary wear and tear excepted. The Lessee shall not modify any Car without the prior written approval of Premier, which shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon any Car pursuant to its obligation to maintain and keep the Cars in good order, condition and repair under this Section shall be considered accessions to such Cars and title thereto shall be immediately vested in Premier without cost or expense to Premier. Title to any parts replaced by Lessee pursuant to this Section shall vest in Premier.

B. Lessee shall perform all record keeping functions related to the use of the Cars by Lessee and other railroads in accordance with the AAR Interchange Rules and the AAR Code of Car Service and Code of Car Hire Rules-Freight.

7. CASUALTY OCCURRENCE.

A. In the event that any Car shall be or become lost, stolen, worn out or destroyed (any such occurrence or determination being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence, but in no event later than 20 days after the date of such occurrence) inform Premier in regard thereto and shall pay to Premier the amount prescribed by the AAR Interchange Rules for the loss or destruction of such Car.

B. Following the occurrence of a Casualty Occurrence with respect to any Car, the Lessee shall, within thirty days following its notice of a Casualty Occurrence with respect to such Car, pay to Premier the loss amount required pursuant to Section 7.A plus any other sums due on or prior to such date in respect of such Car then remaining unpaid.

C. Provided proper notice was given pursuant to Section 7 A, the obligation to pay rent for such Car will terminate as of the date of such Casualty Occurrence, or, if proper notice was not given, the obligation to pay rent will terminate as of the date of such notice. Upon (and not until) payment of all sums required to be paid pursuant to Section 7.B hereof in respect of any Car, the Car will be deleted from this Agreement but the Lessee shall continue to pay rent for all other Cars.

D. Upon payment of the applicable amounts following a Casualty Occurrence, title to the Car which has suffered such Casualty Occurrence shall immediately vest in Lessee and Premier will take such steps as necessary to transfer such title to Lessee.

8. **INSPECTION.** Premier shall, at its sole cost and expense, at any time during normal business hours have the right to enter the premises of Lessee upon 48 hours notice to Lessee for the purpose of examining the Cars to ensure Lessee's compliance with its obligations hereunder. Premier shall enter and occupy Lessee's property at its sole risk and shall be subject at all times to Lessee's operating and safety requirements. Any injury, death or property damage arising out of such entry, occupancy and inspection shall be the entire responsibility of Premier.

9. **PROHIBITION OF LIENS; MARKING OF CARS.**

A. 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 Car, 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 Premier created or purported to be created hereunder.

B. The initial marking and numbering of the Cars shall be performed by Lessee at its expense and Lessee shall, at Premier's expense, remark the Cars prior to their return to Premier with marks and numbers designated by Premier. Lessee will cause each Car to be numbered with the identifying marks and numbers set forth in the applicable Schedule, and will keep and maintain permanently and conspicuously marked on each side of each Car, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO DOCUMENTS FILED WITH THE INTERSTATE COMMERCE COMMISSION." Lessee shall not perform any other remarking or renumbering of the Cars except with the express written consent of Premier.

10. **TAXES.** Lessee agrees to assume the responsibility for the payment and filing of all taxes levied or imposed upon in connection with or measured by this Agreement for any rental paid or other use of the Cars under the terms hereof. Lessee further agrees to assume the responsibility for the payment and filing of all property and ad valorem taxes levied or imposed upon or in connection with or measured by this Agreement or the use of the Cars under the terms hereof.

Notwithstanding the foregoing, Lessee shall not be responsible for any tax imposed by the United States or any state or governmental subdivision thereof which is measured solely by Premier's net income.

In order to avoid recapture of any tax benefit claimed by Premier with respect to the Cars, including, but not limited to, any deduction allowable under Section 168 and related Sections of the Internal Revenue Code of 1986, as amended (the "Code"), Lessee shall: (i) use the Cars predominately within the continental United States, in accordance with the Code; (ii) shall cause third parties having control over their use to use the Cars predominately within the continental United States, in accordance with the Code; and (iii) shall not take any action that will cause the Cars to be considered tax-exempt use property within the meaning of the Code.

If Premier (or any owner of a partnership or beneficial interest of Premier) shall lose by disallowance, recapture or otherwise, any portion of said tax benefits as a result of Lessee's breach of this Agreement (including but not limited to this Section 10), Lessee agrees to pay Premier or such owner a sum which, after deduction of all taxes required to be paid by Premier or such owner in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to the amount of tax benefits so lost by Premier or such owner, which sum shall be payable on written demand made at any time after payment of the tax attributable to the portion of the tax benefit lost; provided, however, that Lessee shall be under no obligation to indemnify Premier for the amount of any tax benefits lost with respect to any Car for which Lessee has paid to Premier the replacement value set forth in Section 7 hereof.

11. INSURANCE. Lessee will, at all times prior to the return of the Cars to Premier, at its own expense, cause to be carried and maintained (i) property insurance in respect of the Cars and (ii) public liability insurance with respect to third party personal and property damage, against such risks and in such the amounts, if any, customarily insured against by Lessee in respect to similar equipment owned or leased by it.

12. INDEMNITIES.

A. Lessee agrees to indemnify and hold Premier harmless from and against all losses, damages, injuries, liabilities, claims and demands whatsoever (whether as a result of damage to the Cars or injury to third parties or their property), regardless of the cause thereof, and any expense in connection therewith (including legal fees), arising out of the use or operation of the Cars during the term of this Agreement unless such claim for loss or damage was caused by Premier's negligence.

B. Premier shall not be liable for any loss or damage to any commodities loaded or shipped in the Cars. Lessee agrees to assume responsibility for, to indemnify Premier against, and to hold Premier harmless from, any claim in respect of such loss or damage and to assume responsibility for any damage caused to any Car by such commodities.

13. ASSIGNMENT; SUBLEASE; SUBORDINATION.

A. So long as lessee shall not be in default under this Agreement, Lessee may sublease the Cars to others, provided, however, that the rights of any such sublessee shall be subject and subordinate to, and any such sublease shall be made expressly subject and subordinate to, all of the terms of this Lease. In addition, before Lessee enters into any such sublease Lessee must obtain Premier's prior approval, and Premier agrees that such approval shall not be unreasonably withheld and that such determination is to be given within 5 business days. No sublease of any Car shall in any way discharge or diminish any of Lessee's obligations to Premier hereunder including, but not limited to, the payments due to Premier pursuant to Section 2 of this Agreement.

B. This Agreement and the Schedules shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. It is

understood and agreed that Premier or any Lease Assignee may assign this Agreement with respect to some or all of the Cars to any security trustee, secured party or owner of such Cars (each herein a "Lease Assignee"). Upon delivery of a notice of assignment to Lessee, Premier as used herein shall mean such Lease Assignee. Lessee shall consent to and acknowledge in writing, upon receipt of notice of assignment, such assignment of this Agreement by Premier or any Lease Assignee; provided, that any such consent and/or acknowledgement shall not in any manner increase or change the rights, obligations, duties or legal position of the Lessee. Premier warrants that any Lease Assignee shall agree to all the terms and conditions of this Agreement. Each Lease Assignee shall warrant that any subsequent Lease Assignee shall agree to all terms and conditions of this Agreement.

C. Lessee's rights hereunder shall be subject and subordinate to the rights of any owner, security trustee or secured party under any lease or financing agreement entered into by Premier in connection with acquisition of some or all of the Cars. Upon notice to Lessee from any such security trustee, secured party or owner that an event of default has occurred under such lease or financing agreement, such party may require that all rent shall be paid directly to such party and/or that Cars be returned to such party, but only upon completion or termination of this Lease, including any optional renewal term pursuant to Section 18 hereof. Any assignment of this Agreement by Premier or any Lease Assignee to any security trustee or secured party shall not subject that security trustee or secured party to any of Premier's or such Lease Assignee's obligations hereunder.

14. COMPLIANCE WITH REGULATIONS. Lessee shall, at its own expense, comply with all governmental laws, regulations and requirements, with the AAR Interchange Rules and with the rules and regulations of the Federal Railway Administration with respect to the use, maintenance, and operation of the Cars. Lessee shall be responsible for obtaining all necessary railroad permissions, approvals and consents for use of the Cars and shall bear all risk of failure to obtain such permissions, approval and consent, or of cancellation thereof. Premier shall take all actions reasonably requested by Lessee in order to assist Lessee in obtaining such permissions, approvals or consents.

15. RETURN OF CARS. Upon the expiration or earlier termination of this Agreement with respect to any Car, including any optional renewal term pursuant to Section 18 hereof, Lessee agrees that Premier shall provide Lessee with disposition instructions, upon not less than 15 days written notice, for the movement of the Cars after their final loading and Lessee will transport each Car to any reasonable place within the continental United States on any railroad lines operated by Lessee or to any connecting carrier for shipment, f.o.b. Lessee shall not be obligated to transport any Car more than once at the request of Premier, after which the Lessee will have no further obligation with respect to any Car so moved. Lessee further agrees, that, if requested by Premier, it will store the Cars for a period of up to 90 days after the expiration of the Lease Term upon such tracks of the Lessee as Premier may reasonably designate taking into account, among other things, Lessee's storage capacity, security and access. During any such storage period Lessee will permit Premier or any person designated by Premier, at their own risk, to inspect the Cars; provided, however, that Lessee will not be liable, except in the case of gross negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising the rights of inspection granted under this sentence.

Lessee shall be responsible for the Cars in accordance with AAR Interchange Rules until such time as each Car is delivered pursuant to Premier's disposition instructions. The Cars shall be delivered free from all charges and liens except those which may result from an act or omission of Premier, and free from all accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee and the Cars shall meet requirements for interchange pursuant to AAR Interchange Rules.

16. POSSESSION AND USE. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner customarily used in the railroad freight business.

17. DEFAULT.

A. The occurrence of any of the following events shall be an Event of Default by Lessee:

(i) The nonpayment by Lessee of any sum required herein to be paid to Premier by Lessee and such nonpayment shall continue for ten (10) days after Lessee's receipt of written notice from Premier;

(ii) Lessee shall fail to maintain the insurance required by Section 11;

(iii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within thirty (30) days of Lessee's receipt of written notice from Premier; or

(iv) The Lessee becomes insolvent or fails generally to pay its debts as such debts become due, or causes or suffers an order for relief to be entered against it under applicable federal or state bankruptcy law, or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a custodian, trustee or receiver for the Lessee or for the major part of its property;

(v) Any representation or warranty made by Lessee herein or in any other document delivered to Premier by Lessee related to this Agreement shall have been false or incorrect in any material respect on the date when made and such breach or default shall continue for a period of thirty (30) days after Lessee's receipt of written notice from Premier of such default.

B. Upon the occurrence of any Event of Default, Premier may:

(i) Proceed by any lawful means to terminate this Agreement and recover damages for a breach hereof. Premier shall use reasonable efforts to mitigate such damages; or

(ii) Terminate Lessee's right to possession and use of the Cars, whereupon all rights and interest of Lessee in the Cars shall terminate and thereupon Premier may enter upon any premises where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from

any right of Lessee, and Premier shall nevertheless have the right to recover from Lessee any and all rent and other amounts which are then due; or

(iii) Proceed by any lawful means to enforce performance by Lessee of this Agreement.

Lessee shall bear the costs and expenses, including without limitation reasonable attorney fees, incurred by Premier in connection with the exercise of its remedies pursuant to this Section 17.B. No remedy referred to in this Section 17 is intended to be exclusive but each shall be cumulative and in addition to any other remedy otherwise available to Premier at law or in equity.

18. RENEWAL OPTION. Provided that no Event of Default, or any event which with lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall have the right at the expiration of the original term of this Lease to renew and extend this Lease as to all, but not less than all, of such Cars for a renewal term of eighty four (84) months. The renewal term with respect to the Cars shall be subject to all the terms of this Lease including those relating to the rental payable by the Lessee. The Lessee shall give Premier written notice not less than 180 days (but not more than 360 days) prior to the end of the original term of this Lease of its election to exercise the renewal option provided for in this Section 18.

19. GOVERNING LAWS. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois. This Agreement contains all of the terms and conditions agreed to between the parties, and no other prior agreements, oral or otherwise, concerning the subject matter of this Agreement, shall be deemed to exist or bind either party hereto. The terms of this Agreement and the rights and obligations of the parties may be changed only by writing executed by both parties.

20. FORCE MAJEURE. Neither party hereto shall be deemed to be in breach or in violation of this Agreement if either is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control including, without limitation, acts of God, riots, fires, storms, public disturbances, or any regulation of any federal, state or local government or any agency thereof.

21. FURTHER ASSURANCES; FINANCIAL INFORMATION.

A. Lessee will, at its expense, promptly and duly execute and deliver to Premier such further documents and assurances and take such further action as Premier may from time to time reasonably 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 Premier hereunder, including, without limitation, the execution, delivery, recordation and filing of documents with the Interstate Commerce Commission, and the execution and filing of Uniform Commercial Code financing statements in the appropriate jurisdictions.

B. Lessee will furnish to Premier 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 the 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 audited by a nationally recognized firm of independent certified public accountants.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 27 day of June, 1989.

**PREMIER EQUIPMENT LEASING
COMPANY**

By 

Title PRESIDENT

**BURLINGTON NORTHERN RAILROAD
COMPANY**

By 

Title Director of Finance

EQUIPMENT SCHEDULE NO. 1

Premier Equipment Leasing Company ("Premier") hereby leases the following railcars to Burlington Northern Railroad Company ("Lessee") pursuant to that certain Lease Agreement dated as of June 27, 1989.

<u>Number of Cars</u>	<u>Description</u>	<u>A.A.R. Designation</u>
46	4750 Cubic Foot, 100 Ton Covered Hopper Car	LO

<u>Delivery Point</u>	<u>Lease Term</u>	<u>Per Car Quarterly Rent</u>
Burlington Northern Lines	September 30, 2004	

Car Marks and Numbers

BN 464950 through BN 464995,
both inclusive

Premier and Lessee hereby incorporate by reference all of the terms, conditions and provisions of the Lease Agreement in this Schedule.

IN WITNESS WHEREOF, the parties have executed this Schedule as of the _____ day of _____, 1989.

**PREMIER EQUIPMENT LEASING
COMPANY**

**BURLINGTON NORTHERN RAILROAD
COMPANY**

By _____

By _____

Title _____

Title _____

STATE OF Texas)
COUNTY OF Tarrant) ss.

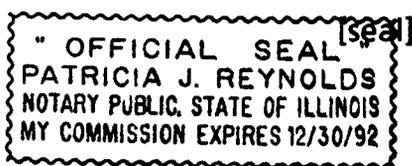
On this 27th day of June, 1989, before me personally appeared Paul J. Weyandt, to me personally known, who being duly sworn, did depose and say that such person is Director of Finance of the Burlington Northern Railroad company and that the foregoing Lease Agreement and Equipment Schedule No. 1 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments was the free act and deed of such corporation.



Julie Harcrow
Notary Public

STATE OF ILLINOIS)
COUNTY OF COOK) ss.

On this 12th day of July, 1989, before me personally appeared Richard Dearing, to me personally known, who being by me duly sworn says that such person is President of Premier Equipment Leasing Company, and that the foregoing Lease Agreement and Equipment Schedule No. 1 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments was the free act and deed of such corporation.



Patricia J. Reynolds
Notary Public