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New No.

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

LAW OFFICES  
ALVORD AND ALVORD

200 WORLD CENTER BUILDING  
918 SIXTEENTH STREET, N.W.  
WASHINGTON, D.C.  
20006-2973

OF COUNSEL  
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MILTON C. GRACE\*  
JAMES C. MARTIN, JR.\*

CABLE ADDRESS  
"ALVORD"

TELEPHONE  
AREA CODE 202  
393-2266

\* NOT A MEMBER OF D.C. BAR  
\* ALSO ADMITTED IN NEW YORK  
\* ALSO ADMITTED IN OHIO  
\* ALSO ADMITTED IN MARYLAND

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RECORDATION NO. \_\_\_\_\_ FILE 1428

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INTERSTATE COMMERCE COMMISSION

8-113A081

Date APR 22 1988

Fee \$ 13.00

ICC Washington, D.C.

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

Dear Ms. McGee:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two fully executed counterparts of a Lease dated as of April 15, 1988, a primary document as defined in the Commission's Rules for the Recordation of Documents.

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

Lessor: Banc One Equipment Finance, Inc.  
111 Monument Circle  
Indianapolis, Indiana 46277

Lessee: Missouri-Kansas-Texas Railroad Company  
701 Commerce Street  
Dallas, Texas 75202

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

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

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

*Charles T. Kappler*

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Page Two

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

Lease dated as of April 15, 1988 between Bank One Equipment Finance, Inc., Lessor, and Missouri-Kansas-Texas Railroad Company, Lessee, covering 100 covered hopper cars for cement service marked and numbered MKT 500 - MKT 599, both inclusive.

Very truly yours,

  
Charles T. Kappler

Ecnlosures

**SCHEDULE A**

**EQUIPMENT DESCRIPTION**

<u>Type</u> <u>Price</u>	<u>Builder</u>	<u>Builder's</u> <u>Spec.'s</u>	<u>Builder's</u> <u>Plant</u>	<u>Qty.</u>	<u>Lessee</u> <u>Numbers</u> <u>(Both</u> <u>Inclusive)</u>	<u>Est.</u> <u>Unit</u> <u>Base</u> <u>Price</u>	<u>Est.</u> <u>Total</u> <u>Base</u> <u>Price</u>
Covered Hopper Railcar for Cement Service	Trinity Industries Other	Trinity Spec. No. L-2091 dated 9/4/87 and Drawing SK56-10-1 dated 8/16/84, as well as Supplements No.1 and No. 2 dated 10/13/87		100	MKT 500 to 599	\$35,000	\$3,500,000

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LEASE

INTERSTATE COMMERCE COMMISSION

THIS LEASE OF RAILROAD EQUIPMENT (the "Lease"), dated as of April 15, 1988, by and between Banc One Equipment Finance, Inc., an Indiana corporation (hereinafter called Lessor), and Missouri-Kansas-Texas Railroad Company, a Delaware corporation (hereinafter called Lessee).

WITNESSETH

WHEREAS, the Lessee has entered into a Purchase Order dated October 15, 1987 (the "Purchase Order"), with Trinity Industries Inc. ("Vendor") pursuant to which the Vendor has agreed to manufacture, sell and deliver the railroad equipment described in Schedule A hereto (hereinafter individually, an "Item of Equipment" and collectively, the "Equipment") to the Lessee; and

WHEREAS, the Lessee is entering into a Purchase Order Assignment dated as of the date hereof ("Purchase Order Assignment") with Lessor pursuant to the terms of which the Lessee shall assign to Lessor its right to purchase the Equipment and other rights and interest with respect to the Equipment under the Purchase Order, and the Vendor will acknowledge and consent thereto pursuant to a Consent and Agreement ("Consent") in the form attached to the Purchase Order Assignment; and

WHEREAS, the Lessee desires to lease the Equipment from Lessor as delivered and accepted and settled for under the Purchase Order at the rentals and under the terms and conditions hereinafter set forth; and

WHEREAS, it is contemplated that the Lessor will arrange to finance a portion of the Purchase Price of each Item of Equipment through the issuance and sale to Bankers Life Insurance Company of Nebraska, First Continental Life & Accident Insurance Company and Reserve Life Insurance Company (being referred to herein along with any assignee or transferee thereof as the "Note Purchasers") of its 9 7/8% Secured Notes (the "Notes") to be issued under and secured by the security agreement (hereinafter called the "Security Agreement") dated as of April 15, 1988 between the Lessor and Bank One, Indianapolis, N.A., as secured party (the "Assignee") creating a security interest in the Equipment in favor of the Assignee in connection with such permanent financing.

NOW, THEREFORE, it is hereby agreed as follows:

Section 1. Delivery. (1) There shall be four (4) dates of payment (hereinafter called the Payment Date(s) or Lease Commencement Date(s)) by Lessor to Vendor of the amounts specified in the aforesaid Purchase Order Assignment ("Purchase Price") with respect to the Equipment, and each Item of Equipment shall be deemed delivered by Lessor to Lessee for all purposes hereunder on its respective Payment Date. Lessee hereby acknowledges that as of the Payment Date for an Item of Equipment, such Item of Equipment shall be deemed to be in good order.

(2) Lessee shall not by virtue of this Lease or the possession or use of the Equipment by Lessee under or pursuant to this Lease or of anything permitted to be done by Lessee hereunder in respect of the Equipment, acquire title to nor any property right or interest, legal or equitable, in the Equipment. Any rights of Lessee in respect to the Equipment shall constitute a leasehold interest only.

(3) Lessor hereby appoints Lessee its agent for inspection and acceptance of the Equipment pursuant to the Purchase Order and Purchase Order Assignment. Each delivery of an Item of Equipment to the Lessor under the Purchase Order and Purchase Order Assignment shall be deemed to be a delivery hereunder to Lessee at the point or points within the United States of America at which such Item of Equipment is so delivered to the Lessor. Upon such delivery, Lessee will cause an employee of Lessee to inspect the same and, if such Item of Equipment is found to be acceptable, to accept delivery of such Item of Equipment of behalf of Lessor under the Purchase Order and Purchase Order Assignment and on behalf of itself hereunder and execute and deliver to Lessor a certificate of acceptance ("Certificate of Acceptance") substantially in the form of Exhibit A hereto, stating, among other things, that such Item of Equipment has been inspected and accepted on behalf of Lessee and Lessor on the date of such Certificate of Acceptance ("Delivery Date") and is marked in accordance with Section 1(4) hereof, whereupon such Item of Equipment shall be deemed to have been delivered to and unconditionally accepted by Lessee and shall be subject thereafter to all terms and conditions of this Lease.

(4) Lessee will cause each Item of Equipment to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Item of Equipment not there listed such number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Item of Equipment, and will

keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Item of Equipment, in letters not less than one inch in height, the words "SUBJECT TO A LEASE AND A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect Lessor's and Assignee's right, title and interest in and to such Item of Equipment and the rights of Lessor under this Lease. Lessee will not place any such Item of Equipment in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, obliterated, defaced or destroyed. Lessee will not change the identifying number of any Item of Equipment unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with Assignee and Lessor and filed, recorded and deposited by Lessee in all public offices where this Lease and Security Agreement shall have been filed, recorded and deposited and (ii) Lessee shall have furnished Assignee and Lessor an opinion of counsel in form and substance acceptable to Assignee and Lessor to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect Assignee's and Lessor's right, title and interest in and to such Equipment and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the right, title and interest of Assignee and Lessor in and to the Equipment.

(5) The Equipment may be lettered with the names or initials or other insignia customarily used by Lessee or its 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 be interpreted as a claim of ownership.

SECTION 2. Term of Lease; Termination. (1) The term of this Lease as to an Item of Equipment shall commence upon the Payment Date for such Item of Equipment and, subject to the provisions of Section 18 hereof and the provisions set forth below, shall terminate on June 30, 2003.

(2) Provided no Event of Default or an event, act or condition which, with notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing, Lessee shall have the right on March 31, 1998 (the "Lease Termination Date") to terminate this Agreement with respect to

all, but not less than all, the Equipment as of the Termination Date if the Equipment is economically obsolete or surplus to Lessee's business and Lessee shall have so determined in good faith and shall have furnished a certified copy of a resolution of its board of directors to such effect within 180 days and not less than 90 days prior to the Termination Date. Lessee shall give Lessor written notice within 270 days and not less than 180 days prior to the Termination Date of its election to exercise such option. For the purposes of this Section 2(2), interest rates or similar finance charges payable by the Lessee in connection with the acquisition of similar equipment under conditional sales contracts, leases or other arrangements for deferred payment of the purchase price, shall be disregarded in the determination of economic obsolescence. On or before the Lease Termination Date, the Lessor shall sell the Equipment "as-is, where-is", without representation or warranty, expressed or implied, for cash to the bidder, if any, which shall have submitted the highest bid prior to such date. Lessor shall, however, give Lessee at least thirty days' notice of the date Lessor requires that bids are to be submitted. The total selling price realized at such sale shall be retained by the Lessor and, in addition, on the Lease Termination Date, the Lessee shall pay to Lessor, in immediately available funds, all accrued and unpaid Rent through and including the Lease Termination Date together with the excess, if any, of (a) the Termination Value (as hereinafter defined) for the Equipment computed as of the Lease Termination Date over (b) the net sales proceeds of the Equipment after deducting expenses incurred by the Lessor in connection with such sale. No sale of any Item of Equipment shall be final until the sale of each Item of Equipment is completed. If the bids for the purchase of the Equipment are unsatisfactory to the Lessee or if, for any other reason, no sale shall have occurred on or as of the Lease Termination Date, the Lessor shall redeliver the Equipment to the Lessee and this Lease shall continue in full force and effect. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise take any action in connection with any such sale other than to transfer to the purchaser named in the highest bid certified by the Lessee to the Lessor, the Lessor's interest in the Equipment against receipt of the payments provided for herein. Upon payment of such Termination Value and such Rent, the Lease shall terminate and no further Rent shall be payable for or in respect of the Equipment. Termination Value for each Item of Equipment as of the Lease Termination Date shall be an amount equal to that percentage of the Purchase Price of such Item of Equipment as is set forth in Schedule D hereto opposite the Lease Termination Date.

SECTION 3. Rentals. (1) Lessee agrees to pay to Lessor as rent ("Rent") for the Equipment the following amounts:

(a) On the dates specified in Schedule B attached hereto during the fifteen-year base lease term commencing July 1, 1988 (each such date being a "Rental Payment Date"), Lessee shall pay to Lessor an amount ("Basic Rent") equal to the applicable rental set forth in Schedule B attached hereto. The first such Rental Payment Date shall be July 1, 1988, and the sixtieth such Rental Payment Date shall be April 1, 2003. Rental for the Equipment for the period from the lease commencement date to and including June 30, 1988 shall be based on the per diem interim rental rate set forth in Schedule B hereto and shall be payable on the last day of each month during said interim rental period;

(b) Sums sufficient to enable the Lessor or the Assignee (or any transferee or assignee of Lessor or the Assignee) to meet the out-of-pocket expenses incurred by Lessor or the Assignee (or any transferee or assignee of Lessor or the Assignee) in connection with the institution of any action or proceeding to enforce the terms hereof; provided, however, that Lessee or the Assignee shall have no liability hereunder with respect to out-of-pocket expenses incurred by Lessor or the Assignee (or any transferee or assignee of Lessor or the Assignee) in the course of administration and performance (as distinct from the enforcement) of said instruments. All rentals accrued pursuant to this paragraph (b) shall be payable by Lessee from time to time forthwith upon delivery to Lessee of an invoice or invoices setting forth the amount of such rentals then due; and

(c) Lessee shall pay to Lessor, as supplemental rent, all amounts (other than the rentals described in Section 3(a) hereof) which Lessee assumes or agrees to pay hereunder to Lessor or to others, including, without limitation, the payments described in Section 3(b) hereof, Termination Value payments and Casualty Value (as defined in Section 8(3) hereof) payments.

(2) Lessee will pay, to the extent legally enforceable, interest at the greater of eleven and seven-eighths percent (11 7/8%) per annum or 2% per annum in excess of the rate of interest announced from time to time by Chemical Bank as its "prime rate" (hereinafter called the "Prime Rate") (but in no event shall such rate of interest

exceed the highest rate permitted by applicable law) upon any Rent remaining unpaid after the same shall have become due and payable under any of the provisions of this Lease, anything herein contained to the contrary notwithstanding.

(3) All computations hereunder shall be made on the basis of a 360-day year of twelve 30-day months.

(4) All Rent payments provided for in this Lease, other than rentals accrued pursuant to subparagraph (b) of paragraph (1) of this Section 3 and any other payments constituting part of the Excepted Rights in Collateral as defined in the Security Agreement, shall be paid in lawful money of the United States in immediately available funds at such place as the Lessor (or Assignee so long as the Security Agreement shall remain in effect) shall designate in writing to the Lessee. It is agreed that payment by draft satisfies this requirement. If any of the Rental Payment Dates referred to above is not a business day, the rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York and/or Dallas, Texas are authorized or obligated to remain closed.

(5) This Lease is a net Lease and Lessee shall not be entitled to any abatement of Rent, reduction thereof (except as otherwise expressly provided in Section 8 hereof) or setoff against Rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of Lessee against Lessor under this Lease or otherwise; nor except as otherwise expressly provided herein shall this Lease terminate, or the respective obligations of Lessor or Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Equipment from whatsoever cause, the prohibition of or other restriction against Lessee's use of all or any of the Equipment, the interference with such use by any private person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Rent and other amounts payable by and obligations of Lessee hereunder shall be absolute

and unconditional and shall be separate and independent covenants and agreements and shall continue unaffected in all events in the manner and at the times herein provided unless the obligation to pay or perform the same shall be terminated pursuant to the express provisions of this Lease.

SECTION 4. Subordination of Lease to Security Agreement. (1) Anything herein to the contrary notwithstanding, this Lease and the interest of Lessee in the Equipment shall in all respects be subject and subordinated to all the terms, conditions and provisions of any Security Agreement, and the documents described therein. So long as no Event of Default has occurred and is continuing, Lessee shall quietly possess, use and enjoy the Items of Equipment and the rents, revenues, profits and income therefrom without let, hindrance or interruption by Lessor or by any other person lawfully claiming under or through Lessor.

(2) If an event of default, as defined in any Security Agreement, or the documents described therein, which shall not also be an event of default under Section 18 of this Lease, shall occur and Assignee exercises any of the remedies to which it is entitled thereunder and thereby acquires the interest of Lessor under the Lease, Lessee agrees to attorn to Assignee or its nominee or designee and recognize Assignee or said nominee or designee as its Lessor under the Lease and, in such event, the Lease shall continue in full force and effect as a direct lease between Assignee or said nominee or designee and Lessee upon all the then executory terms, covenants and conditions of the Lease, except that Assignee shall not (i) be liable for any previous act or omission by Lessor under the Lease, provided that Lessor shall continue to be liable for any such act or omission, (ii) be subject to any offset which shall have theretofore accrued to Lessee against Lessor, or (iii) be obligated to perform any duty, covenant or condition required to be performed by the Lessor under any of the terms hereof, but on the contrary, the Lessee and the Lessor by their respective executions hereof each acknowledge and agree that notwithstanding any such assignment each and all of such duties, covenants or conditions required to be performed by the Lessor shall survive any such assignment and shall be and remain the sole liability of the Lessor. Upon request of Assignee, Lessee shall promptly execute and deliver to Assignee an agreement confirming Lessee's attornment.

**SECTION 5. Covenants, Representations and Warranties.**

**(a) Lessor covenants, represents and warrants that:**

(i) As of the Lease Commencement Date with respect to an Item of Equipment, such Item of Equipment shall be free and clear of any and all claims, liens and encumbrances of any nature whatsoever, arising by, through or under Lessor, except for the rights of Lessee hereunder and the title and interest of any Assignee under any Security Agreement.

(ii) It is a duly organized and validly existing corporation in good standing under the laws of the State of Indiana, 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; and it is empowered and authorized to own its properties and carry on its business as now or hereafter conducted and to enter into and perform its obligations under this Lease.

(iii) The execution and delivery of this Lease have been duly authorized and will not contravene any provision of law or of its articles of incorporation or by-laws and will not contravene or constitute a default under the provisions of any agreement or other instrument binding upon it; and this Lease is a valid and binding obligation of the Lessor enforceable against the Lessor in accordance with the terms hereof.

(iv) No governmental authorization or approvals are required for the execution and delivery of this Lease or for the validity and enforceability hereof or for the leasing of the Equipment hereunder for the rentals and on the other terms and conditions herein provided.

(v) No litigation or administrative proceedings are pending or, to the best knowledge of Lessor, threatened against Lessor, the adverse determination of which would affect the validity of this Lease, the rights of Lessor or its successors hereunder or the ability of the Lessor to perform its obligations under the Lease.

**(b) Lessee covenants, represents and warrants that:**

(i) As of the Lease Commencement Date with respect to an Item of Equipment, such Item of Equipment shall be free and clear of any and all claims, liens and encumbrances of any nature whatsoever arising by, through or under any party other than Lessor; and the Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge any and all claims, liens and encumbrances of any nature whatsoever not excepted herein if the same shall arise at any time with respect to any Item of Equipment.

(ii) It is a duly organized and validly existing corporation in good standing under the laws of the State of Delaware, 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; and it is empowered and authorized to own its properties and carry on its business as now or hereafter conducted and to enter into and perform its obligations under this Lease.

(iii) The execution and delivery of this Lease are within its corporate powers, have been authorized by proper corporate proceedings and will not contravene any provision of law, governmental rule or regulation, judgment or order applicable to the Lessee, or of its charter or by-laws and do not and will not contravene any provision of or constitute a default under the provisions of any indenture, mortgage, contract or other agreement or instrument binding upon it; and this Lease is a valid and binding obligation of the Lessee which is enforceable against the Lessee in accordance with its terms.

(iv) No giving of notice to, registration with or taking any action in respect of or by any federal, state or local governmental body is required and no governmental authorization or approvals are required for the execution and delivery of this Lease or for the validity and enforceability hereof or for the leasing of the Equipment hereunder for the Rent and on the other terms and conditions herein provided, or, if any such actions or approvals are so required they have been so given and/or obtained, and, if any such approvals are hereafter required, they will be promptly obtained.

(v) No litigation or administrative proceedings are pending or, to the best knowledge of Lessee, threatened against or affecting Lessee in any court or before any governmental body, the adverse determination of which would affect the validity of this Lease, the rights of Lessor or its successors hereunder, or the ability of Lessee to perform its obligations under the Lease.

(vi) The Lessee is not in default under any material obligation for the payment of borrowed money, the deferred purchase price of property, or rent under any lease of real or personal property, and no event that, with the lapse of time or the giving of notice or both, would constitute a default under any thereof has occurred and is continuing.

(vii) The Lessee has filed all tax returns that are required under the laws of the United States and any state or subdivision thereof and has paid all taxes shown to be due and payable, except taxes being contested by Lessee in good faith, and there are no Federal tax liens filed against the Lessee.

(viii) The balance sheet and the related statement of income and statement of changes in financial position of the Lessee, or the consolidated group of which the Lessee is a member, heretofore delivered to the Lessor, have been prepared in accordance with generally accepted accounting principles and fairly present the financial position of the Lessee or such consolidated group, as the case may be, on and as of the date thereof, and the results of its operations for the period or periods covered thereby; and since the date of such balance sheet and statement, there has not been any material adverse change in the financial condition or results of operations of the Lessee or such consolidated group.

(ix) Neither the Lessee nor any person acting on its behalf has directly or indirectly offered or sold any interest in the indebtedness secured by the Security Agreement, other securities, the Equipment, or the lease obligations of the Lessee to, solicited offers to buy any such interest from, or otherwise approached or negotiated in respect of the purchase and sale or other disposition of any such interest with, any person so as to bring the transactions contemplated by this agreement within the provisions of section 5 of the Securities Act of 1933, as amended and neither the Lessee nor any person acting on its behalf shall do so.

(x) The Equipment qualifies as "rolling stock equipment" under section 1168 of the U.S. Bankruptcy Code and Lessor and Assignee shall be entitled to the rights, privileges and protection thereunder.

(xi) The Items of Equipment to be settled for hereunder on each Lease Commencement Date are (or will on such Lease Commencement Date be) covered by the insurance required by Section 7 hereof and all premiums due in respect of such insurance have been or shall be timely paid.

(xii) On each Lease Commencement Date all sales, use or transfer tax as payable upon the purchase by the Lessor of the Items of Equipment to be settled for hereunder on such Lease Commencement Date and on the lease thereof to the Lessee either has been paid or shall be timely paid in accordance with applicable law or such transactions will then be exempt from any such taxes.

(xiii) No taxes, fees or other charges in connection with the execution and delivery of the Lease are payable.

(xiv) The Lessee is a "common carrier" and the Equipment is "rolling stock" as such terms are defined in Section 3(a)(6) of the Securities Act of 1933, as amended.

(xv) The transactions contemplated hereby are not subject to the prohibitions of Section 406 of the Employee Retirement Income Security Act of 1974, as amended, or Section 4975 of the Internal Revenue Code of 1986, as amended.

SECTION 6. Taxes. (1) All payments to be made by Lessee hereunder will be free of expense to Lessor, Assignee and the Note Purchasers for collection or other charges and will be free of expense to Lessor, Assignee and the Note Purchasers with respect to the amount of any local, State or Federal taxes (other than the Federal income tax payable by Lessor, Assignee or the Note Purchasers in consequence of the receipt of payments provided herein and other than State or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the State and city in which Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees (and any other charges, fines or penalties in connection therewith) hereafter levied or imposed upon or in connection with or measured by, this Lease or any rental, use, payment, shipment, delivery or transfer of title under the terms hereof, including without limitation the purchase of the Equipment by Lessor pursuant to the Purchase Order Assignment but excluding any voluntary transfer by Lessor of its interest in the Equipment other than in connection with the exercise of its remedies pursuant to Section 18 hereof, or any assignment or participation or interest in any assignment hereof, all of which expenses, taxes, assessments, license fees, charges, fines and penalties Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. Lessee will also pay promptly all taxes (other than taxes referred to in the first parenthetical of this Section 6), assessments or license fees (and any charges, fines or penalties in connection therewith) which may be imposed upon any part of the Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon Lessor, Assignee or the Note Purchasers solely by reason of its ownership thereof, and will keep at all times all and every part of the Equipment free and clear of all taxes and assessments which might in any way affect the title of Lessor or Assignee or the Note Purchasers or result in a lien upon any part of the Equipment and will supply Lessor, Assignee and the Note Purchasers with a receipt or other evidence of such payment satisfactory to Lessor, Assignee and the Note Purchasers; provided, however, that Lessee shall be under no obligation to pay any taxes, assessments, license fees, charges, fines or penalties of any kind (hereinafter called "impositions") so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the reasonable advance opinion of Lessor, Assignee and the Note Purchasers, adversely affect the property or rights of Lessor or Assignee or the Note

Purchasers hereunder or under the Security Agreement, or other documents described therein and the Lessee shall have agreed to indemnify the Lessor, Assignee and the Note Purchasers in a manner reasonably acceptable to such parties for any liability, expenses, obligations, damages, penalties, claims, actions, suits, costs and disbursements arising out of or related to such contest (including, without limitation, legal and accounting fees). If any impositions shall have been charged or levied against Lessor or Assignee or the Note Purchasers directly and paid by Lessor or Assignee or the Note Purchasers, Lessee shall reimburse Lessor or Assignee or the Note Purchasers, as the case may be, on presentation of an invoice therefor.

(2) All the indemnities contained in this Section 6 shall continue in full force and effect, notwithstanding the expiration of the term of this Lease. Payments due from Lessee to Lessor or Assignee or the Note Purchasers under this Section 6 shall be made directly to the party indemnified.

(3) In case any report or return is required to be made with respect to any obligation of the Lessee under or arising out of this Section 6, Lessee will where permitted to do so under applicable rules and regulations, make and timely file such reports and returns in such manner as to show the interest of Lessor and Assignee in the Equipment or, where not so permitted, will notify Lessor and Assignee of such requirement and will prepare and deliver such reports to Lessor and Assignee within a reasonable time prior to the time such reports are to be filed. All costs and expenses (including legal and accounting fees) of preparing any such return or report shall be borne by Lessee.

**SECTION 7. Insurance.** (1) Lessee will maintain at its sole cost and expense at all times during the continuance of this Lease (and thereafter pending delivery of the Equipment to Lessor pursuant to this Lease and so long as the Equipment shall be stored by Lessee) with insurers of recognized reputation and responsibility satisfactory to the Lessor and the Assignee (provided that insurance arranged by Lessee through Lloyds of London shall be deemed satisfactory to the Lessor and the Assignee) with insurers of recognized reputation and responsibility satisfactory to the Lessor and the Assignee general liability and property damage insurance policies, with Lessor and Assignee named as additional insureds and loss payees, as their respective interests may appear, which shall protect Lessor and Assignee against all risks arising out of the condition, maintenance, use and operation of the Equipment, having limits for bodily injury or death of not less than \$25,000,000 per occurrence and limits for casualty occurring to the Equipment of not less than \$4,000,000 per occurrence. Such policies

may have such deductibles as are usual and customary for Class I railroads operating within the United States. It is acknowledged by the parties that as of the date hereof the deductibles on Lessee's current policies do not exceed \$3,000,000. Lessor shall be furnished with certificates of all such policies, which certificates shall provide that in the event of material change, non-renewal or cancellation of any such policy, the company issuing such certificate(s) will provide Lessor and Assignee with thirty days' prior written notice thereof before such material change, non-renewal or cancellation shall be effective. If Lessee shall fail to provide for the foregoing insurance, Lessor may procure such insurance, and Lessee shall, upon demand, reimburse Lessor for all outlays for such insurance, with interest thereon computed at the greater of 11 7/8% per annum or 2% per annum over the Prime Rate (not to exceed the highest rate of interest permitted by applicable law). Lessor at its option, cost and expense may obtain policies of insurance providing coverage with respect to the Equipment in addition to the coverage required by this Section 7 to be maintained by Lessee. Lessee will also carry and maintain at its sole cost and expense with respect to the Equipment such other insurance as is at least comparable in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Equipment.

(2) Any policies of insurance carried in accordance with this paragraph shall name Lessor and Assignee as additional named insureds and loss payees as their respective interests may appear and shall be made payable, in the case of policies covering loss or damage in respect of any Item of Equipment, to the Assignee (if the Security Agreement is still in effect, otherwise to the Lessor).

(3) Any policies of insurance carried in accordance with this paragraph shall provide that losses shall be adjusted with the Lessee subject to approval by the Lessor and the Assignee.

(4) If Lessor shall receive (directly or from Assignee) any insurance proceeds or condemnation payments in respect of an Item of Equipment suffering a Casualty Occurrence, Lessor shall pay such proceeds or condemnation payments to Lessee up to an amount equal to the Casualty Value as hereinafter defined with respect to an Item of Equipment previously paid by Lessee and any balance of such proceeds or condemnation payments shall remain the property of Lessor; provided, however, that no Event of Default shall have occurred and be continuing and Lessee shall have made payment of the Casualty Value thereof, and accrued Rent in respect of such an Item of Equipment to Lessor. All insurance proceeds received by Lessor (directly or from

Assignee) in respect of any Item of Equipment not suffering a Casualty Occurrence as hereinafter defined shall be paid to Lessee upon proof satisfactory to Lessor that any damage to such Item of Equipment in respect of which such proceeds were paid has been fully repaired.

(5) On the Lease Commencement Date in respect of any Item of Equipment and on each anniversary date thereof, the Lessee will furnish to the Lessor and the Assignee an insurance certificate of the Lessee's insurance broker describing in reasonable detail the insurance then carried and maintained on such Equipment.

**SECTION 8. Payment for Casualty Occurrences.** (1) In the event that (i) any Item of the Equipment shall be or become lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, or (ii) the Purchase Price of any Item of Equipment shall have been refunded by the Vendor pursuant to the terms of its patent indemnity therefor, or (iii) any Item of Equipment shall be taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term of this Lease or by any other governmental entity resulting in loss of possession by the Lessee for a period of ninety (90) consecutive days or until the end of the term or any renewal term of this Lease (such occurrences being hereinafter called "Casualty Occurrences") during the term or any renewal term of this Lease, Lessee shall promptly, and in any event within thirty (30) days after it shall have determined that an Item of Equipment has suffered a Casualty Occurrence, give written notice thereof to Lessor and Assignee. On the next succeeding Rental Payment Date after such notice, Lessee shall either (x) pay to Lessor an amount equal to the accrued Rent for such Equipment to the date of such payment plus (A) in the case of Casualty Occurrences of the types described in Sections 8(1)(i) and 8(1)(iii) hereof, a sum equal to the Casualty Value (as hereinafter defined) of such Equipment as of the date of such payment in accordance with Schedule C hereto, and (B) in the case of a Casualty Occurrence of the type described in Section 8(1)(ii) hereof, an amount equal to the difference between the Casualty Value of such Equipment as of the date of such payment in accordance with Schedule C hereto and the amount, if any, refunded by the Vendor to Lessor pursuant to the terms of the patent indemnity of Vendor, or (y) subject to the satisfaction of the conditions contained in Section 8(2) hereof, convey or cause to be conveyed to Lessor, and to be leased by Lessee hereunder in replacement thereof, a replacement Item of equipment for the Item of

Equipment that has suffered a Casualty Occurrence which shall be free and clear of all liens except liens permitted by Section 13 hereof and which shall be functionally equivalent to such Item of Equipment and have a value and utility equal to or greater than the value of such Item of Equipment on the date immediately prior to the date of such Casualty Occurrence assuming that such Item of Equipment was in the condition required by the terms hereof (a "Replacement Item of Equipment"). Upon the making of the payment described in clause (x) of the immediately preceding sentence by Lessee in respect of such Equipment, the Rent for such Item of Equipment shall cease to accrue as of the date of such payment, the term of this Lease as to such Item of Equipment shall terminate and (except in the case of the loss, theft or complete destruction of such Item of Equipment ) Lessor shall be entitled to recover possession of such Item of Equipment. Except as hereinabove in this Section 8 provided, Lessee shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Item of Equipment after the lease commencement date.

(2) Conditions to Replacement of Item of Equipment. Lessee's right to make a replacement under Section 8(1) hereof shall be subject to the fulfillment, in addition to the conditions contained in such Section 8(1), of the following conditions precedent at Lessee's sole cost and expense:

(i) Lessor and Lessee shall determine that the Replacement Item of Equipment has a value and utility at least equal to and is in as good operating condition and repair as the Item of Equipment being replaced (assuming that such Item of Equipment was in the condition and repair required by the terms hereof), provided, however, that Lessor may require such determination to be made by a nationally-recognized appraiser, selected by Lessor and paid for by Lessee;

(ii) no Event of Default shall, on the Replacement Closing Date referred to below, have occurred and be continuing;

(iii) on the date that the Replacement Item of Equipment is delivered, which date shall be not later than the Rental Payment Date succeeding the written notice of such Casualty Occurrence required by Section 8(1) hereof (hereinafter referred to in this Section 8(2) as the "Replacement Closing Date") the following documentation shall have been duly authorized, executed and delivered by the respective party or parties thereto and shall be in full force and

effect, and an executed counterpart of each thereof (or, in the case of the bills of sale referred to below, a photocopy thereof) shall have been delivered to Lessor and Assignee:

(A) a Lease Amendment satisfactory in form and substance to Lessor and Assignee covering the Replacement Item of Equipment;

(B) a Security Agreement Amendment satisfactory in form and substance to Lessor and Assignee covering the Replacement Item of Equipment;

(C) a full warranty bill of sale (as to title), in form and substance satisfactory to Lessor and Assignee, covering the Replacement Item of Equipment (hereinafter called the "Replacement Bills of Sale"), executed by the owner thereof in favor of Lessor, dated the Replacement Closing Date; and

(D) an Officer's Certificate of Lessee certifying that the Replacement Item of Equipment is of at least equal value and utility, and in as good operating condition, as the Item of Equipment it replaces;

(iv) on or before the Replacement Closing Date, Lessor and Assignee shall have received such documents and evidence with respect to Lessee, Lessor, the Owner of such Replacement Item of Equipment or Lender, as Lessor or Assignee or their respective special counsel may reasonably request in order to establish the consummation of the transactions contemplated by this Section 8(1), the taking of all necessary corporate action in connection therewith and compliance with the conditions set forth in this Section 8(1), in each case in form and substance reasonably satisfactory to Lessor and Assignee;

(v) Lessor and Assignee (acting directly or by authorization to their respective counsel) shall each have received evidence satisfactory to Lessor and Assignee as to the due compliance with Section 7 hereof with respect to the Replacement Item of Equipment;

(vi) (A) on the Replacement Closing Date, Lessor shall receive good title to the Replacement Item of Equipment; free and clear of Liens (other than

the Lien of the Security Agreement); (B) all documents reasonably required by Lessor or Assignee shall have been duly filed with the Interstate Commerce Commission (the "ICC"); and (C) Lessor and Assignee (acting directly or by authorization to their respective counsel) shall have received evidence satisfactory to each of them with respect to the matters covered by this subparagraph (vi);

(vii) on the Replacement Closing Date, the following statements shall be true and Lessor and Assignee and their respective counsel shall have received an Officer's Certificate of Lessee, dated the Replacement Closing Date, stating that (A) the representations and warranties made by Lessee in the Lease are true and accurate on and as of the Replacement Closing Date as though made on and as of the Replacement Closing Date except to the extent that such representations and warranties relate solely to an earlier date, (B) the matters set forth in clause (i) above are confirmed and (C) no Event of Default will result from the purchase or lease of the Replacement Item of Equipment;

(viii) Lessor and Assignee shall, at the expense of Lessee, have received (acting directly or by authorization to its counsel) (A) an opinion, satisfactory in form and substance to Lessor and Assignee, of the general counsel of Lessee (i) to the effect that good and marketable title to the Replacement Item of Equipment has been vested in Lessor free and clear of all liens other than the rights of Lessee hereunder and the rights of Assignee under the Security Agreement, and (ii) with respect to the effectiveness, priority, recordation and filing of the interests which the Security Agreement purports to create, (B) an opinion of qualified ICC counsel satisfactory to Lessor and Assignee in form and substance satisfactory to Lessor and Assignee, and (C) such other opinions of such counsel as Lessor or Assignee may reasonably request; and

(ix) on or before the Replacement Closing Date, Lessee shall have furnished Lessor and Assignee with such other evidence as Lessor or Assignee has reasonably requested of the value and utility of, and good title to, such Replacement Item of Equipment;

(3) Lessor hereby appoints the Lessee its agent to dispose of any Item of Equipment if it has suffered a Casualty Occurrence at the best price obtainable on an

"as is, where is" basis. Provided that the Lessee is not in default under this Lease and has made all payments required by this Lease, the Lessee shall be entitled to the proceeds of such sale (net of expenses) to the extent they do not exceed the Casualty Value of such Item of Equipment and shall pay any excess to the Lessor.

(4) The Casualty Value of each Item of Equipment as of the Rent Payment Date on which such payment is made shall be an amount equal to that percentage of the Purchase Price of such Item of Equipment as is set forth in Schedule C hereto opposite the Rent Payment Date next succeeding the actual date of such Casualty Occurrence or, if there is no such Rent Payment Date, the last Rent Payment Date.

**SECTION 9. Maintenance and Repair.** (1) Lessee, at its own cost and expense, will at all times (i) maintain and keep the Equipment in as good operating order, repair and condition as when delivered pursuant to Section 1 hereof, ordinary wear and tear excepted, and in as good operating order, repair and condition as other equipment of similar type and vintage owned or leased by Lessee, (ii) maintain the Equipment as an operating and functional part of its business, (iii) replace any part of the Equipment which shall be or become worn out, lost, stolen, destroyed or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever, with like kind equipment that is functionally equivalent to the part of the Equipment being replaced, and, (iv) subject to the provisions of Section 8 hereof, in case of damage by fire, accident or otherwise to the Equipment, will promptly repair the Equipment and restore it to good operating order, all without expense to Lessor. In addition, Lessee shall maintain each Item of Equipment in such condition as will enable such Item of Equipment to perform the functions for which it was originally intended, including, but not limited to, being fit for use in interchange under load, and shall maintain each Item of Equipment in accordance with the specifications of the manufacturer of such Item of Equipment and in accordance with the standards prescribed by the Association of American Railroads or any governmental authority having jurisdiction over the Equipment and without limiting the foregoing, according to those standards applied by Lessee to equipment owned by it. Without limitation as to any other provision of this Section 9(1), each Item of Equipment subject hereto shall be operated safely and carefully by properly trained persons and shall not be operated or used in a negligent, reckless, careless or abusive manner or used beyond its maximum load capacity.

(2) All parts and accessories installed on, incorporated in or attached to the Equipment or any part thereof and any replacements thereto shall be considered accessions to the Equipment and, without cost or expense to Lessor, full ownership thereof, free from any lien, charge, security interest or encumbrance (except for those created by any Security Agreement), shall be immediately vested in Lessor.

SECTION 10. Compliance with Laws, Rules and Regulations. During the term of this Lease, Lessee will comply in all respects (including without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws, rules and regulations of the jurisdictions in which any operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads (or of any successor thereto) and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws, rules and regulations affect the operation, maintenance, condition or use of the Equipment or any additional equipment or appurtenances thereof; and in the event that such laws, rules or regulations require alteration of any of the Equipment, Lessee will conform therewith, at its expense, and will maintain the Equipment in proper condition for operation under such laws, rules and regulations; provided, however, that Lessee may, in good faith, contest the validity or application of any such law, rule or regulation in any reasonable manner which does not, in the advance opinion of Lessor and Assignee, adversely affect the title, property or rights created or purported to be created hereunder.

SECTION 11. Reports and Inspections. (1) During the term of this Lease, Lessee will furnish, on or before January 31 in each year, commencing with the year 1989, to Lessor, Assignee and the Note Purchasers an accurate statement, signed by the President, a Vice President or the Chief Engineer of Lessee, describing any casualty which occurred during the preceding year and containing such other information regarding the condition and state of repair of the Equipment as Lessor or Assignee or the Note Purchasers may reasonably request. Lessor and Assignee shall have the right, by their agents, but shall be under no obligation, to inspect the Equipment and the records of Lessee relating to the Equipment and to Lessee's obligations hereunder at any reasonable times during the continuance of this Lease.

(2) Lessee agrees to prepare and deliver to Lessor and Assignee within a reasonable time prior to the required date of filing (or, to the extent permissible, file

on behalf of Lessor or Assignee) any and all reports to be filed by Lessor or Assignee with any Federal, State or other regulatory authority by reason of the ownership of Lessor or Assignee of the Equipment or the leasing by Lessor thereof to Lessee.

(3) The Lessee agrees that it will maintain its financial statements in a manner which fairly present the financial condition of the Lessee and its consolidated subsidiaries, the results of their operations and changes in their financial position in accordance with generally accepted accounting principles consistently applied. The Lessee will furnish to the Lessor, the Assignee and the Note Purchasers:

(i) Quarterly Statements - As soon as practicable the end of the first, second, and third quarterly fiscal periods in each fiscal year of the Lessee, and in any event within 50 days thereafter, duplicate copies of:

(a) a consolidated balance sheet of the Lessee and its consolidated subsidiaries as at the end of such quarter setting forth in comparative form the amount for the end of the corresponding period of the preceding fiscal year,

(b) consolidated statements of earnings and of changes in common stockholders' equity of the Lessee and its consolidated subsidiaries for such quarterly period, setting forth in comparative form the amount for the corresponding period of the preceding fiscal year, and

(c) consolidated statements of changes in financial position for the portion of the fiscal year ending with said quarter, setting forth in comparative form the amount for the corresponding period of the preceding fiscal year,

all in reasonable detail and attested as complete and correct in all material respects, subject to changes resulting from fiscal year-end adjustments, by a financial officer of the Lessee;

(ii) Annual Statements - As soon as practicable after the end of each fiscal year, and in any event within 95 days thereafter, duplicate copies of:

(1) a consolidated balance sheet of the Lessee and its consolidated subsidiaries as at the end of such year, and

(2) a consolidated statements of earnings, of changes in common stockholder's equity and of changes in financial position of the Lessee and its consolidated subsidiaries for such year,

setting forth in each case in comparative form the figures for the previous fiscal year and accompanied by an opinion of a firm of independent certified public accountants of recognized national standing stating that such financial statements present fairly the financial condition of the companies being reported upon and have been prepared in accordance with generally accepted accounting principles consistently applied (except for changes in application in which such accountants concur) and that the audit by such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards;

(iii) SEC and Other Reports - Promptly upon their becoming available, one copy of each financial statement, report, or proxy statement sent by the Lessee to its shareholders generally, and of each regular or periodic report and any prospectus (in the form in which it becomes effective) filed by the Lessee with any securities exchange or with the Securities and Exchange Commission or any successor agency, and one copy of all press releases and other statements made available by the Lessee or any subsidiary to the public concerning developments in the business of the Lessee and its subsidiaries which are material on a consolidated basis;

(iv) Notice of Default or Claimed Default - Immediately upon becoming aware of the existence of a Default or an Event of Default or that the Lessor has given notice or taken any other action with respect to an Event of Default or a claimed default under this Lease, or a default in the payment of the principal, premium, if any, sinking fund or interest with respect to indebtedness for borrowed money, or an event of default with respect to any indebtedness for borrowed money or in the instrument under which such indebtedness is outstanding permitting the holders thereof to accelerate the maturity thereof, a written notice specifying the nature of the Default, Event of Default, default or claimed default and any such notice given or action taken by the Lessor or by the

holders of such other indebtedness and what action the Lessee is taking or proposes to take with respect thereto.

SECTION 12. Possession and Use. Subject to the provisions of Section 4 hereof, Lessee, in the absence of the occurrence or continuance of an Event of Default hereunder, shall be entitled to the possession, use and quiet enjoyment of the Equipment and to the use thereof, but only upon and subject to all the terms and conditions of this Lease. Lessee shall at all times keep the Equipment in its sole possession and control except as otherwise expressly provided herein. Lessee shall not assign the Lease or sublease or in any way transfer possession of the Equipment without the prior written consent of Lessor; provided, however, that an affiliate of Lessee shall be permitted to use the Equipment upon railroad lines over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract. Notwithstanding the foregoing, Lessee shall be permitted to use the Equipment for connecting with other carriers in the usual interchange of traffic or pursuant to "run-through" agreements or exchange agreements, and Lessee shall have the right to assign its interest under this Lease or sublease the Equipment to either the Union Pacific Railroad Company ("UP") or the Missouri Pacific Railroad Company ("MoPac") or to any wholly owned or majority owned subsidiary of UP or MoPac so long as such permitted assignee or sublessee in question has a tangible net worth in excess of \$88,600,000 [and with respect to which a petition for reorganization under Title II of the United States Code as now constituted or as hereafter amended has not been filed by or against such permitted assignee in question] subject to all the terms and conditions of this Lease, or to any other carrier having a tangible net worth in excess of \$88,600,000 ("Class I Carrier") with the prior written consent of Lessor and Assignee which shall not be unreasonably withheld, provided that any such assignment or sublease shall expressly provide that (i) it is subject and subordinate to this Lease (including all the terms and provisions hereof), (ii) the sublessee or assignee thereunder shall not transfer possession of or any other rights to any Item of Equipment to any other person, (iii) the Lessor may avoid or terminate such assignment or sublease following an Event of Default hereunder and, that in the event the Lessor declares this Lease to be in Default, such assignee's or sublessee's rights under such assignment or sublease shall automatically be deemed assigned to the Lessor and (iv) the term (including any option of such assignee or sublessee to renew or extend) of such assignment or sublease shall not continue beyond the end of the then current term for such Item of Equipment.

No permitted assignment or sublease shall relieve Lessee of any of its obligations hereunder, unless Lessee shall have assigned its interest hereunder to UP or MoPac, or to a Class I Carrier which Lessor and Assignee have so consented to, and any such permitted assignee shall have executed and delivered to Lessor and Assignee a written assumption agreement whereby such permitted assignee shall have assumed all obligations of Lessee hereunder in form reasonably satisfactory to Lessor and Assignee, and Lessee shall pay all costs and expenses of Lessor or Assignee in connection with any permitted assignment or sublease.

SECTION 13. Prohibition 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 any party other than Lessor which, if unpaid, might become a lien or a charge upon any Item of Equipment, or the Rent payable by Lessee hereunder, equal or superior to the title or claim of Lessor thereto, 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, in the reasonable opinion of Lessor or Assignee, adversely affect the title, property or rights created or purported to be created hereunder.

SECTION 14. Lessee's Indemnities. (1) Lessee agrees to indemnify and save harmless Lessor, Assignee and the Note Purchasers, and their respective successors or assigns, from and against all losses, damages, injuries, liabilities, claims, suits, judgments, costs, expenses and demands whatsoever, and expenses in connection therewith, including counsel fees, arising out of this Lease, any Security Agreement, other documents described herein or therein, and ownership of the Equipment by Lessor or the use and operation of the Equipment during the term of this Lease including, but not limited to, (i) the performance or enforcement of any of the terms hereof or thereof, and (ii) the manufacture, purchase, acceptance, rejection, return, ownership, lease, disposition, installation, delivery, maintenance, repair, service, overhaul, design, testing, possession, use, condition, operation or any accident in connection therewith (including, without limitation, those claims based on latent and other defects, whether or not discoverable, or claims based on strict liability in tort, or any claim for patent, trademark or copyright infringement). At the request of Lessor, Lessee shall assume and conduct promptly and diligently, at Lessee's expense, the entire defense of Lessor, Assignee and the Note Purchasers, and their respective agents, successors and assigns, in connection with this indemnification.

(2) Lessee hereby waives any existing or future claims or rights arising during the term or after termination of the Lease against, and hereby releases Lessor, any Assignee and the Note Purchasers, and their respective agents, successors and assigns, on account of, arising from, or in any way connected with injury or death of personnel of Lessee or others or loss or damage to property of Lessee or others or the loss of use of any property that may result from or arise, in any manner, out of any Item of Equipment, or from any article used therein or produced therewith, whether or not the Item of Equipment involved is in the possession of Lessee at the time.

(3) All of the Lessor's rights and benefits arising from the indemnities contained in this Section 14 shall survive the expiration or other termination of the Lease and said indemnities are expressly made for the benefit of, and shall be enforceable by, Lessor, Assignee and the Note Purchasers and their respective agents, successors and assigns.

(4) Lessee shall not be liable for any costs and expenses incurred by Lessor or Assignee or the Note Purchasers, including counsel fees and ongoing trustee fees, except to the extent otherwise agreed in writing, incurred in connection with the negotiation and preparation of this Lease and the documents described therein. Notwithstanding the foregoing, Lessee shall not be required to make any indemnification for any claim which arises from the gross negligence or willful misconduct of Lessor or Assignee or the Note Purchasers. The obligation of Lessee to indemnify any person hereunder shall not be affected by the willful misconduct or gross negligence of any other person indemnified hereunder.

SECTION 15. Warranties. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, AS TO THE FITNESS, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT LEASED BY LESSEE HEREUNDER, AND LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR PURPOSE OR AS TO ANY PATENTED FEATURES THEREOF OR AS TO THE TITLE THEREOF OR ANY COMPONENT THEREOF, OR AS TO THE INTEREST THEREIN OF LESSOR, it being agreed that all such risks, as between Lessor and Lessee, are to be borne by Lessee. Notwithstanding the foregoing, Lessee shall not be prohibited from asserting any cause of action it may have against the manufacturer of the Equipment and Lessor agrees to assign all warranties of such manufacturer to Lessee at the time of closing.

SECTION 16. Patent Indemnity. Lessee hereby agrees to indemnify, protect and hold harmless Lessor, Assignee and the Note Purchasers and any person in whom title to the Equipment may be vested, and any assignee of an interest in this Lease, from any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against Lessor, Assignee or the Note Purchasers or any such person or assignee because of the use in or about the construction or operation of the Equipment or any part thereof, of any design specified by Lessee, or articles and materials specified by Lessee and not manufactured by the manufacturer of such Equipment, which infringes or is claimed to infringe, on any patent or other right.

SECTION 17. Assignment. (1) All or any of the rights, benefits and advantages of Lessor hereunder, including without limitation the right to receive payment of Rent or any other payment under this Lease, are being assigned to the Assignee pursuant to the Security Agreement, and, if such Security Agreement shall no longer be in effect, may be assigned or transferred by Lessor and reassigned or retransferred by any assignee at any time and from time to time. To the extent assigned, all rights of Lessor hereunder (including, but not limited to, the rights under Section 18 hereof) shall inure to the benefit of Lessor's assigns. If Lessor shall give written notice to Lessee stating the identity and post-office address of any assignee entitled to receive the payment of Rent and/or other sums payable by Lessee hereunder, Lessee shall thereafter make the payments designated in such notice to the designated assignee.

(2) In the event of any assignment, Lessee shall:

- (a) send to Lessor and Assignee copies of any notices required to be sent to Lessor hereunder;
- (b) not permit the Lease to be amended, modified or terminated, except as provided in Section 2(2) hereof, without the prior written consent of Assignee; and
- (c) acknowledge the reliance of Assignee upon Lessee's covenants, warranties and representations herein, and shall, if requested, restate directly to Assignee such representations, warranties and covenants and make such other representations, warranties and covenants to Assignee as may be reasonably required to give effect to such Assignment.

(3) Any assignee pursuant to this Section 17 shall not be obligated to perform any duty, covenant or condition required to be performed by the Lessor under any of the terms hereof. Without limiting the foregoing, the Lessee acknowledges and agrees that the rights of such assignee in and to the Rent shall not be subject to any abatement whatsoever, and shall not be subject to any defense, setoff, counterclaim or recoupment or reduction of any kind for any reason whatsoever by reason of failure of or defect in the Lessor's title or any interruption from whatsoever cause in the use, operation or possession of any Item of Equipment or any part thereof or any damage to or loss or destruction of any Item of Equipment or any part thereof or by reason of any other indebtedness or liability, howsoever and whenever arising, or the Lessor or of any other person to the Lessee or to any other person, or for any cause whatsoever, it being the intent hereof that the Lessee shall be unconditionally and absolutely obligated to pay such assignee all of the Rent, subject only to the provisions of the Security Agreement relating to Excepted Rights in Collateral.

(4) Unless and until the Lessee shall have received from the Assignee notice that the lien of the Security Agreement has been released (i) no amendment or modification of, or waiver by or consent of the Lessor in respect of, any of the provisions of this Lease except in respect of Excepted Rights in Collateral shall be effective unless the Assignee shall have joined in such amendment, modification, waiver or consent or shall have given its prior written consent thereto, and (ii) except as otherwise provided in the Security Agreement, the Assignee shall have the sole right to exercise all rights, privileges, and remedies (either in its own name or in the name of the Lessor for the use and benefit of the Assignee) which by the terms of this Lease or by applicable law are permitted or provided to be exercised by the Lessor.

**SECTION 18. Events of Default; Remedies.** (1) If, during the continuance of this Lease, one or more of the following events (herein called "Events of Default") shall occur and be continuing:

(a) default shall be made in the payment of any part of the rental provided in Sections 3 or 20 hereof and such default shall continue for ten (10) days; or

(b) Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of any Item of the Equipment or shall default on the maintenance of the insurance coverage required by Section 7; or

(c) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of Lessee contained herein and such default shall continue unremedied for thirty (30) days after written notice from Lessor or the Assignee to Lessee specifying the default and requesting that the same be remedied; or

(d) (i) a petition for reorganization under Title 11 of the United States Code as now constituted or as hereafter amended, shall be filed by or against Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within sixty (60) days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision as the same may hereafter be amended; or

(ii) any other proceeding shall be commenced by or against Lessee for any relief which includes, or might result in, any modification of the obligations of Lessee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganization, arrangements, compositions or extensions (other than a law which does not permit any readjustments of such obligations), and, unless such proceeding shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue), all the obligations of Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for Lessee or for the property of Lessee in connection with any such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within sixty (60) days after such proceeding shall have been commenced; or

(e) any representation or warranty made by the Lessee in this Lease or any document delivered by Lessee in connection herewith shall prove to be incorrect in any material respect when made or given;

(f) Final judgment or judgments for the payment of money aggregating in excess of \$1,000,000 shall be outstanding against the Lessee or any subsidiary thereof and any one of such judgments has been outstanding for more than 30 days from the date of its entry and has not been discharged in full or stayed;

(g) The Lessee or any subsidiary thereof shall fail to make one or more payments due on aggregate indebtedness for borrowed money exceeding \$1,000,000; or any event shall occur or any condition shall exist, the effect of which event or condition is to cause (or permit one or more persons to cause) more than \$1,000,000 of aggregate indebtedness for borrowed money of the Lessee or any subsidiary thereof to become due before its (or their) stated maturity or before its (or their) regularly scheduled date of payment; or

(h) Default shall occur under any lease under which the Lessee or any subsidiary thereof is lessee having a remaining term in excess of one year providing for the payment of aggregate rentals thereunder over the remaining term thereof of not less than \$1,000,000 if such default causes (or permits one or more persons to cause) the termination of such lease;

then, in any such case, Lessor, at its option, may:

(I) proceed by appropriate court action or actions either at law or in equity to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(II) by notice in writing to Lessee terminate this Lease as of a date not less than ten (10) days after such notice, whereupon all right of Lessee to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but Lessee shall remain liable as herein provided; and thereupon Lessee shall deliver possession of the Equipment to Lessor in accordance with Section 19 hereof and Lessor may by its agents enter upon the premises of Lessee or other premises where the Equipment may be and take possession of the Equipment and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Equipment for any purposes whatever; but Lessor

shall, nevertheless, have a right to recover from Lessee any and all amounts which under the terms of this Lease may be then due or which may become due and unpaid, including rentals accruing hereunder after the date of default (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and denominator is the total number of days in such full rental period) and also to recover forthwith from Lessee:

(i) as damages for loss of the bargain and not as a penalty, a sum, with respect to the Equipment, which represents the excess of (x) the present worth, at the time of such termination, of the aggregate of the rentals for the Equipment which would otherwise have accrued hereunder from the date of such termination by its terms but for the Event of Default which resulted in termination hereunder over (y) the then present worth of the fair rental value of such Equipment for such period, such present value to be computed in each case on a basis of 6% per annum discount, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated; plus interest commencing on the date of such notice on such excess at the Prime Rate as of the date of such notice. Such present worths are to be computed in each case by discounting such rental payments at a rate of 10% per annum compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated; or

(ii) an amount equal to the excess, if any, of the Casualty Value as of the Rent Payment Date on or next preceding the date of termination over the amount Lessor reasonably estimates to be the sales value of such Item of Equipment at such time; provided, however, that in the event Lessor shall have sold any Item of Equipment pursuant to clause (iii) below, Lessor, in lieu of collecting any amounts payable by Lessee pursuant to the preceding clause (ii) with respect to such Item of Equipment, may, if it shall so elect, demand that Lessee pay Lessor and Lessee shall pay to Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Item of Equipment, as of the Rent Payment Date on or next preceding the date of termination over the net proceeds of such sale; or

(iii) Lessor may sell any Item of Equipment at public or private sale, as the Lessor may determine, free and clear of any rights of the Lessee without any duty to account to the Lessee with respect to any such sale or for the proceeds thereof (except to the extent required by clause (ii) above if the Lessor elects to exercise its rights under said clause); or

(iv) The Lessor may hold, keep idle or lease to others any Item of Equipment or any part thereof, as the Lessor in its sole discretion may determine, free and clear of any rights of the Lessee without any duty to account to the Lessee with respect to such action or inaction or for any proceeds with respect thereto, except that the Lessee's obligation to pay rent with respect to such Item of Equipment on Rental Payment Dates subsequent to the date upon which the Lessee shall have been deprived of use of such Item of Equipment pursuant hereto shall be reduced by the net proceeds, if any, received by the Lessor from leasing such Item of Equipment to any person other than the Lessee; and

(v) In addition to any damages payable pursuant to the aforesaid clauses (i) through (iv), or any thereof, Lessee shall also pay, any damages or expenses, including reasonable attorneys' fees, in addition thereto which Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of Rent, including, without limitation, expenses of sale or re-leasing (including incidental transportation costs incurred by Lessor); and

(III) apply moneys then held by it hereunder to amounts due to Lessor hereunder, including damages and expenses referred to in Clause (II) of this Section 18.

(IV) waive any Event of Default and its consequences and rescind and annul any such notice of termination or notice of sale of the Equipment by notice to Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no Event of Default had occurred and no such notice had been given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by Lessee that time is of the essence of this Lease and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

(2) Each and every power and remedy hereby specifically given to Lessor shall be in addition to every other power and remedy specifically so given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by Lessor. All such powers and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of Lessor in the exercise of any power or remedy herein provided or otherwise available to Lessor and no renewal or extension of any payments due hereunder or other indulgence duly granted to Lessee shall impair any such power or remedy or shall be construed to be a waiver of any default or any acquiescence therein. Acceptance by Lessor of any payment after it shall have become due hereunder shall not be deemed to alter or affect Lessee's obligations or Lessor's rights hereunder with respect to any subsequent payments or any prior or subsequent default hereunder. In the event that Lessor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit Lessor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

(3) Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law.

(4) The Lessee also agrees to furnish to the Lessor, the Assignee, and any assignee thereof, and the Note Purchasers promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default or which, after notice or lapse of time, or both, would constitute an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Paragraph (4) a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of this operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

**SECTION 19. Return of Equipment.** (1) If this Lease is terminated pursuant to Section 2 or 18 hereof or upon the expiration of the term hereof, Lessee shall forthwith deliver possession of the Equipment to the Lessor and each Item of Equipment so delivered shall (i) be in the operating order, repair and condition as when

originally delivered to Lessee, ordinary wear and tear excepted, (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and all rules and regulations of any governmental agency or other organization with jurisdiction over the Equipment, (iii) have been maintained in accordance with the provisions of Section 9 and (iv) have attached or affixed thereto any special device considered an accession thereto and shall have removed therefrom at Lessee's expense any addition, modification or improvement which were made by Lessee during the term of this Lease and are readily removable without causing material damage to the Equipment and do not adversely and materially affect the value of the Equipment. For the purpose of delivering possession of any Item of Equipment as above required, Lessee shall at its own cost, expense and risk:

(a) forthwith assemble and in the usual manner (including, but not by way of limitation, giving prompt written notice to the Association of American Railroads and all railroads to which any Item or Items of Equipment have been interchanged or which may have possession thereof to return the Item or Items of Equipment), deliver such Item or Items of Equipment upon such storage tracks of Lessee or any of its affiliates as Lessor may reasonably request;

(b) store such Item or Items of Equipment on such tracks at the risk of Lessee without charge for insurance, rent or storage to Lessor for a period of one hundred eighty (180) days from such termination date or, in the case of a termination pursuant to Section 18 hereof, until such item or items are sold, leased or otherwise disposed of; and

(c) transport the same from any such storage tracks to any place on the lines of railroad operated by Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by Lessor, but only one such move per Item of Equipment shall be paid for by Lessee.

All amounts earned in respect of the Equipment after the date of termination of this Lease shall belong to Lessor and, if received by Lessee, shall be promptly turned over to Lessor.

(2) The delivery, storage and transporting of the Equipment, as hereinbefore provided, are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee

requiring specific performance of the covenants of Lessee to so assemble, deliver, store and transport the Equipment. During any storage period, Lessee will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of the Equipment, to inspect the same, provided that Lessor or persons designated by it execute appropriate releases of liability for personal injury, in form provided by Lessee.

(3) During any storage period described in this Section 19, Lessee will continue the insurance required hereunder and will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of such Item of Equipment, to inspect the same; provided, however, that Lessee shall not be liable, except in the case of negligence of Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of Lessor or any prospective purchaser or user, the rights of inspection granted under this sentence; provided, further, that Lessor shall require prospective purchasers or their employees to execute Lessee's standard release form which shall hold Lessor, Assignee and Lessee harmless from and against any and all claims for personal injury. During any such storage period the Lessee shall maintain the Equipment in such manner as the Lessee normally maintains similar units of railroad equipment owned or leased by it in similar storage circumstances, which maintenance shall in no event be to a standard lower than that required by the Association of American Railroads. In addition, Lessee shall, at its own expense, give prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Item of Equipment has been interchanged or which may have possession thereof to return such Item of Equipment to Lessee.

(4) Without in any way limiting the obligations of Lessee under the foregoing provisions of this Section 19, Lessee hereby irrevocably appoints Lessor and any assignee of any rights hereunder, and each of them, as the agent and attorney of Lessee, with full power and authority, at any time while Lessee is obligated to deliver possession of the Equipment or any part thereof to Lessor, to demand and take possession of such Equipment in the name and on behalf of Lessee from whomsoever shall be at the time in possession of such Equipment. In connection therewith, Lessee will supply Lessor with such documents as Lessor may reasonably request.

SECTION 20. Purchase and Renewal Options.

(1) Lessee shall have the right to renew this Lease with respect to all and not less than all the Equipment at the end of the primary lease term for one (1) five year renewal term, at the renewal rental set forth in Schedule B hereto which shall be payable on the last day of each calendar quarter of such renewal term. All such payments shall be in arrears. The terms and conditions of any such renewal period shall be the same as those herein other than this Section 20. To exercise such renewal option, Lessee must give Lessor written notice within 270 days and not less than 180 days prior to the expiration of the primary lease term of the Lease, and such option may only be exercised if the Lease has not been earlier terminated and Lessee is not in default under the Lease.

(2) Lessee shall have the right to purchase all and not less than all of the Items of Equipment at the end of the primary lease term for the amount set forth in Schedule B hereto. This option must be exercised by written notice delivered to Lessor not earlier than October 2, 2002, and not later than December 31, 2002. Such option may only be exercised if the Lease has not been earlier terminated and Lessee is not in default under the Lease.

SECTION 21. Tax Indemnification. (1) Tax Assumptions. In entering into this transaction, Lessor and Lessee have made the following assumptions regarding the income tax characterization of the transaction for federal income tax purposes (the "Tax Assumptions"):

(a) Lessor will be treated as the purchaser, owner, original user and lessor of the Equipment;

(b) each Item of Equipment will be treated as placed in service by Lessor on its respective lease commencement date;

(c) in the hands of Lessor each Item of Equipment will constitute "7-year property" within the meaning of Section 168 of the Internal Revenue Code of 1986 (the "Code");

(d) Lessor will be entitled to accelerated cost recovery deductions with respect to the Equipment under the Code based on the Modified Accelerated Cost

Recovery System using a 200% declining balance method of depreciation and switching to the straight line method as of the beginning of the first taxable year such straight line method will yield a greater depreciation allowance;

(e) except in the event that an Item of Equipment suffers a Casualty Occurrence, no portion of the cost recovery deductions in respect of any Item of Equipment shall be recaptured at any time prior to the expiration of the term of the Lease;

(f) the indebtedness incurred under the Security Agreement will constitute indebtedness of Lessor, and Lessor will be entitled to current deductions for interest paid or accrued thereon except to the extent, if at all, limited by Section 469 of the Code;

(g) the only amounts that Lessor will be required to include in gross income with respect to the transactions contemplated by this Lease, the Purchase Order Assignment, and the Security Agreement prior to the expiration of the term of this Lease (or on or after such expiration if such inclusion relates to events or matters arising or occurring prior to or coincident with such termination) will be (i) rentals in such amounts as are paid or accrued under Section 3(1)(a) hereof; (ii) amounts to the extent they are offset by deductions in the same taxable year of Lessor in which such amounts were includable in gross income; (iii) any indemnity hereunder; iv) Casualty Value payments; or (v) gain attributable to Lessee's purchase of the Equipment pursuant to Section 20 of this Lease;

(h) Lessor will not be required to include any amount received with respect to the transactions contemplated by this Lease, the Purchase Order Assignment and the Security Agreement in its gross income in a taxable year prior to the taxable year in which such income would be included under its method of accounting (which shall be in accordance with generally accepted accounting principles) assuming such amount was paid when due under this Lease, the Purchase Order Assignment and the Security Agreement;

(i) Lessor shall be entitled to amortize over a period not longer than the original term of the Lease plus renewal periods all costs and expenses, other than costs

and expenses included in the Purchase Price of the Equipment, paid or incurred by Lessor with respect to the transactions contemplated by this Lease, the Purchase Order Assignment, and the Security Agreement that are not currently deductible; and

(j) All amounts includable in gross income by, and all deductions allowed to, Lessor with respect to the Equipment will be treated as income or deductions derived from or allocable to sources within the United States as defined in Section 861 of the Code.

(2) Lessee's Special Tax Representations, Warranties and Covenants. Lessee hereby represents, warrants and covenants to the Lessor as follows:

(a) As of the Lease Commencement Date for each Item of Equipment:

(i) Each Item of Equipment will constitute "recovery property" and "7-year property" (within the meaning of Section 168 of the Code) in the hands of the Lessee, and Lessor will be entitled to use any method of depreciation permitted by Section 167 or accelerated cost recovery permitted by the Code.

(ii) The Purchase Price of the Item of Equipment approximates its fair market value.

(iii) It is reasonable to assume that at the end of the fifteen year base lease term, the Item of Equipment will have a remaining useful life of at least 3.75 years and a residual value (computed without regard to inflation) equal to at least 20% of the Purchase Price of the Item of Equipment.

(iv) The Item of Equipment will not require any improvements, modification or additions (other than ancillary items of equipment of a kind that are customarily selected and furnished by purchaser or lessees of equipment that is similar to the Item of Equipment) in order to be rendered complete for its intended use by Lessee.

(v) Lessee, all affiliates of Lessee, and all shareholders and other persons related to Lessee shall have been fully reimbursed for all costs and expenses (if any) included in the Purchase Price of the Item of Equipment paid or incurred by them with respect to the Item of Equipment.

(b) No loss, damage, condemnation, confiscation, seizure or requisition to or of an Item of Equipment which does not constitute a Casualty Occurrence or require the payment of Casualty Value will result in the loss or disallowance of any of the tax benefits in or resulting from the Tax Assumptions.

(c) The Equipment does not constitute "limited use property" within the meaning of Rev. Proc. 76-30, 1976-2 C.B. 647.

(d) For purposes of Section 168 of the Code, each Item of Equipment will be placed in service on its respective Lease Commencement Date and shall not be used "predominantly outside the United States" as that phrase is defined in Sections 168(g)(4) and 48(a)(2)(B)(ii) of the Code.

All representations, warranties and covenants are based upon and shall be construed by reference to the Code, as in effect on the date of this Agreement. The Lessee shall not be responsible in any manner whatsoever for any amendments or other changes to the Code enacted after the date of this Agreement, whether or not such amendments or other changes are made retroactive to a date preceding the date of this Agreement.

(3) Loss of Tax Benefits. If, (a) by reason of the acts or omissions of Lessee or of any other person in possession of the Equipment or an Item of Equipment, or (b) by reason of the inaccuracy or breach by Lessee of the representations, warranties or covenants contained in Section 21(2) of this Lease or in any agreement contemplated hereunder; Lessor, in determining its federal income tax liability for any taxable year, shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of, or delay in claiming all or any portion of the tax benefits described in or resulting from the Tax Assumptions (any such event being hereinafter called a "Loss"), or shall be required to include in its gross income any amounts other than those amounts expressly assumed to be includable in gross income as a Tax Assumption, or shall be required to include any amount in gross income at an earlier date than is contemplated by the Tax Assumptions, or shall lose or be denied the right or be unable to exclude from its income any amount that would be so excludable if the Tax Assumptions were correct (any such required inclusion being referred to as an "Inclusion"), then Lessee shall pay Lessor an indemnity with respect to such Loss or Inclusion in the amount determined below, provided that Lessee shall not be required to pay any such indemnity to the extent that a Loss or Inclusion is attributable to one or more of the following events:

(a) the failure of Lessor in its federal income tax returns for the appropriate years to elect or otherwise claim in a timely and proper manner any deductions, credits and treatment of income and deductions described in or resulting from the Tax Assumptions, unless such failure is due to Lessee's failure timely to provide Lessor with the information reasonably necessary to make such claim or election (but only if such information was previously requested by Lessor), or unless in the reasonable opinion of independent tax counsel selected by Lessor and approved by Lessee (whose approval shall not be unreasonably withheld) there is no reasonable basis for such claim or treatment;

(b) a voluntary disposition by Lessor of its interest in the Equipment or any Item of Equipment, a voluntary disposition being a disposition which was within Lessor's control to prevent, notwithstanding any financial hardships of the Lessor, if such disposition shall not be pursuant to or in connection with the exercise of any remedy available to the Lessor under Section 18 of this Lease;

(c) a disposition by Lessor of its interest in the Equipment or any Item of Equipment in a transaction in which the Casualty Value is payable (pursuant to Section 8 of the Lease); or

(d) a transfer by Lessor resulting from bankruptcy or other proceedings for the relief of debtors in which Lessor is the debtor (voluntarily or involuntarily), of its interest in the Equipment or any Item of Equipment; or

(e) the application of Sections 465, 467, or 469 of the Code to Lessor.

(f) any amendment to or other change in the Code or the Treasury Regulations thereunder which amendment or change is directly or indirectly attributable to legislation enacted on or after the date of this Agreement, whether or not such legislation may be made retroactively effective to a date preceding this Agreement. Lessor and Lessee acknowledge and agree that any and all risk associated with any changes in tax laws enacted after the date of this Agreement shall be borne exclusively by Lessor.

(4) Amount of Indemnification. In the case of any Loss or Inclusion that is indemnifiable pursuant to Section 21(3) hereof, Lessee shall pay to Lessor an amount that after deduction of all taxes, fees, and other charges required to be paid by Lessor as a direct result of the receipt or accrual of such amount under the laws of any federal, state or local taxing authority, shall be, with respect to each taxable year of Lessor, equal to the sum of (a) the aggregate amount of additional federal income taxes payable by Lessor from time to time as a direct result of such Loss or Inclusion, plus (b) the aggregate amount of any interest, penalties or additions to tax payable by Lessor with respect to such year as a result of such Loss or Inclusion.

Lessor shall pay to Lessee from time to time amounts equal to the sum of (a) the reduction in federal taxes (together with the excess of interest received from the Internal Revenue Service that is attributable to such reduction over all taxes paid by Lessor with respect to that interest), if any, realized by Lessor directly or indirectly attributable to or resulting from any Loss or Inclusion previously indemnified by Lessee hereunder, or to any amount paid by Lessee to Lessor under the immediately preceding paragraph and (b) the reduction in federal, state or local taxes realized by Lessor as a direct result of any payment pursuant to this sentence; provided, however, that (x) the aggregate amount paid by Lessor to Lessee under this paragraph with respect to any Loss or Inclusion shall not exceed the aggregate amount (including any interest attributable thereto) paid by Lessee to Lessor under the immediately preceding paragraph with respect to any Loss or Inclusion, and (y) any disallowance or reduction of such additional tax benefits subsequent to the year of realization by Lessor shall be treated as a Loss and subject to the provisions of this Section 21. Anything to the contrary herein notwithstanding, Lessor shall not be obligated to make any payments to Lessee hereunder if, and so long as, an Event of Default shall have occurred and be continuing, provided such withheld amount, together with interest thereon (from the last date such amount would have been payable in the absence of an Event of Default) shall bear interest at the rate applicable to obligations of the U.S. government having a maturity of thirty (30) days which shall be paid to Lessee when there is no longer an Event of Default continuing. Any amount that would be due to Lessee by Lessor pursuant to this paragraph as applied without clause (x) above, and not payable as a result of clause (x), shall be carried over to future years and such amount shall be offset against any future payments otherwise required under this Section 21(4) to be made by Lessee to Lessor.

Any amount payable to Lessor pursuant to this Section 21 shall be paid not later than thirty (30) days after receipt of a written demand therefor from Lessor, but such payment shall not be due prior to the earliest of (a) payment by Lessor of the additional taxes (including payments of estimated tax) which become due as a result of the Loss or Inclusion, (b) the date Lessor shall suffer a reduction in the amount of any refund of federal income tax that Lessor would have been entitled to receive but for such Loss or Inclusion, or (c) in the case of a contest pursuant to Section 21(6) hereof, the time prescribed in Section 21(6) for such payment.

Any amount payable to Lessee pursuant to this Section 21(4) shall be paid not later than thirty (30) days after the date on which Lessor shall realize any such reduction in federal income tax (including payments of estimated tax) and shall be accompanied by a written statement describing in reasonable detail the computation of the amount so payable as reasonably determined by Lessor. Lessor shall use reasonable efforts to claim and maximize any such reduction in federal income tax.

(5) Computations. Whenever it may be necessary to determine (a) whether there is a Loss or Inclusion, (b) the amount of a Loss or Inclusion or (c) the amount of any payment required to be made hereunder by either Lessee or Lessor, such determination and such computation shall be made on the assumptions that (a) Lessor could have currently fully utilized (at the highest marginal corporate federal income tax rate in effect at the time such Loss or Inclusion shall enter into the Lessor's federal income tax computation (the "Tax Rate")) the deduction or other tax benefit or attribute that shall be the basis of the Loss, or, as the case may be, shall have suffered a full detriment (at the Tax Rate) with respect to the Inclusion, (b) the Lessor can currently fully utilize (at the Tax Rate) the deductions, inclusion, nontaxability, or other allowances attributable to tax benefits arising from any nontaxability, or other allowances attributable to tax benefits arising from any Loss or Inclusion (or payments to Lessee) and (c) the payment, receipt or accrual by Lessor of any such indemnity payment and of any interest on any refund of federal income tax to the extent includable in Lessor's gross income and/or the payment or accrual by Lessor to Lessee on account of any tax benefits arising from any Loss or Inclusion to the extent such payment or accrual is deductible by Lessor, will, as the case may be, currently be subject to or benefited by federal income tax at the Tax Rate.

All computations required to be made hereunder shall be made reasonably by Lessor, and the results of such computations, together with a statement describing in

reasonable detail the manner in which such computations were made, shall be delivered to Lessee in writing. Within fifteen (15) days following Lessee's receipt of such computations, Lessee may request that an accounting firm (other than any accounting firm that regularly prepares Lessor's certified financial statements or that provides services to Lessor on an ongoing basis), such firm to be selected by Lessor and reasonably acceptable to Lessee, determine whether such computations of Lessor are mathematically accurate and based on reasonable assumptions. Such accounting firm shall be requested to make its determination within thirty (30) days. If such accounting firm shall determine that such computations are inaccurate or unreasonable, then such firm shall determine what it believes to be the appropriate computations. The computations of Lessor or the accounting firm selected as provided above, whichever is applicable, shall be final, binding and conclusive upon Lessee and Lessor and Lessee shall have no right to inspect the books, records, tax returns or other documents of or relating to Lessor to verify such computations or for any other purpose. All fees and expenses payable to an accounting firm under this paragraph shall be borne solely by Lessee or, in the event that the computations of the accounting firm are applicable, then such fees and expenses shall be borne by Lessor.

(6) Right to Contest. In the event a "Claim" (as defined below) shall be made by the Internal Revenue Service, which, if successful, would result in a Loss or Inclusion under circumstances that would require Lessee to indemnify Lessor for such Loss or Inclusion, Lessor hereby agrees to take such action in connection with contesting such Claim as Lessee shall reasonably request in writing from time to time, provided that: (a) within sixty (60) days (or thirty (30) days if Lessor has received a 30-day letter from the Internal Revenue Service) after notice by Lessor to Lessee of such Claim, Lessee shall request that such Claim be contested; (b) Lessor, at its sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service authorities in respect of such Claim and may, at its sole option, either contest the Claim in the United States Tax Court or pay the tax claimed and sue for a refund in the appropriate United States District Court and/or the United States Claims Court, considering, however, in good faith such request as Lessee shall make concerning the most appropriate manner in which to proceed; (c) prior to taking such action, Lessee shall have furnished Lessor with an opinion of independent tax counsel chosen by Lessee and reasonably acceptable to Lessor, to the effect that a reasonable basis exists for contesting the Claim; (d) prior to taking such action Lessee shall have agreed to reimburse Lessor, on demand, all costs and expenses that Lessor may incur in connection with contesting such Claim, including, without

limitation, (A) reasonable attorneys' and accountants' fees and disbursements, and (B) the amount of any interest, penalties or additions to tax indemnified hereunder that may ultimately be payable to the United States Government as a result of contesting such Claim; and (e) within six (6) months after requesting Lessor to contest the Claim, Lessee shall have acknowledged its obligation to indemnify hereunder Lessor in the event Lessor does not prevail in such contest (provided, however, that notwithstanding such acknowledgment Lessee shall not be obligated to so indemnify Lessor to the extent the Final Determination (as hereinafter defined) clearly establishes that no Loss or Inclusion has occurred). In the event Lessor shall pay the tax claimed and then seek a refund, Lessor may either (a) require Lessee to advance funds sufficient to pay the tax that would be indemnified by Lessee hereunder if the Claim were resolved adversely to Lessor, in which case, to the extent the refund Claim is successful, such funds as are not required to be applied to an indemnity payable hereunder, together with interest, if any, received from the taxing authority and attributable thereto, shall be refunded to Lessee within sixty (60) days, or (b) forego such an advance, in which case, if the Final Determination of such claim shall be adverse to Lessor, Lessee shall pay to Lessor interest at the rate from time to time applicable to deficiencies in such tax on the amount of tax paid attributable to the Loss or Inclusion computed from the date of payment of such tax to the date Lessee shall reimburse Lessor for the payment of such tax in accordance with the terms hereof. If any such Claim shall be made by the Internal Revenue Service and Lessee shall have requested Lessor to contest such Claim as above provided and shall have duly complied with all of the terms of this Section 21(6), Lessee's liability with respect to such Loss or Inclusion as a consequence of such Claim shall become fixed upon Final Determination of the liability of Lessor for the tax claimed and after giving effect to any refund obtained, together with interest thereon. In the case of any such Claim by the Internal Revenue Service referred to above, Lessor agrees to notify promptly Lessee in writing of such Claim and agrees not to make payment of the tax claimed for at least sixty (60) days (or 30 days if Lessor has received a 30-day letter from the Internal Revenue Service) after the giving of such notice (provided, however, that Lessor may make payment within a shorter period if necessary to preserve Lessor's procedural remedies with respect to the Claim) and agrees to give to Lessee any information that is relevant and material to the contest of such claim to the extent such information is particularly within the knowledge of Lessor, including, but not limited to, copies of all Internal Revenue Service correspondence, examiner's reports and other Internal Revenue Service documents pertaining to the Claim and to cooperate in all other respects with Lessee in good faith in order to contest any such claim effectively. Lessee and its counsel

shall maintain confidentiality with respect to all such information insofar as is possible, consistent with the conduct of a contest hereunder.

Lessee shall be entitled to appear in person or through its representatives and to participate in any administrative or judicial proceeding involving a Claim, provided that, in the opinion of Lessor's counsel, such appearance or participation does not adversely affect in any material respect any other interest of Lessor or any affiliate of Lessor in such proceeding, whether such interest is related or unrelated to this Lease. Lessor shall supply Lessee with such information requested by Lessee in writing that, in the opinion of Lessor's counsel, is necessary for Lessee to participate in any proceeding to the extent permitted hereunder.

Upon a prompt and timely request by Lessee, accompanied by an opinion of independent tax counsel chosen by Lessee and reasonably acceptable to Lessor to the effect that Lessor has a reasonable likelihood of success with respect to an appeal relating to the Claim, Lessor shall appeal any adverse judicial decision to the appropriate court.

For purposes of this Section 7, a "Claim" shall be deemed to be made by the Internal Revenue Service when Lessor receives any documents, in proposed or final form, from the Internal Revenue Service indicating that the Internal Revenue Service opposes Lessor's treatment of an item.

For purposes of this Agreement, a "Final Determination" shall be deemed to occur with respect to a Loss or Inclusion when (a) there is a decision, judgment, decree or other order by any court of competent jurisdiction, which decision, judgment, decree or other order has become final, i.e., all allowable appeals requested by the Lessee pursuant to this Section have been exhausted by either party to the action, (b) there is a closing agreement made under Section 7121 of the Code, or (c) the time for instituting a claim for refund has expired, or if a refund claim was filed, the time for instituting suit with respect thereto has expired.

Lessor shall lose its right to be indemnified hereunder if (i) Lessor fails to give Lessee prompt notice of a Claim and as a result of such failure Lessee is effectively precluded from exercising its right to cause Lessor to contest such Claim, or (ii) Lessor shall enter into a settlement or compromise with the Internal Revenue Service with respect to, or otherwise concede, any indemnified claim (other than an

indemnified claim that Lessor is not required to contest hereunder) without the prior written consent of Lessee with respect to such settlement, compromise, or concession. Lessor may elect not to contest a Claim, in which case if Lessor is otherwise required to contest such Claim hereunder, it shall lose its right to be indemnified with respect to the Loss or Inclusion that is the subject of the Claim.

(7) Survival. All of the obligations of Lessee and Lessor accruing under this Agreement shall continue in full force and effect notwithstanding the expiration or other termination of the Lease.

(8) Recomputation of Casualty Values. If any amount is required to be paid hereunder by one party to another and shall actually be so paid, Lessor shall recompute Casualty Values on the basis of new assumptions (taking into account the circumstances giving rise to the Loss or Inclusion resulting in such payment or payments) with respect to the federal tax consequences of the transaction to Lessor and otherwise in accordance with the manner in which such Casualty Values were originally computed by Lessor. Lessor shall deliver the results of such recomputation to Lessee. The verification procedures set forth in Section 21(5) shall apply equally to the recomputation of Casualty Values hereunder. Such recomputed Casualty Values shall be substituted for the Casualty Values then appearing in the Lease and shall be set forth in a written agreement executed and delivered by Lessor and Lessee, but the failure to so set forth such recomputed Casualty Values shall not affect the validity of such recomputed Casualty Values for the purposes of the transaction; provided, however, that as a result of such recomputation none of such Casualty Values shall be decreased to an amount less than the amount sufficient to pay in full as of the date of payment hereof the aggregate unpaid principal amount of any note delivered in connection with the Security Agreement ("Note") then outstanding, and the accrued and unpaid interest thereon, together with the aggregate of all other amounts, if any, then due to the holder of any such Note. All fees and expenses payable to any accounting firm under this paragraph shall be borne solely by Lessee.

SECTION 22. Recording. Lessee shall at its expense promptly cause this Lease and the Security Agreement, and every other instrument in addition or supplementary thereto, to be filed and recorded with the Interstate Commerce Commission in accordance with Title 49, Section 11303 of the United States Code, and Lessee shall at its expense promptly from time to time do and perform any other act and execute, acknowledge, deliver, file, register, record and deposit (and refile,

reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by Lessor or Assignee for the purpose of proper protection, to the satisfaction of counsel for Lessor and Assignee, of Lessor's ownership interest and Assignee's security interest in the Equipment and the rights under this Lease or for the purpose of carrying out the intention of this Lease; and promptly after each such filing, upon request of Lessor and/or Assignee, Lessee shall provide an opinion or opinions of counsel for Lessee with respect thereto, in each case satisfactory to Lessor and/or Assignee.

**SECTION 23. Survival of Covenants.** Any other provisions contained in this Lease to the contrary notwithstanding, it is hereby agreed that the provisions of Sections 4, 6, 14, 15, 16, 17, and 21 hereof shall survive the expiration or termination hereof.

**SECTION 24. Notices.** Any notice permitted or required to be given by either party hereto to the other shall be deemed to have been given when personally delivered or delivered to a United States post office first-class postage prepaid or to a telegraph office addressed as follows:

If to the Lessor:           Banc One Equipment Finance, Inc.  
                                  111 Monument Circle, Suite 510  
                                  Indianapolis, Indiana 46277  
                                  Attention: President

If to Lessee:                Missouri-Kansas-Texas Railroad Company  
                                  701 Commerce Street  
                                  Dallas, Texas 75202  
                                  Attention: Mr. Karl R. Ziebarth

If to the Assignee:        Bank One, Indianapolis, N.A.  
                                  111 Monument Circle  
                                  Suite 810  
                                  Indianapolis, Indiana 46277  
                                  Attention: Corporate Trust Department

or addressed to either party at such other addresses as such party shall hereafter furnish to the other party in writing. Any notice hereunder to any assignee of Lessor or of Lessee shall be deemed to be properly served if delivered or mailed certified or

registered mail, return receipt requested, to such assignee at such address as may have been furnished in writing to Lessor or Lessee, as the case may be, by such assignee. A duplicate copy of any notice required or permitted to be delivered hereunder shall be given to any Assignee.

SECTION 25. Section Headings. All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

SECTION 26. Law Governing. This Lease and all rights and obligations hereunder shall be governed and construed in accordance with the law of the State of Indiana; provided, however, that any remedies herein provided which shall be valid under the law of the jurisdiction where proceedings for the enforcement hereof shall be taken shall not be affected by any invalidity thereof under the law of the State of Indiana.

SECTION 27. Successors and Assigns. Subject to the provisions of Section 17 hereof, this Lease shall be binding upon and shall inure to the benefit of Lessor and Lessee, and their respective successors and assigns, and no other persons shall have or acquire any right under or by virtue of this Lease.

SECTION 28. Certain Applicable Laws. Any provision of this Lease which is prohibited or unenforceable under the applicable law of any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction. Where, however, the provisions of any such applicable law may be waived, they are hereby waived to the full extent permitted by law, to the end that this Lease shall be deemed to be a valid and binding agreement enforceable in accordance with its terms.

SECTION 29. Modification. No variation of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of Lessor and Lessee.

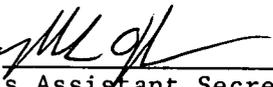
SECTION 30. Execution. This Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be

sufficiently evidenced by any such original counterpart; provided, however, that only the counterpart of this Lease marked "Secured Party's Original" shall be deemed to constitute the only original of this Lease constituting "chattel paper" for purposes of the Uniform Commercial Code as in effect in any jurisdiction, all other counterparts being deemed duplicates hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed as of the day, month and year first above written.

BANC ONE EQUIPMENT FINANCE, INC.

Attest:

By   
Its Assistant Secretary

By:   
Title: 

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

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

sufficiently evidenced by any such original counterpart; provided, however, that only the counterpart of this Lease marked "Secured Party's Original" shall be deemed to constitute the only original of this Lease constituting "chattel paper" for purposes of the Uniform Commercial Code as in effect in any jurisdiction, all other counterparts being deemed duplicates hereof.

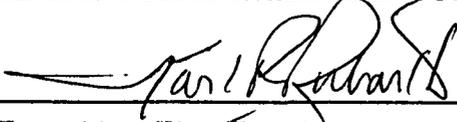
IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed as of the day, month and year first above written.

BANC ONE EQUIPMENT FINANCE, INC.

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

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

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

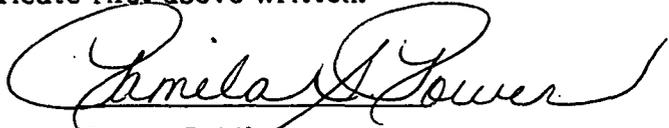
By:  \_\_\_\_\_

Title: Executive Vice President-Financial

STATE OF INDIANA )  
 ) SS.:  
COUNTY OF Marion )

On this 18th day of April, 1988, before me, Pamela S. Power, a Notary Public of said State, duly commissioned and sworn, personally appeared Michael P. Mattasite, to me personally known, who by me being duly sworn, says that he is <sup>Vice</sup> President of Banc One Equipment Finance, Inc., an Indiana corporation, and that the foregoing instrument was signed and sealed on behalf of said corporation for the purposes and consideration therein expressed, and as the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Notary Public  
Printed Name: Pamela S. Power  
County of Residence: Marion Commission Expiration:  
10/30/90

[Seal]

STATE OF TEXAS )  
 ) SS.:  
COUNTY OF DALLAS )

On this \_\_\_ day of \_\_\_\_\_, 198\_, before me, \_\_\_\_\_, a Notary Public of said State, duly commissioned and sworn, on this day personally appeared Karl R. Ziebarth, known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be a Vice President of Missouri-Kansas-Texas Railroad Company, a Delaware corporation, and acknowledged to me that he executed said instrument for the purposes and consideration therein expressed, and as the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

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

[Seal]

STATE OF INDIANA )  
 ) SS.:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 198\_, before me, \_\_\_\_\_, a Notary Public of said State, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me personally known, who by me being duly sworn, says that he is \_\_\_\_\_ of Banc One Equipment Finance, Inc., an Indiana corporation, and that the foregoing instrument was signed and sealed on behalf of said corporation for the purposes and consideration therein expressed, and as the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

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

[Seal]

STATE OF TEXAS )  
 ) SS.:  
COUNTY OF DALLAS )

On this \_\_\_\_ day of April, 1988, before me, Lolita M. McKnight /\_\_\_\_\_, a Notary Public of said State, duly commissioned and sworn, on this day personally appeared Karl R. Ziebarth, known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be a Vice President of Missouri-Kansas-Texas Railroad Company, a Delaware corporation, and acknowledged to me that he executed said instrument for the purposes and consideration therein expressed, and as the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

*Lolita M. McKnight*  
Notary Public

[Seal]

SCHEDULE A

EQUIPMENT DESCRIPTION

<u>Type Price</u>	<u>Builder</u>	<u>Builder's Spec.'s</u>	<u>Builder's Plant</u>	<u>Qty.</u>	<u>Lessee Numbers (Both Inclusive)</u>	<u>Est. Unit Base Price</u>	<u>Est. Total Base Price</u>
Covered Hopper Railcar for Cement Service	Trinity Industries Other	Trinity Spec. No. L-2091 dated 9/4/87 and Drawing SK56-10-1 dated 8/16/84, as well as Supplements No.1 and No. 2 dated 10/13/87		100	MKT 500 to 599	\$35,000	\$3,500,000

## SCHEDULE B

### RENTAL PAYMENTS AND OPTION PRICES

1. Interim Rental. For each day from and including the Lease Commencement Date with respect to an Item of Equipment to and including June 30, 1988, the rental per day for such Item of Equipment shall be .03125% of the Purchase Price of each Item of Equipment. Such rental shall be paid on the last day of each month from the month that includes the lease commencement date to and including June 30, 1988.
2. Base Term Rental. During the fifteen year base lease term commencing July 1, 1988, and ending June 30, 2003, rental shall be paid quarterly in advance in sixty (60) consecutive installments on each January 1, April 1, July 1 and October 1, commencing July 1, 1988, to and including April 1, 2003, and shall each be in an amount equal to 2.8125% of the Purchase Price of the Equipment.
3. Renewal Term Rental. Rental during the five (5) year renewal term shall be an amount equal to the Rent for the fifteen year base lease term.
4. Purchase Option. Pursuant to and subject to Section 20 of the Lease, Lessee shall have the right to purchase the Equipment for the lesser of (i) Fair Market Value determined as set forth below or (ii) an amount equal to 39.5% of the original Purchase Price.

Fair Market Value shall be determined on the basis of and shall be equal to the price which would obtain in an arm's length transaction between an informed and willing buyer (specifically excluding a used equipment dealer) and an informed and willing seller, under no compulsion to sell and on the assumption that the Equipment will, at the end of the Lease term, be free and clear of all liens and encumbrances, and be in the condition as would be required upon its return pursuant to Section 19 of the Lease; and in such determination, costs of removal from the location of current use shall not be a deduction from such value. If Lessor and Lessee are unable to agree upon a determination of the Fair Market Value of the Equipment within twenty (20) days after any such purchase option

notice has been received by Lessor, such value shall be determined in accordance with the foregoing definition by a qualified independent appraiser as Lessor and Lessee may mutually agree upon, or if the parties are unable to agree on an appraiser, each party shall select an appraiser and the average of the two appraisals shall be the Fair Market Value. Such decision shall be binding on the parties hereto. Any appraiser shall be furnished with a copy of the Lease and be instructed to make such determination on the basis set forth herein within a period of ninety (90) days following appointment, and shall promptly communicate such determination in writing to Lessor and Lessee. The expenses and fees of the appraiser shall be borne by the party whose original written proposal containing a Fair Market Value offer varied the most from the determination of Fair Market Value by such appraiser(s), provided that if only one party makes a written offer, such expenses and fees shall be borne equally by the parties.

SCHEDULE C

CASUALTY VALUES

<u>Casualty Values (expressed as a percentage of Purchase Price)</u>	<u>Rent Payment Date</u>
100.47971385	July 1, 1988
100.45610367	October 1, 1988
100.39419961	January 1, 1989
100.29703974	April 1, 1989
100.11493447	July 1, 1989
99.84617328	October 1, 1989
99.50188692	January 1, 1990
99.08702062	April 1, 1990
98.59205244	July 1, 1990
98.03142426	October 1, 1990
97.41223677	January 1, 1991
96.73747582	April 1, 1991
96.00295495	July 1, 1991
95.21797370	October 1, 1991
94.38674518	January 1, 1992
93.51081753	April 1, 1992
92.59018412	July 1, 1992
91.63024231	October 1, 1992
90.63314315	January 1, 1993
89.59936815	April 1, 1993
88.52343902	July 1, 1993
87.40626885	October 1, 1993
86.24959806	January 1, 1994
85.05368779	April 1, 1994
83.81390215	July 1, 1994
82.53093869	October 1, 1994
81.20611310	January 1, 1995
79.83945009	April 1, 1995
78.44280652	July 1, 1995
77.01910024	October 1, 1995
75.56737245	January 1, 1996
74.08637505	April 1, 1996
72.59710817	July 1, 1996
71.09885711	October 1, 1996

<u>Casualty Values (expressed as a percentage of Purchase Price)</u>	<u>Rent Payment Date</u>
69.58865546	January 1, 1997
68.06402904	April 1, 1997
66.54005453	July 1, 1997
65.00937577	October 1, 1997
63.46916064	January 1, 1998
61.91678218	April 1, 1998
60.36940184	July 1, 1998
58.81822265	October 1, 1998
57.26061708	January 1, 1999
55.69380291	April 1, 1999
54.13730413	July 1, 1999
52.58064965	October 1, 1999
51.02150100	January 1, 2000
49.45691958	April 1, 2000
47.90910602	July 1, 2000
46.36564739	October 1, 2000
44.82459520	January 1, 2001
43.28285508	April 1, 2001
41.70813705	July 1, 2001
40.08432746	October 1, 2001
38.40776395	January 1, 2002
36.67319859	April 1, 2002
34.90020685	July 1, 2002
33.07289451	October 1, 2002
31.18684475	January 1, 2003
29.23663372	April 1, 2003

SCHEDULE D

TERMINATION VALUES

<u>TERMINATION VALUE</u>	<u>Lease Termination Date</u>
61.98678218	March 31, 1998

EXHIBIT A

CERTIFICATE OF INSPECTION AND ACCEPTANCE

TO: Trinity Industries, Inc., Ortner Freight Car Division  
Banc One Equipment Finance, Inc.

Date: \_\_\_\_\_, 1988

Pursuant to the provisions of that certain Lease dated as of April 15, 1988, between BANC ONE EQUIPMENT FINANCE, INC. (hereinafter called "Lessor") and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY (hereinafter called "Lessee"), the undersigned, a duly authorized representative of Lessee and Lessor, does hereby certify that he has made a thorough examination of the \_\_\_\_\_ ( ) 100-ton, 3,000 cubic foot capacity, twin covered hopper cars, as constructed by Trinity Industries, Inc., Ortner Freight Car Division in accordance with the terms and provisions of Lessee's Purchase Order dated October 15, 1987, said cars bearing Lessee car numbers with serial numbers as follows:

<u>Car Number</u>	<u>Car Number</u>	<u>Car Number</u>
MKT _____	MKT _____	MKT _____
MKT _____	MKT _____	MKT _____
MKT _____	MKT _____	MKT _____
MKT _____	MKT _____	MKT _____
MKT _____	MKT _____	MKT _____
MKT _____	MKT _____	MKT _____
MKT _____	MKT _____	MKT _____
MKT _____	MKT _____	MKT _____
MKT _____	MKT _____	MKT _____

The undersigned further certifies that at the time of delivery thereof there was plainly, distinctly, and conspicuously stenciled on each side of each car identified above the following legend in letters not less than one inch in height:

SUBJECT TO A LEASE AND A SECURITY AGREEMENT FILED  
WITH THE INTERSTATE COMMERCE COMMISSION

The undersigned hereby accepts the work for and on behalf of Lessee and Lessor as having been duly and properly performed in accordance with the provisions in said Purchase Order, and said work conforms to the quality and condition satisfactory to Lessee.

MISSOURI-KANSAS-TEXAS RAILROAD  
COMPANY (Lessee) and on behalf of  
Banc One Equipment Finance, Inc.  
(Lessor)

By: \_\_\_\_\_  
Vice President