

# HELM PACIFIC CORPORATION

One Embarcadero Center • San Francisco, CA 94111

415/398-4510

November 20, 1992

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RECORDED BY \_\_\_\_\_ FILED 11/23

NOV 23 1992-10 10 AM

INTERSTATE COMMERCE COMMISSION

Ms. Mildred Lee  
Recordations Unit  
Interstate Commerce Commission  
12th and Constitution Avenue, N.W.  
Washington, DC 20423

RE: Railcar Lease Agreement dated as of July 31, 1992 ("Lease")  
between Helm-Pacific Leasing and Wisconsin & Southern  
Railroad Company

Dear Ms. Lee:

On behalf of Helm-Pacific Leasing, I submit for filing and recording, under 49 U.S.C. Section 11303(a) and the regulations promulgated thereunder, the following document:

Two (2) executed counterparts of a document entitled  
Railcar Lease Agreement dated as of July 31, 1992  
between Helm-Pacific Leasing and Wisconsin & Southern  
Railroad Company.

In connection with the recording of the Lease, please note the following information:

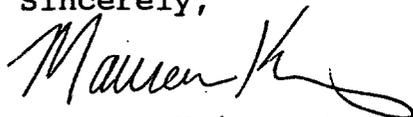
Name and Address of Lessor: Helm-Pacific Leasing  
c/o Helm Financial Corporation  
One Embarcadero Center, Suite 3500  
San Francisco, California 94111

Name and Address of Lessee: Wisconsin & Southern Railroad  
Company  
511 Barstow Street  
Horicon, WI 53032

Equipment: Fifty (50) insulated boxcars (See  
Exhibit A for car numbers)

Please file this Lease as a primary document. The filing fee of Sixteen Dollars (\$16.00) is included in the enclosed check.

Sincerely,



Maureen Krieg  
Contract Administrator

mek  
Enclosures (2)

D. This Agreement shall be governed by and construed according to the laws of the State of California.

E. Lessor shall have the right to examine the physical facilities of the Lessee, loading data, and other pertinent information which may affect the use and earning capacity of the Cars. After such examination Lessor may notify Lessee in writing of any dissatisfaction and this Agreement shall be null and void by virtue of such notice. The right to so notify Lessee shall terminate ten (10) business days after the date of signing this lease agreement by Lessee.

F. Lessor and Lessee agree that this Agreement, including any Exhibits attached hereto and made a part hereof, shall be recorded with the Interstate Commerce Commission, at the expense of Lessee within fifteen (15) days of execution by the parties hereto.

G. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail postage prepaid, certified or registered, addressed as set forth below.

If to Lessor: Helm-Pacific Leasing  
One Embarcadero Center  
Suite 3500  
San Francisco, CA 94111  
Attn: President

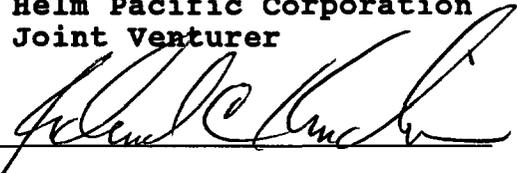
If to Lessee: Wisconsin & Southern Railroad Company  
511 Barstow Street  
Horicon, WI 53032  
Attn: President

Either party hereto may change the address to which notice is to be mailed by written notice thereof to the other.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**LESSOR**

**HELM-PACIFIC LEASING**  
By: Helm Pacific Corporation  
its Joint Venturer

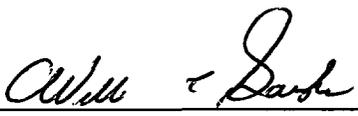
By:   
Title: President  
Date: 10/19/92

By: Union Pacific Venture  
Leasing Incorporated  
its Joint Venturer

By: D. Chandler Lewis  
Title: President - UPVL  
Date: 10-15-92

**LESSEE**

**WISCONSIN & SOUTHERN RAILROAD  
COMPANY**

By:   
Title: President  
Date: 7-31-92

STATE OF CALIFORNIA )  
 ) S  
COUNTY OF SAN FRANCISCO )

On this 19 day of October, 1992, before me personally appeared Richard C. Kirchner, to me personally known, who, being by me duly sworn, says that he is President of **HELM-PACIFIC CORPORATION**, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation as a joint venture partner of Helm-Pacific Leasing.

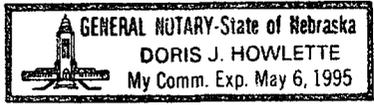
Andrea Drongoski  
Notary Public

My Commission Expires: 6/10/96



STATE OF NEBRASKA )  
 ) S  
COUNTY OF DOUGLAS )

On this 15th day of October, 1992, before me personally appears D. Chandler Lewis, to me personally known, who being by me duly sworn says that he is a President of **UNION PACIFIC VENTURE LEASING INCORPORATED**, that said instrument was signed and sealed on behalf of said corporation by authority of its President and Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation as a joint venture partner of Helm-Pacific Leasing.



Doris J. Howlette  
Notary Public

My Commission Expires: May 6, 1995

[Notarial Seal]

STATE OF WISCONSIN )  
 ) S  
COUNTY OF Milwaukee )

On this 31<sup>st</sup> day of July, 1992, before me personally appears WILLIAM GARDNER, to me personally known, who being by me duly sworn says that he is a PRESIDENT of WISCONSIN & SOUTHERN RAILROAD COMPANY, that said instrument was signed and sealed on behalf of said corporation by authority of its President and Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Ray De  
Notary Public

My Commission Expires: 12-9-92

[Notarial Seal]

**EXHIBIT A**

<b><u>Equipment Description</u></b>	<b><u>Quantity</u></b>	<b><u>Car Numbers</u></b>
50 foot, 70 ton, insulated boxcars with 20 inch cushioned underframe, load dividers, plug doors and two pneumatic bulkheads with one air bag each; built by Pacific Car and Foundry in 1974 and 1975.	up to 100	WSOR 1050-1099

EXHIBIT B

**CERTIFICATE OF ACCEPTANCE**

The undersigned, a duly authorized representative of Wisconsin & Southern Railroad Company (the "**Lessee**"), does hereby certify that he has caused to be inspected and, on the date set out below, has accepted on behalf of the Lessee the following described Cars, which Cars are in good order, condition and repair and conform in all respects to the terms, provisions, requirements and standards of the certain Railcar Lease Agreement dated as of \_\_\_\_\_, 1992 between Helm-Pacific Leasing and Lessee.

<u>Equipment Description</u>	<u>Number of Cars</u>	<u>Old Car Number</u>	<u>New Car Number</u>	<u>Date Accepted</u>
50 foot, 70 ton, insulated boxcars with 30 inch cushioned underframe, load dividers, plug doors and two pneumatic bulkheads with one air bag each; built by Pacific Car and Foundry in 1974 and 1975.				

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Authorized Representative

**EXHIBIT C**

**RUNNING REPAIRS: RBL BOXCARS**

Angle Cocks	Wheel Assemblies
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Couplers
Grab Irons	Draft Gears
Brake Shoes	Coupler Carriers
Brake Shoe Keys	Center Plates (Not Replacement)
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Roller Bearing Adapters
Air Brakes	Air Hose Supports
Hand Brakes	Load Divider Repairs (Not Replacement)
Brake Beams and Levers	
Truck Springs	
Door Hardware (Not Replacement)	

## EXHIBIT D

FILE NAME: G:\SPEC\HBO\C2807&8.SP  
FILE REV.: A

DATE: December 5, 1991  
DATE: March 16, 1992

UNION PACIFIC RAILROAD  
REPAIR SPECIFICATION

BX-001-92

HEAVY BAD ORDER

RBL CARS

**DESCRIPTION:** REPAIR 75 60' AND 173 50' INSULATED BOXCARS IN HBO STATUS AT UP SHOP AT PALESTINE. THE PROJECT NUMBERS C2807 AND C2808. PROGRAM TO START JANUARY 1, 1991.

### 1.0 INTRODUCTION

This specification covers the requirements of the HBO repair of 60' and 50' insulated boxcars. In addition to this specification, the subject cars are to comply with current FRA rules.

### 2.0 Scope

The scope of this specification is to identify the repairs required and provide guidelines for performing the repairs. The cars are to be restored to a serviceable condition for a period of not less than 5 years. In addition, the specification provides for mechanical maintenance requirements to eliminate customer mechanical rejects for the same period. The HBO repair shall be completed within 174 man hours.

### 3.0 Mechanical Requirements

#### 3.1 Plug Doors

Remove doors if necessary and perform all repairs necessary to place doors in good operating condition. Doors must be operable by one man, both opening and closing.

All doors not equipped with "anti-spin" devices shall be so equipped. Stencil "Anti-Spin" on doors near the operating handle.

Ensure 3rd upper crank arms are in place.

Replace all door gaskets unless in like new condition. Gaskets shall be one piece or fitted with corner pieces and glued. Replace the Landis gaskets with the standard YSD "O" gaskets

Straighten lower door tracks and upper door guides as required.

Ensure the door safety interlocks are operable.

Lubricate doors per AAR standards Lubrication Manual.

### 3.2 Interiors

Walls shall be smooth and free of nails and bolt head projections prior to covering with 1/4" plywood. Apply "SEQUENTIA" to cover the plywood. Measure inside width of cars to ensure stenciling is correct. Change UMLER as required.

Install 3/16" x 16" scuff plates to interior sides of cars. Make sure the scuff plate and 1/4" sheathing butt together.

All floors shall be sanded smooth and flat, especially at the floor/floor track interface. Uneven edges shall not exceed 1/4". Floor boards shall be replaced if found delaminating or rotting. Gouges exceeding 3/8" deep, 2" wide and 2'-0" long are to be filled in. Resin and hardener, Store Items 350-1730 and 350-1731 are acceptable for this purpose.

Replace all wood door posts with formed steel door posts.

### 3.3 Bulkheads, Crane Rail & Floor Tracks.

Ensure that Load Dividers are operable by one man.

Replace carriages wherever necessary.

Remove and repair bulkheads as required.

Thoroughly inspect all linkages, upper and lower corner pins and operating arms for defects and replace/repair as required.

Structural integrity shall be maintained. Bulkheads shall be repaired if found twisted, or bowed vertically or horizontally in excess of 2". Paint and restencil faces of bulkheads after repair.

Ensure all safety items, hold-downs, cables etc. are in place.

Faces of bulkheads shall be solid and smooth.

Inspect crane rail and replace any sections that have been heated or are found damaged. Replace sections at wall bracket locations only.

Thoroughly clean floor keepers and repair/replace as required.

### 3.4 Underframe

Repair damaged and/or bent stringers and cross members.

Inspect and repair cracks in the center sill/bolster connections.

Inspect and repair/replace strikers and coupler carrier wear plates.

Replace worn out/defective couplers/coupler parts/uncoupling devices as required. If coupler replaced use SBE68DE bottom shelf couplers.

Replace defective cushioning devices.

Inspect draft gears and replace as required. Gauge draft gear pockets and repair as required.

Body center plates worn 1/2" or more from original dimensions shall be either replaced or restored to new using AWS 7018 or higher strength rod and turned down to the following dimensions.

15-7/8" + 0"-1/16" for 16" center plates

13-3/4" +/- 1/16" for 14" center plates

### 3.5 Air Brakes

Ensure all pipings are sound and secure.

Brake rigging and supports shall be repaired in accordance with AAR Field Manual Rules 6 thru 12.

Inspect all brake hoses and supports and repair/replace as needed. Replace all banded hoses.

Replace angle cocks as required.

Replace all defective slack adjusters with mechanical double acting slack adjusters.

Perform the 90 PSI Single Car Test. If not passed, replace ABD valves with Wabco ABDT service and ABDS emergency valves designed for leakage protection to reduce UDE sensitivity.

Cars equipped with ABDW brake systems requiring replacement of the emergency portion, shall have the brake system changed to ABDT service/ABDS emergency. Brake stencil shall be changed to:

ABDT SER  
ABDS EMER

Replace the Absco truck mounted brakes on WP cars with WABCOPAC II brakes. Existing bolsters are not compatible with WABCOPAC II brakes and need to be changed as per sketch provided.

Inspect Hand brakes and replace/repair defective parts as required.

### 3.6 Trucks

All trucks shall be restored to like new condition and within original manufacturing tolerances, unless found in like new condition. Reconditioned or new components can be obtained from store stock in lieu of remanufacturing side frames and bolsters.

Side frames columns shall be reconditioned in accordance with attached Union Pacific Drawing 420-SK-13356 and Standard Car Truck Maintenance Manual Pages 6 thru 9 and ASF Maintenance Manual Page 18. The plow bolt design column wear plate fasteners are being replaced by Cam-Car bolts. The plow bolt designed wear plates shall be utilized along with elastic stop nuts and flat washers per drawings.

The bolster gib contact area of the side frame shall be restored to new dimension and tolerances using AWS electrode E-7018 or higher tensile rod and ground to finished dimensions.

Unit brake beam pockets shall be restored to new condition per Manual of Recommended Standards and Practices Page D-241. Holland non-metallic wear liners shall be used.

Pedestals shall be restored to new condition in accordance with attached A.A.R. Manual of Standards Page D-124. Pedestals shall be equipped with Transdyne Snap-In Roof Liners.

Bolsters shall be restored to new condition. Gibs are to be built up by welding or replaced using AWS E-7018 or higher tensile rod to latest A.A.R. requirements allowing for 1/2" inner and outer clearance. Bolster center plate rings are to be removed and replaced in accordance with U.P. Drawing 421-C-36242. Bolster shall be equipped with drop in T-1 Horizontal wear liner. Bolster pocket area shall be restored in accordance with Standard Car Truck Maintenance Manual Pages 11, 12, 14, 16, 18 and 22. Stainless steel wear plates shall be used and shall be applied with stainless steel rod AWS E-309-16 or equivalent. ASF bolster pockets to be repaired in accordance with ASF Maintenance Manual Pages 12 thru 17.

Friction wedges, snubbing springs and load springs shall be replaced 100%. The snubbing and load spring arrangement shall be upgraded to Standard Car Truck's 787-C friction casting, B-432 outer & B-433 inner stabilizer springs where applicable. Trucks springs shall be replaced as required.

Bolsters shall be equipped with Stucki or Miner steel capped constant contact side bearings and set up in accordance with manufacturers specifications.

Roller bearing adapters shall be replaced if worn more than 75%.

Brake beams shall be replaced or restored to new condition by welding.

Wheel sets shall be replaced as required.

### 3.7 Safety Appliances

Handholds and sill steps are to be restored to new condition, if damaged, by repairing or replacing.

### 3.9 Painting & Stenciling

The following car components to be protected prior to blast cleaning:

Brake Equipment -	Air Hoses	Angle Cock
	Empty/Load Valves	Brake Cyl.
	Hand Brake	AB Valve
	Slack Adj.	Dirt Col.
	Vent Valve	Cut Out
	Retainer	
Body and Trucks -	Roller Brg.	Wheels
	Axles	Trucks
	Center Plt.	Badge Plt.
	Draft Sys.	Couplers

Entire Car shall have loose paint and rust removed.

A finish coat of approved paint shall be applied to a dry film thickness of 3 mils minimum and 5 mils maximum.

Cars shall be stenciled in accordance with AAR Standards and Recommended Practices Section L for box cars.

### 4.0 Miscellaneous

#### 4.1 Charges

Labor and material are chargeable to operating expense.

#### 4.2 Reporting

Completion is to be submitted on "SW DUP WORKDONE EQM" showing car number and program # C2807 and C2808.

**EXHIBIT E**

**SETTLEMENT VALUE**

**"Settlement Value" means twenty thousand dollars (\$20,000.00)**

NOV 23 1992-10 10 AM

INTERSTATE COMMERCE COMMISSION

**RAILCAR LEASE AGREEMENT**

**RAILCAR LEASE AGREEMENT** (the "Agreement") dated July 31, 1992 by and between **HELM-PACIFIC LEASING**, a Nebraska joint venture (hereinafter called "Lessor"), and **WISCONSIN & SOUTHERN RAILROAD COMPANY**, a Wisconsin corporation (hereinafter called "Lessee").

**1. Scope of Agreement**

Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, up to one hundred (100) insulated boxcars more fully described in Exhibit A attached hereto (hereinafter called collectively the "Cars" and individually a "Car").

**2. Term**

This Agreement shall remain in full force from the date above written, until it shall have been terminated as to all the Cars as provided herein. The term of the Agreement with respect to each Car shall commence on the date of delivery of such Car and terminate on the last day of the \_\_\_\_\_ following the month in which the last Car is accepted and delivered as provided Section 3.B. hereof.

**3. Acceptance and Delivery of Cars**

A. Lessee, at its expense, shall have the right to inspect and reject the Cars subject to this Agreement at the Union Pacific repair facility in Pocattello, Idaho prior to Lessor's transporting the Cars to the Delivery Point (as defined below). Acceptance of the Cars by Lessee shall be evidenced by a Certificate of Acceptance as per the attached Exhibit B, executed by a duly authorized representative of Lessee, the execution of which shall constitute conclusive evidence of acceptance of the Cars herein identified.

B. Lessee covenants that it shall adhere to the Interchange Rules for the duration of this Agreement. Lessor will deliver the Cars to Lessee at an interchange point located in the metropolitan area of Chicago, Illinois on the railroad lines of the Union Pacific Railroad Company (hereinafter called the "Delivery Point"). Delivery of the Cars to the Delivery Point (the "Delivery") shall take place on the day following the interchange of the Cars to the Lessee.

**4. Railroad Markings and Record Keeping**

A. Lessee shall, at its expense, prepare and file with respect to the Cars all documents relating to the registration, maintenance and record keeping functions normally performed by a railroad with respect to railroad equipment of the type subject to this Agreement. Such matters shall include, but are not limited to: (i) preparation of appropriate AAR interchange

agreements with respect to the Cars; (ii) registration of the Cars in the Official Railway Equipment Register and the Universal Machine Language Equipment Register ("UMLER"); and (iii) preparation of any reports as may be required from time to time by the ICC and any other regulatory agencies with respect to the Cars. Lessee shall register each Car in UMLER in such a manner that the Union Pacific is allowed access to any required information with regard to each Car. The Union Pacific will inform Lessee which initials to use to designate owner.

B. Lessee shall perform all record keeping functions relating to the use of the Cars by Lessee and other railroads, including but not limited to, car hire reconciliation, collection and receipt of revenues from other railroad companies, records pertaining to maintenance and repair and billing in accordance with the Interchange Rules. All record keeping performed by Lessee hereunder and all records of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Lessee in a form suitable for reasonable inspection by Lessor from time to time during Lessee's regular business hours.

C. Lessee shall submit to Lessor a monthly report for all sums due to Lessee from Lessor for such calendar month with respect to the maintenance of the Cars along with the reporting required in Section 6.C. Such report shall include all repair charges received by Lessee during the previous month. Lessee shall pay all such repair invoices out of Payments received pursuant to Section 6.

## 5. Maintenance, Taxes and Insurance

A. It is understood, during the term of this Agreement, commencing on the date of Delivery of each Car as provided in Section 3.B. the Lessee shall perform or cause to be performed, at Lessor's expense, maintenance and repair work necessary to maintain the Cars in good operating condition ("**Maintenance Services**") in conformity with all applicable laws and regulations including the AAR Code of Interchange Rules and FRA Railroad Freight Car Safety Standards, 49 CFR Part 215, as amended, except for the following which shall be performed by or caused to be performed by Lessee at Lessee's expense:

(i) repairs required as a result of damage caused by the Lessee, its agents, representatives, customers or independent contractors or any third party; or

(ii) repairs required because of damage caused to the Cars by any corrosive or abrasive substance loaded therein or used in connection therewith; or

(iii) repairs required because of excessive, unusual or avoidable damage caused to the Cars by open flames, forklifts, sledges or other similar devices during loading or unloading operations; or

(iv) repairs required due to Rule 95 or 97 damage as defined in the AAR Field Manual of the Interchange Rules; or

B. Except for any repairs or maintenance of interior lading equipment, special interiors or removable parts of the Cars ("**Interior Maintenance**") which would be Lessee's responsibility pursuant to Section 5.A. above, Lessor shall

Lessee shall ("**Interior Maintenance Amount**"), and

Amount"); provided, however, that such Excess Interior Maintenance Amount shall

in the aggregate for the Cars. If the costs for Interior Maintenance per calendar year in the aggregate for the Cars ("**Interior Maintenance Cap**"), then Interior Maintenance Cap. Interior Maintenance costs shall be prorated for any Car not subject to this Agreement for an entire calendar year.

C. If there is any dispute as to who is responsible for repairs to any Car, the completion of such repairs by a party shall not constitute an admission of responsibility, but instead such party may still assert its claims that the other party was responsible.

D. Lessee will review any suggestions made by Lessor regarding operating conditions that might be causing undue and avoidable wear or damage to the Cars and to implement those suggested changes that are reasonable under the circumstances.

E. Lessee shall use its best efforts to minimize any damage to the Cars and shall notify Lessor in writing of any maintenance required including, when available, the time, place and nature of any accident. Lessee may make running repairs to those parts of the Cars specified in Exhibit C ("**Running Repairs**") to facilitate continued immediate use of each Car, but shall not otherwise make any repairs, alterations, improvement, or additions ("**Non-Routine Repairs**") to any Car without Lessor's prior written consent. Subject to Section 5.F., Lessee will make the Cars available at a repair shop specified by Lessor at any reasonable time for the purpose of repairs. Lessee shall as promptly as practical deliver Cars requiring repairs to the repair shop specified by Lessor. Lessee shall make Cars available for inspection or maintenance in accordance with its operating convenience and at its own expense. Lessor shall use its best efforts to solicit bids from the repair facility owned by Lessee ("**The Repair Facility**") prior to moving any Car to any contract repair shop for the purpose of making any Non-Routine Repairs to such Car, and Lessor shall entertain The Repair Facility's bid in its selection of a contract repair shop to

perform such Non-Routine Repairs. Lessee shall perform all Maintenance Services and Running Repairs at the contract labor rate agreed to by Lessor and Lessee ("**Contract Labor Rate**").

F. Lessee shall pay all transportation charges for moving any Car to the repair shop or such repair or inspection facility if such facility is located on the lines of Lessee and any costs associated with moving such Car to a loading point on Lessee's line from any such facility.

G. Neither party to this Agreement will alter materially the physical structure or allow any third party to alter materially the physical structure of any of the Cars without the other party's written consent.

H. Any and all additions to any Car and any replacements thereto and of parts thereof made by the Lessee shall constitute accessions to such Car and, without cost or expense to the Lessor, title shall be immediately vested in the owner of the Cars free and clear of encumbrances except for claims against owner of the Cars. The accessions shall be free and clear of all claims, liens, encumbrances, security interests and rights of third parties of any nature whatsoever as arising by or through Lessee.

I. Lessor reserves the right to retire any Car that in its sole opinion it deems uneconomical to repair. Lessee's obligation to pay rent shall abate for any Car retired by Lessor as of the date on which it was retired.

J. Lessee shall, at all times while this Agreement is in effect at its own expense, cause to be carried and maintained: (i) all-risk, physical loss or damage insurance with respect to each Car in minimum amount equal to the settlement value (as defined in Section 6.E.); and (ii) public liability insurance in a minimum amount of \_\_\_\_\_ per occurrence with respect to third party personal injury and property damage, in each case for such risks and with such insurance companies as are satisfactory to the Lessor. All insurance shall be taken out in the name of Lessee and shall name Lessor and any assignee of Lessor as additional insureds and shall also list Lessor and any assignee of Lessor as loss-payees as their interests may appear on the insurance policies. Said policies shall provide that Lessor and any assignee of Lessor shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation thereof. With respect to the additional insureds, Lessee's insurance policies shall be primary to any other valid and available insurance ("**Other Insurance**") effected by, or for, the additional insureds. Any and all deductibles in the described policies shall be paid by the Lessee.

Each item obtained by Lessee pursuant to this Section shall be in accordance with the above terms and conditions, and such terms and conditions shall be set forth on the Certificate

of Insurance provided to the Lessor pursuant to this Subsection. Lessee shall furnish to Lessor concurrently with execution hereof, and within thirty (30) days of receipt of a written request from Lessor, and at intervals of not more than twelve (12) calendar months from execution hereof, Certificates of Insurance evidencing the aforesaid insurance. Lessee shall provide Lessor a Certified Copy of each insurance policy upon written request.

K. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state or federal taxes (other than the federal income tax payable by the Lessor in consequence of the receipt of payments provided herein and other than state or city income taxes or franchise taxes measured by gross or net income based on such receipts or based on capital employed by Lessor, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or licenses (and any charges, fines or penalties in connection with or measured by, this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof), all of which taxes, assessments, licenses, charges, fines and penalties the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all taxes, assessments or licenses (and any charges, fines or penalties in connection therewith) which may be imposed upon any Car or for the use or operation thereof or upon the Lessee's earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Car free and clear of all taxes and assessments which might in any way affect the title of the Lessor or result in a lien upon any such Car.

## 6. Lease Rental

A. Lessee agrees to pay the following rent to Lessor for the use of the Cars:

For the purpose of this Agreement, "**Total Potential Per Diem Earnings**" shall be defined  $\frac{\text{number of Cars}}{\text{rate as published in The Official Railway Equipment Register, commencing on the commencement of this Agreement, as defined in Section 2 hereof and "Mileage Earnings" shall be defined under freight tariff RPS 6007-I.}}$

Lessee shall not take any action to diminish the Total Potential Per Diem Earnings and Mileage Earnings to be paid by other railroads for the use of the Cars.

Lessee, or its agent, shall collect all payments made by other railroad companies for their use or handling of the Cars, including but not limited to, per diem payments and mileage

payments (which payments made to Lessee are herein-after collectively referred to as "Payments") and distribute them as follows:

(i) Payments for

(ii)

B. During the term of this Agreement,

("Minimum Required Earnings"), then

If this Agreement is terminated for insufficient Payments, Lessee shall, at its expense, remove Lessee's railroad markings from the Cars when requested by Lessor and place thereon such markings as may be designated by Lessor. After the removal and replacement of markings, Lessee shall, when requested by Lessor, load such Cars and deliver them to a connecting carrier for shipment. For any Car for which the term of the Agreement has been terminated pursuant to this Section 6.B., Lessee shall provide for such Car up to \_\_\_\_\_ on its railroad tracks under the terms and conditions of this Agreement.

C. Lessee shall collect or cause to be collected all Payments with respect to the Cars in connection with the use of the Cars by other railroads. Lessee shall pay to Lessor all net Payments due Lessor within ninety (90) days after the end of each calendar month in which Payments were earned. Lessee shall not take any action to diminish the Total Potential Per Diem Earnings and Mileage Earnings to be paid by other railroads for the use of the Cars.

D. In the event destruction or damage beyond repair of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules of Car Hire Rules and Rules 7 and 8 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Car will be removed from the rental calculations of this Agreement on the date car hire for such Car ceased as set forth in the aforementioned Rules 7 and 8. Lessor may, at its option and at its expense, replace any destroyed Car

with similar equipment upon prior written notice from Lessor to Lessee.

E. If any Car, while in the possession of the Lessee, is damaged to the extent that such damage exceeds the Settlement Value as specified in Exhibit E attached hereto, Lessee shall notify Lessor within thirty (30) days following the date of the occurrence of such damage ("Damage Date"). Lessee shall remit to Lessor an amount equal to the Settlement Value of such Car within sixty (60) days of the Damage Date. Upon payment of such amount, title to such Car shall vest with Lessee.

## 7. Possession and Use

A. Conditioned upon the Lessee performing all of the terms, covenants and conditions of this Agreement, Lessor shall not interfere with Lessee's possession, use and quiet enjoyment of the Cars during the term of this Agreement, provided no event of default has occurred and is continuing. Lessee shall use the Cars in the manner and to the extent Cars are customarily used in the railroad freight business, as set forth in Subsection 7.C. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by Lessor in connection with the acquisition of Cars; i.e., upon notice to Lessee from any such secured party or owner that an event of default has occurred and is continuing under such financing agreement, such party may require that all rental payments shall be made directly to such party and/or that the Cars be returned to such party, whereupon this Agreement shall terminate upon payment of all amounts due from Lessee hereunder.

B. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property (including, without limitation, the rules of the United States Department of Transportation, the Interstate Commerce Commission, and the current Interchange Rules or supplements thereto of the Mechanical Division, Association of American Railroads, as the same may be in effect from time to time) except that either Lessor or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

C. The use of the Cars shall be limited to use by a rail common carrier and the Cars shall always bear the reporting marks of Lessee or its affiliates or subsidiaries. The reporting marks on the Cars shall not be changed without Lessor's prior written consent. During the term of this Agreement, the Cars shall at all times be registered in the Official Railway Equipment Register and UMLER.

D. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Cars or any interest therein or in this Agreement or any Equipment Schedule thereto. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

## 8. Default

A. The occurrence of any of the following events shall be an event of default:

(i) The nonpayment by Lessee of any rental or other sum required herein to be paid by Lessee within ten (10) days after written notice of such nonpayment;

(ii) The breach by Lessee of any other term, covenant or condition of this Agreement, which is not cured within ten (10) days;

(iii) The insolvency by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors;

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee that is consented to by Lessee or is not dismissed within thirty (30) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within thirty (30) days from the date of said filing or appointment;

(v) Any action by Lessee to discontinue rail service on all or a portion of its tracks or abandon any of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state, if such action might unfavorably affect the payments earned by the Cars;

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

B. Upon the occurrence of any event of default, 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 Agreement (and Lessee

(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 Agreement (and Lessee agrees to bear Lessor's costs and expenses, including reasonable attorneys' fees, in securing such enforcement) or to recover damages for the breach thereof; and/or

(ii) By notice in writing to Lessee, terminate this Agreement, whereupon all rights of Lessee hereunder to lease the Cars shall absolutely cease and terminate as though this had never been made, but Lessee shall remain liable as hereinafter provided; and/or

(iii) By its agents enter upon the premises of Lessee or other premises where any of the Cars may be and take possession of all or any of such Cars and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Cars 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 Agreement may be then due or which may have accrued to the date or subsequent to the date of such termination and also to recover forthwith from Lessee; (a) any damages and expenses, including reasonable attorneys' fees, in addition thereto which Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Agreement, and (b) all costs and expenses incurred in searching for, taking, removing, keeping and storing such Cars, and (c) all additional amounts owing by Lessee hereunder, whether as rental or otherwise. In connection with the damages set out in (a), (b) and (c) hereinabove, Lessor shall make every reasonable effort to mitigate its damages and Lessee shall be entitled to a reduction or setoff in the amount of the damages set out in (a), (b) and (c) as a result of any release or other activities performed to sustain its duty to mitigate.

The remedies in this Agreement provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. Lessee, unless otherwise specified herein, hereby waives any and all existing or future claims to any offset against the rental or any other payments due Lessor hereunder and agrees to pay such rental and all other payments as directed regardless of any offset or claim which may be asserted by Lessee or on its behalf.

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

The nonpayment by Lessor of any sum required herein to be paid or reimbursed by Lessor to Lessee not later than thirty (30) days after receipt of notice from Lessee that such payment is due

law or in equity. In the event Lessor disputes the occurrence of a Lessor Default claimed by the Lessee, such dispute or disagreement may be submitted, upon the request of the parties, to a panel of three (3) independent arbitrators, one of whom shall be selected by Lessee, one of whom shall be selected by Lessor, and the third to be selected by such designated arbitrators. The determination of a majority of such arbitrators as to such dispute or disagreement shall be binding upon both parties hereto.

## 9. Termination

A. Upon the expiration or early termination of this Agreement (whether at the end of the initial term or any extended term) with respect to any Car, Lessee shall promptly deliver such Car to Lessor in good order and repair, including clean and free of debris and foreign material, ordinary wear and tear excepted, suitable for movement in the interchange system in conformity with all applicable laws and regulations including the AAR Code of Rules and FRA Railroad Freight Car Safety Standards, and at such location as Lessor may designate, as follows:

(i) If some or all of the Cars, are to be delivered to Lessor at a location or locations on Lessee's railroad tracks, Lessee shall be responsible for any transportation costs incurred in moving such Cars to Lessee's railroad tracks subsequent to the date of expiration. Lessee shall, at Lessor's option, provide, with respect, to any Car which is either on Lessee's railroad tracks on the date of expiration or is subsequently returned to Lessee's railroad tracks, up to sixty (60) days free storage on its railroad tracks from either the date of expiration or the date the last Car is returned to Lessee's railroad line subsequent to the time of expiration, whichever date is later.

(ii) Lessee shall remark the Cars as set forth in Subsection 9.B. of this Agreement. Lessee shall bear the costs associated with such remark. Lessee shall not remove Lessee's railroad marks from any Car without complying with all legal requirements applicable thereto. After remarking, Lessee shall, at Lessor's option, load the Cars with freight on Lessee's lines and deliver them to a connecting carrier for shipment.

(iii) If some or all of the Cars are to be delivered to Lessor at a location other than Lessee's tracks, the cost of assembling, delivering, storing, and transporting each Car to such location once off the lines of Lessee shall be borne by Lessor. (Lessee shall bear the expense of remarking such Cars.)

B. Remarking, with respect to each Car, shall include the following: (i) removal of existing railroad initials and numbers, mandatory markings and all company logos of Lessee; (ii) complete cleaning of the area where new marks are to be placed subsequent to the removal of markings and company logos as

designated by Lessor; (iii) application of new mandatory markings as designated by Lessor; and (iv) any transportation involved in moving each Car to and from a suitable work area to perform the remarking set forth in this Section.

#### **10. Indemnities**

The Lessee agrees to indemnify, save harmless and defend the Lessor and the Lessor's assignee against any charges or claims made against the Lessor or its assignee, and against any expense, loss or liability (including but not limited to counsel fees and expenses, penalties and interest) which the Lessor may incur in any manner (unless resulting from the Lessor's sole negligence) by reason of entering into or the performance of this Agreement or the ownership of, or which may arise in any manner out of or as a result of the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of, any Car until such Car is returned to the Lessor in accordance with the terms of the Agreement, and to indemnify and save harmless the Lessor and the Lessor's assignee against any charge, claim, expense, loss or liability on the account of any accident (unless resulting from the Lessor's sole negligence) in connection with the operation, use, condition, possession or storage of such Car resulting in damage to property or injury or death to any person. The indemnities contained in this section shall survive payment or performance of all other obligations under this Agreement or the termination of this Agreement.

#### **11. Representation, Warranties and Covenants**

Lessee represents, warrants and covenants that:

A. Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has the corporate power and authority and is duly qualified and authorized to do business wherever necessary to carry out its present business and operations and to perform its obligations under this Agreement.

B. This Agreement has been duly authorized, executed and delivered by the Lessee and constitutes Lessee's legal, valid and binding obligation, enforceable in accordance with its terms except as enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the rights of creditors generally and general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

C. The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee

or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

D. There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee.

E. There is no fact which Lessee has not disclosed to Lessor in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of the Lessee or the ability of the Lessee to perform its obligations under this Agreement.

## **12. Inspection**

Lessor shall at any time during normal business hours have the right to enter the premises where the Cars may be located, for the purpose of inspecting and examining the Cars to insure Lessee's compliance with its obligations hereunder. Lessee shall immediately notify Lessor of any accident connected with the Cars. Lessee shall also notify Lessor in writing within five (5) days after any attachment, tax lien or other judicial process which shall attach to any Car.

## **13. Miscellaneous**

A. This Agreement and any Equipment Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not without the prior written consent of Lessor assign this Agreement or any of its rights hereunder or sublease the Cars to any party, and any purported assignment or sublease in violation hereof shall be void.

B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Lessor in connection, with the acquisition of the Cars in order to confirm the financing party's interest in and to the Cars, this Agreement hereto and to confirm the subordination provisions contained in Section 7.

C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars except as a lessee only.