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RECORDATION NO. 20749  
FILED 1425  
MAR 30 1994 - 3 25 PM  
INTERSTATE COMMERCE COMMISSION  
0100162076

March 29, 1994

New Recordation No.

Dear Mr. Strickland:

On behalf of The Penn Mutual Life Insurance Company, I submit for filing and recording under 49 U.S.C. § 11303(a) and the regulations promulgated thereunder, executed counterparts of a primary document, not previously recorded, entitled Loan and Security Agreement ("Agreement"), dated as of March 29, 1994.

The parties to the enclosed Agreement are:

The Penn Mutual Life Insurance Company 530 Walnut Street Philadelphia, PA 19172	—	LENDER
Railcar, Ltd. Suite 315 1819 Peachtree Road, N.E. Atlanta, GA 30309-1847	—	DEBTOR

The said Agreement, among other things acts to create a security interest in the equipment listed in Exhibit A thereto by the Debtor to the Lender.

The equipment covered by the instant Agreement is as identified in Exhibit A thereto.

A short summary of the Agreement to appear in the ICC Index is as follows:

"Covers 54 aluminum covered hopper cars, NS 258000-258053."

Enclosed is a check in the amount of eighteen dollars (\$18.00) in payment of the filing fee.

Once the filing has been made, please return to bearer the stamped counterpart(s) of the document not required for filing purposes, together with the fee receipt, the letter from the ICC acknowledging the filing, and the two extra copies of this letter of transmittal.

Very truly yours,

*Allen H. Harrison, Jr.*  
Allen H. Harrison, Jr.  
Attorney for The Penn Mutual Life Insurance  
Company or the purpose of this filing.

*A. Strickland*  
Honorable Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423  
Enclosures  
BY HAND

8375 -020

18749  
RECORDATION NO. \_\_\_\_\_ FILED 1425

MAR 30 1994 -3 25 PM

INTERSTATE COMMERCE COMMISSION

LOAN AND SECURITY AGREEMENT

between

RAILCAR, LTD.

and

THE PENN MUTUAL LIFE INSURANCE COMPANY

March 29, 1994

*(Norfolk Southern Lease)*

TABLE OF CONTENTS

<u>Section</u>	<u>Heading</u>	<u>Page</u>
Recitals		
1.	Definitions . . . . .	1
2.	Issuance of the Notes	
	2.1 Commitment of the Lender . . . . .	2
	2.2 Closing . . . . .	2
	2.3 Conditions Precedent to the Closing Date . . . . .	3
	2.4 Representations, Warranties and Covenants . . . . .	4
3.	Grant of Security	
	3.1 Equipment Collateral . . . . .	10
	3.2 Lease Collateral . . . . .	10
	3.3 Excepted Rights in Collateral . . . . .	11
4.	Possession, Use and Release of Property	
	4.1 Possession of Collateral . . . . .	12
	4.2 Release of Property . . . . .	12
	4.3 Protection of Purchaser . . . . .	13
5.	Application of Assigned Rent and Certain Other Moneys Received by the Lender	
	5.1 Application of Assigned Rent . . . . .	13
	5.2 Application of Casualty Payments . . . . .	13
	5.3 Default . . . . .	14
	5.4 Excepted Payments . . . . .	14
6.	Defaults and Other Provisions	
	6.1 Events of Default . . . . .	14
	6.2 Lender's Rights . . . . .	16
	6.3 Acceleration Clause . . . . .	18
	6.4 Waiver by Debtor . . . . .	18
	6.5 Effect of Sale . . . . .	18
	6.6 Application of Sale Proceeds . . . . .	18
	6.7 Discontinuance of Remedies . . . . .	19
	6.8 Cumulative Remedies . . . . .	19

<u>Section</u>	<u>Heading</u>	<u>Page</u>
7.	Transfer of Debtor's Interest . . . . .	20
8.	The Note	
8.1	Execution of the Note . . . . .	20
8.2	Payment of the Note . . . . .	20
8.3	Transfers and Exchanges of Note; Lost or Mutilated Note . . . . .	21
8.4	New Note . . . . .	22
8.5	Cancellation of Note . . . . .	22
9.	Miscellaneous	
9.1	Business Days . . . . .	22
9.2	Successors and Assigns . . . . .	23
9.3	Partial Invalidity. . . . .	23
9.4	Communications . . . . .	23
9.5	Governing Law . . . . .	23
9.6	Counterparts . . . . .	23
9.7	Table of Contents and Headings. . . . .	24
9.8	Limitation of Liability . . . . .	24
9.9	Marking of Equipment . . . . .	25
9.10	Participation . . . . .	25
9.11	Transaction Expenses . . . . .	25
Signature Page . . . . .		25
Acknowledgments		
EXHIBIT A	Description of Equipment	
EXHIBIT B	Copy of Lease	
EXHIBIT C	Form of Secured Note	
EXHIBIT D	Description of Opinion of Counsel for the Debtor	

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT ("Agreement") is entered into this 29<sup>th</sup> day of March, 1994 between RAILCAR, LTD., a Georgia corporation (the "Debtor"), and THE PENN MUTUAL LIFE INSURANCE COMPANY, a Pennsylvania corporation (the "Lender").

W I T N E S S E T H:

WHEREAS, the Debtor is the owner of the Equipment which is currently the subject of the Lease with the Lessee (as such terms are hereinafter defined); and

WHEREAS, the Debtor proposes to borrow One Million One Hundred Twenty Thousand Seven Hundred Two and 83/100 Dollars (\$1,120,702.83) from the Lender by issuing a note on a nonrecourse basis to the Lender, and to secure its obligations under the note by a grant hereunder to the Lender of a security interest in the Equipment and the Lease;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants contained herein, the parties hereto agree as follows:

Section 1. DEFINITIONS.

Unless the context otherwise requires, for all purposes of this Agreement the following terms shall have the following meanings (such definitions to be equally applicable to both the singular and plural forms of the terms defined):

"Basic Rent" shall mean monthly rental as provided for in the Lease.

"Business Day" shall have the meaning specified in Section 9.1 hereof.

"Casualty Occurrence" shall have the meaning specified in Section 5.2 hereof.

"Certificate of Acceptance" shall mean the Certificate of Acceptance issued pursuant to the Lease.

"Closing Date" shall have the meaning specified in Section 2.1 hereof.

"Collateral" shall have the meaning specified in Section 3 hereof.

"Commitment" shall have the meaning specified in Section 2.1 hereof.

"Equipment" shall mean the equipment specified on Exhibit A attached hereto and incorporated herein by this reference.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"Event of Default" shall have the meaning specified in Section 6.1 hereof.

"Excepted Rights in Collateral" shall have the meaning specified in Section 3.3 hereof.

"Financing Agreements" shall mean, collectively, the agreements set forth in Section 2.3(a) hereof.

"Item of Equipment" shall mean each individual item of railroad rolling stock (i.e., each railroad car) within the group of items of railroad rolling stock constituting "Equipment" hereunder.

"Lease" shall mean the Lease Agreement attached hereto as Exhibit B and incorporated herein by this reference.

"Lease Event of Default" shall mean an event of default as defined and set forth in Paragraph 20 of the Lease.

"Lessee" shall mean the lessee under the Lease.

"Loan Value" shall have the meaning specified in Section 5.2 hereof.

"Note" shall mean the secured nonrecourse note executed and delivered hereunder in substantially the form of Exhibit C attached hereto and incorporated herein by this reference.

Capitalized terms used but not defined herein are used as defined in the Lease.

## Section 2. ISSUANCE OF THE NOTES.

2.1. Commitment of the Lender. Subject to the fulfillment of the conditions specified in Section 2.3 hereof, the Lender shall make a secured loan to the Debtor on \_\_\_\_\_, 1994 (the "Closing Date"), evidenced by the Note in the principal amount of One Million One Hundred Twenty Thousand Seven Hundred Two and 83/100 Dollars (\$1,120,702.83) (the "Commitment") and payable to the Lender. The Note shall be dated such Closing Date, shall bear interest at the rate of five and sixty-three one-hundredths percent (5.63%) per annum and shall be payable as provided in the Note.

2.2. Closing. The closing shall take place on the Closing Date at the offices of Lender's counsel, Drinker Biddle & Reath, 1100 P&B Building, Broad and Chestnut Streets, Philadelphia,

Pennsylvania 19107. On the Closing Date, the Lender shall make available to the Debtor, or its order (provided adequate instructions have been timely furnished to the Lender), in immediately available funds the full amount of the Commitment. Upon receipt of the secured loan made on the Closing Date, the Debtor will simultaneously deliver to the Lender as provided in Section 2.1 hereof the Note in the principal amount equal to the Commitment.

2.3. Conditions Precedent to the Closing Date. The obligation of the Lender to make available its Commitment on the Closing Date shall be subject to fulfillment of the following conditions on or prior to such Closing Date to the satisfaction of the Lender:

(a) Fully executed copies of this Agreement, the Lease and the Note (collectively, the "Financing Agreements") shall have been delivered to the Lender and each such agreement shall be in full force and effect.

(b) The Lease, or a memorandum or short form thereof, and this Agreement shall have been duly filed and recorded contemporaneously in conformity with 49 U.S.C. Section 11303 of the Interstate Commerce Act and in such other places within the United States as may be reasonably requested by the Lender as necessary for the protection of the title of the Debtor to, or the security interest of the Lender in, the Equipment.

(c) The Lender shall have received a signed opinion, dated the Closing Date, of (i) legal counsel for the Debtor, Cushing & Morris, Suite 2323, 229 Peachtree Street, Atlanta, Georgia, in substantially the form set forth in Exhibit D attached hereto and incorporated herein by this reference, and (ii) its legal counsel in Philadelphia and special Interstate Commerce Commission counsel as to the filing at the Interstate Commerce Commission, in form and substance reasonably satisfactory to it.

(d) The Lender shall have received the Note to be issued to the Lender.

(e) All searches deemed necessary or appropriate by Lender and its legal counsel shall have been completed, and it shall be established that the Debtor has good title to the Equipment, the Lease and the payments under the Lease, free and clear of all liens, claims and encumbrances. The Lender shall have received confirmation that any further filing and recording reasonably requested by the Lender, in addition to the Lease, or memorandum or short form thereof, and this Agreement in conformity with 49 U.S.C. Section 11303 of the Interstate Commerce Act and any other applicable laws shall have been duly effected to protect the title of the Debtor to, or the security interest of the Lender in, the Equipment and the Lease, and that all taxes, fees and other charges in connection therewith have been paid, or arrangements satisfactory

to Lender and its legal counsel have been made for such filing and payment.

(f) The Lender shall have received certified copies of the organizational documents and the appropriate corporate proceedings of the board of directors of the Debtor and a certified copy of the By-laws of the Lessee with respect to the authorization of the Financing Agreements and the other instruments contemplated herein and therein and with respect to the execution, delivery and performance thereof by the respective party and appropriate certificates showing the incumbency and the specimen signatures of the officers of the Debtor and the Lessee executing the agreements and instruments referred to herein, each such certificate to be dated the Closing Date.

(g) The Lender shall have received copies of the executed Certificates of Acceptance with respect to the Equipment as contemplated by the Lease.

(h) The representations and warranties of the Debtor contained herein and in any certificate delivered pursuant hereto shall be true and correct on and as of each Closing Date with the same effect as though made on and as of the Closing Date; on the Closing Date there shall be (i) no default, or event which, but for the lapse of time or the giving of notice (or both), would be such a default, hereunder or under the Lease, (ii) no event giving rise to the payment of a casualty loss pursuant to the Lease, or the occurrence of any event which, but for the lapse of time or the giving of notice (or both), would give rise to such payment, except to the extent that, in any such case, the Commitment shall be reduced in proportion to the Items of Equipment which suffer such a casualty loss (the "Casualty Equipment"), and the Casualty Equipment will be excluded for all purposes under this Agreement (provided, however, if a substantial number of Items of Equipment suffer such a casualty loss, the obligation of Lender to fund hereunder shall be at Lender's option), and (iii) no material adverse change in the business, assets or financial condition of the Lessee from the financial and business condition of the Lessee reflected in the financial statements dated December 31, 1992 and September 30, 1993 (nine months) previously submitted to Lender.

(i) The lien and security interest of The First National Bank of Boston ("Bank of Boston") in the Lease and the Equipment shall have been released.

(j) The Lender shall have received such evidence of fulfillment of the foregoing conditions of this Section 2.3 including, without limitation, certificates of officers of the Lessee, the Debtor, public officials and others, and legal opinions as the Lender may reasonably require to establish to its satisfaction the fulfillment of such conditions.

#### 2.4. Representations, Warranties and Covenants.

(a) Debtor. The Debtor represents, warrants and covenants to Lender that:

(i) The Debtor is a corporation duly organized, validly existing and in good standing under the laws of the state of Georgia and is duly licensed or qualified to do business as a foreign corporation in good standing in each jurisdiction in which such qualification is required.

(ii) The Debtor has full corporate power and authority to execute, deliver and perform this Agreement, the Lease and the Note.

(iii) This Agreement and the Lease have each been duly authorized, executed and delivered by the Debtor and constitute the legal, valid and binding obligations of the Debtor enforceable against it in accordance with the terms thereof, except to the extent that enforcement may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditor's rights generally and except to the extent that enforcement is subject to general principles of equity (including, but not limited to, all matters of public policy) regardless of whether such enforceability is considered in a proceeding in equity or at law.

(iv) The Note has been duly authorized by the Debtor and when executed and delivered by the Debtor will constitute the legal, valid and binding obligation of the Debtor enforceable against it in accordance with the terms thereof, except to the extent that enforcement may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditor's rights generally and except to the extent that enforcement is subject to general principles of equity (including, but not limited to, all matters of public policy) regardless of whether such enforceability is considered in a proceeding in equity or at law.

(v) No authorization, consent or approval of or by any governmental authority, court or administrative agency is required for the execution, delivery or performance by the Debtor of this Agreement, the Lease or the Note.

(vi) Neither the execution, delivery or performance by the Debtor of this Agreement, the Lease and the Note, nor compliance with the terms and provisions thereof, conflicts or will conflict with or will result in a breach or violation of any of the conditions or provisions of the charter documents, as amended, or by-laws, as amended, of the Debtor, or, to the knowledge of the Debtor, conflicts with any law, governmental rule or regulation, order, writ, injunction or decree of any court or governmental authority against the Debtor or by which it or any of its properties is bound, or of any indenture, mortgage or contract or other agreement or instrument to which the Debtor is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties except for the security interest granted herein.

(vii) Neither the Debtor nor, to its knowledge, anyone acting on its behalf, has directly or indirectly offered the Note, or similar securities relating to the Equipment, for sale to, or solicited any offer to acquire any of the same from, anyone other than the Lender.

(viii) The Debtor has acquired its interest in the Equipment for its own account and with its general corporate assets and no funds used to acquire any item of Equipment have been furnished directly or indirectly out of the assets of or in connection with any employee benefit plan (or its related trust) or any separate account in which any employee benefit plan has any interest. As used in this paragraph (viii), the terms "employee benefit plan" and "separate account" shall have the respective meanings assigned to them in ERISA.

(ix) The Debtor has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as the assignment hereunder shall remain in effect, any of its right, title or interest in the Collateral hereby assigned, to anyone other than the Lender, and that it will not, so long as the assignment hereunder shall remain in effect, except as provided in this Agreement, accept any payment from the Lessee, enter into any agreement amending or supplementing the Lease, execute any waiver or modification of, or consent under, the terms of the Lease, settle or compromise any claim against the Lessee arising under the Lease, or submit or consent to the submission of any dispute, difference or other matter arising under or in respect of the Lease to arbitration thereunder without the prior written consent of the Lender thereto.

(x) There are no actual, pending or, to the knowledge of the Debtor, threatened legal actions, arbitrations, or other proceedings involving the Debtor which might have an adverse effect on the validity or enforceability of this Agreement, the Lease or the Note.

(xi) The Debtor hereby ratifies and confirms the Lease and hereby agrees that it will not take or omit to take any action, the taking or omission of which might result in an alteration or impairment of the Lease, or of any of the rights created by the Lease, or the assignment hereunder.

(xii) The Debtor covenants and agrees to perform, abide by and be governed and restricted by each and all of the terms, provisions, restrictions, covenants and agreements herein set forth and in the Lease, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns to the same extent as though each and all of said terms, provisions, restrictions, covenants and agreements were fully set out herein and as though any amendment or supplement to the Lease were fully set out in an amendment or supplement to this Agreement.

(xiii) The Debtor has good and marketable title to the Collateral, free and clear of all liens [other than the security interest in favor of the Bank of Boston (which will be released and satisfied from the loan proceeds) and the security interest granted herein]; and the Debtor will warrant and defend the title to the Collateral against all claims and demands of all persons whatsoever except persons claiming by, through or under the Lender. The parties intend that Lender shall be entitled to assert or receive the benefit of all rights and claims arising under any third party warranty relating to the Equipment. For so long as Debtor is indebted to Lender hereunder, Debtor hereby assigns to Lender all of the rights and benefits of all warranties of title with respect to the Equipment provided by the person or persons from whom Debtor acquired the Equipment. The Debtor agrees to pay or discharge, at its own cost and expense, any and all claims, liens or charges (other than those arising by, through or under the Lender) on or with respect to the Collateral. The Debtor further agrees to indemnify and hold harmless the Lender from and against any loss, costs or expenses (including legal fees and expenses) incurred, in each case, as a result of the imposition or enforcement of any such claim, lien or charge. Without limiting the foregoing, there is no financing statement or other filed or recorded instrument (other than those in favor of the Bank of Boston, which will be released and satisfied from the loan proceeds) in which the Debtor is named and which the Debtor has signed, as debtor or mortgagor, now on file at the Interstate Commerce Commission or in any other public office covering any of the Collateral excepting the financing statements or other instruments filed or to be filed in respect of and for the security interest provided for herein. It is expressly understood that the Lease and the operation thereof in accordance with its terms shall not constitute a violation of this Section 2.4(a)(xiii).

(xiv) The Debtor will do, execute, acknowledge and deliver every and all further acts, deeds, conveyances, transfers and assurances (a) for the perfection of the security interest being herein provided for in the Collateral, whether now owned or hereafter acquired and (b) as the Lender reasonably may consider necessary or desirable for giving full effect to this Agreement or for securing the rights of the Lender hereunder. Without limiting the foregoing but in furtherance of the security interest herein granted in the revenues and other sums due and to become due under the Lease, the Debtor covenants and agrees that it will cause the Lessee to be notified of such assignment pursuant to the Lease and direct the Lessee, upon written notice by the Lender, to make all payments of such revenues and other sums due and to become due under the Lease, other than the Excepted Rights in Collateral, as the Lender may direct.

(xv) The Debtor will not, without the prior written consent of the Lender:

(A) declare a default or exercise the remedies of the Debtor under, or terminate or modify or accept a surrender of, or offer or agree to any termination or modification or surrender of, or take or omit to take any action which might result

in an alteration or impairment of, the Lease or by affirmative act consent to the creation or existence of any security interest or other lien to secure the payment of indebtedness upon the rights created by the Lease or any part thereof; or

(B) receive or collect, or permit the receipt or collection of, any payment of Basic Rent under the Lease prior to the date for payment thereof provided for by the Lease or assign, transfer or hypothecate (other than to the Lender hereunder) any Basic Rent then due or to accrue in the future under the Lease in respect of the Equipment; or

(C) sell, mortgage, transfer, assign or hypothecate (other than to the Lender hereunder) its interest in the Equipment or any part thereof or in any amount to be received by it from the use or disposition of the Equipment.

(xvi) The Debtor hereby appoints the Lender and its successors and assigns, the true and lawful attorney of the Debtor, irrevocably and with full power of substitution for and in the name, place and stead of the Debtor, to demand, collect, receive, receipt for, sue for, compound and compromise and give acquittance for, any and all rents, income, profits, moneys and claims for sums which are assigned under Sections 3.1 and 3.2 hereof, to endorse any checks or other instruments or orders in connection therewith, to make all waivers and agreements and to file any claims (including without limitation any proof of claim in any bankruptcy proceeding commenced by or against the Lessee) or take any actions or institute any proceedings with respect thereto which the Lender may deem necessary or advisable in its sole and complete discretion. Anything herein contained to the contrary notwithstanding, (A) this Section 2.4(a)(xvi) shall be effective if and only if there shall have occurred and be continuing an Event of Default, and (B) neither the Lender nor its successors or assigns shall have any obligation or liability by reason of or arising out of this Agreement to make any inquiry as to the nature or sufficiency of, to present or file any claim with respect to, or to take any action to collect or enforce the payment of, any amounts to which it may be entitled at any time by virtue of this Agreement. Upon written request from the Debtor, such request to be made no more frequently than once in any six month period, the Lender shall account to the Debtor for any and all rents, income, moneys and claims for sums received by the Lender pursuant to the grant of security herein.

(xvii) The Debtor further covenants and agrees that it will give the Lender written notice of any event or condition constituting an Event of Default under the Lease or an event which, but for the lapse of time or the giving of notice or both, would be an Event of Default if the Debtor has actual knowledge of such event or condition.

(xviii) The Debtor will furnish the Lender upon receipt thereof duplicates or copies of all reports, notices, requests, demands, certificates, financial statements and other

instruments furnished to the Debtor under the Lease, to the extent that same shall not have been furnished to the Lender pursuant to the Lease.

(xix) The Debtor warrants that it will pay or caused to be paid all appropriate brokers commissions or finders fees in connection with the acquisition of the Equipment and the other transactions contemplated thereby. The Debtor agrees that the Lender has no obligation to pay such fees and it agrees to indemnify the Lender for any and all sums whatsoever required to be expended by the Lender in payment of such claims by brokers provided that the Debtor shall be under no obligation to indemnify the Lender for fees incurred solely as a result of acts by the Lender.

(xx) Within one hundred twenty (120) days after the end of each fiscal year during the term of this Agreement, Debtor shall deliver to Lender the following: (i) audited financial statements of Debtor for the fiscal year just completed and (ii) a certificate signed by an authorized officer of Debtor to the effect that, to the knowledge of Debtor, there is no default under the Lease or event which, but for the lapse of time or the giving of notice or both, would be a default, and, to the knowledge of Debtor, that the Equipment is in satisfactory condition as required under the Lease.

(b) Lender. The Lender represents and warrants that:

(i) The Lender understands that the Note has not been registered under the Securities Act of 1933, as amended, and that the Note must be held indefinitely unless subsequent disposition thereof is registered under said Act or is a transaction exempt from registration.

(ii) The Note to be issued to the Lender pursuant to this Agreement is being acquired by it with its general corporate assets, and no funds used to acquire such Note will be furnished directly or indirectly out of the assets of or in connection with any employee benefit plan (or its related trust) or any separate account in which any employee benefit plan has any interest. As used in this paragraph (ii), the terms "employee benefit plan" and "separate account" shall have the respective meanings assigned to them in ERISA.

(iii) The Lender is a corporation duly organized, validly existing and in good standing under the laws of the state of Pennsylvania.

(iv) The Lender has full corporate power and authority to execute, deliver and perform this Agreement.

(v) This Agreement has been duly authorized, executed and delivered by the Lender and constitutes the legal, valid and binding obligations of the Lender enforceable against it in

accordance with the terms thereof, except to the extent that enforcement may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditor's rights generally and except to the extent that enforcement is subject to general principles of equity (including, but not limited to, all matters of public policy) regardless of whether such enforceability is considered in a proceeding in equity or at law.

(vi) The making of the secured loan to the Debtor evidenced by the Note has been duly authorized by the Lender.

(vii) No authorization, consent or approval of any governmental authority is required for the execution, delivery or performance by the Lender of this Agreement.

### Section 3. GRANT OF SECURITY.

In order to secure the prompt payment of the principal and interest on the Note issued hereunder, and to secure the payment of all other indebtedness of the Debtor to the Lender pursuant to this Agreement and the performance and observance of all covenants and conditions in each of the Financing Agreements, and for the benefit of the Lender and any other holders of the Note, the Debtor does hereby convey, warrant, mortgage, pledge, assign and grant to the Lender, its successors and assigns, for the security and benefit of each holder of the Note, a first priority security interest in all of the Debtor's right, title and interest in and to the properties, rights, interests and privileges described in Sections 3.1 and 3.2 hereof whether now owned or hereafter acquired, and all proceeds thereof, subject always to the exceptions, reservations and limitations contained in Section 3.3 hereof (all of which properties, rights, interests and privileges hereby mortgaged, assigned and pledged, or intended so to be, are collectively referred to as the "Collateral").

3.1 Equipment Collateral. Collateral includes the Equipment and such other equipment as may be described from time to time on any amendments or additions to Exhibit A, together with all accessories, equipment, parts and appurtenances appertaining or attached to any of the Equipment, whether now owned or hereafter acquired, and all substitutions, renewals or replacements of, and additions, improvements, accessions and accumulations to, or proceeds of any and all of said Equipment, together with all the rents, issues, income, profits, avails and other proceeds (including insurance proceeds) therefrom.

3.2 Lease Collateral. Collateral also includes all right, title, interest, claims and demands of the Debtor in, to and under the Lease, including any extensions of the term of the Lease, together with all rights, powers, privileges, options and other benefits of the Debtor under the Lease, including, without limitation, but subject always to the exceptions, reservations and limitations contained in Section 3.3 hereof:

(a) the immediate and continuing right to receive and collect all Basic Rent and loss value payments, insurance proceeds, condemnation awards and other payments, proceeds, tenders and security now or hereafter payable to or receivable by the Debtor under said Lease or pursuant thereto;

(b) the right to make all consents, waivers and agreements and to enter into any amendments relating to the Lease or any provision thereof; provided, however, that the Lender shall be under no obligation to take such actions; and

(c) the right to take such action upon the occurrence of an Event of Default under said Lease or an event which with the lapse of time or giving of notice, or both, would constitute an Event of Default under said Lease, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by the Lease or by law, and to do any and all other things whatsoever which the Debtor or its successors and assigns is or may be entitled to do under the Lease; it being the intent and purpose hereof that, subject always to the exceptions, reservations and limitations contained in Section 3.3 hereof, the assignment and transfer to the Lender of said rights, powers, privileges, options and other benefits shall be effective and operative immediately and shall continue in full force and effect, and the Lender shall have the right to collect and receive Basic Rent and loss value payments, insurance proceeds, condemnation awards and other payments for application in accordance with the provisions of Sections 5 and 6 hereof at all times during the period from and after the date of this Agreement until the indebtedness hereby secured has been fully paid and discharged.

It is expressly agreed that anything herein contained to the contrary notwithstanding, the Debtor shall remain liable under the Lease to perform all of the obligations assumed by it thereunder, all in accordance with and pursuant to the terms and provisions thereof, and the Lender and the holders of any Note shall have no obligation or liability under the Lease by reason of or arising out of the assignment hereunder, nor shall the Lender or the holder of the Note be required or obligated in any manner to perform or fulfill any obligations of the Debtor under or pursuant to the Lease or, except as herein expressly provided, to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or present or file any claim, or take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

3.3 Excepted Rights in Collateral. There are expressly excepted and reserved from the security interest and operation of this Agreement the following described properties, rights, interests and privileges (hereinafter the "Excepted Rights in Collateral"), and nothing contained herein or in any other agreement shall

constitute an assignment of the Excepted Rights in Collateral to the Lender:

(a) all payments of any indemnity under Paragraphs 13, 14 and 16 of the Lease which by the terms of the Lease are payable to the Debtor for its own account (except to the extent such payments are owed to Lender pursuant to the terms of this Agreement on account of monies expended by Lender pursuant to such Paragraphs);

(b) all rights of the Debtor under the Lease to demand, collect, sue for or otherwise obtain all amounts from the Lessee due the Debtor on account of any such indemnities or payments due pursuant to said Paragraphs 13, 14 and 16 of the Lease, except as provided in clause (a) above; and

(c) any insurance proceeds payable under general public liability policies maintained by the Lessee pursuant to Paragraph 13 of the Lease which by the terms of the Lease are payable directly to the Debtor for its own account (except to the extent such proceeds are payable to Lender pursuant to the terms of this Agreement on account of monies expended by Lender pursuant to such Paragraph 13).

#### Section 4. POSSESSION, USE AND RELEASE OF PROPERTY.

4.1 Possession of Collateral. So long as no Event of Default, or event which but for the lapse of time or giving of notice (or both), would constitute an Event of Default, has occurred and is continuing, the Debtor shall remain in full possession, enjoyment and control of the Equipment and shall be entitled to manage, operate and use the same and each part thereof with the rights and franchises appertaining thereto; provided always that the possession, enjoyment, control and use of the Equipment shall at all times be subject to the observance and performance of the terms of this Agreement and the Lease. It is expressly understood that the use and possession of the Equipment by the Lessee under and subject to the Lease shall not constitute a violation of this Section 4.1.

4.2 Release of Property. So long as no Event of Default, or event which but for the lapse of time or giving of notice (or both), would constitute an Event of Default, has occurred and is continuing, the Lender shall execute a release in respect of any Item of Equipment withdrawn, lost or destroyed as referred to in Paragraph 18 of the Lease upon receipt from the Lessee of written notice designating the Item of Equipment in respect of which the Lease will terminate and receipt by the Lender of the Loan Value with respect thereto, or upon receipt by the Lender of evidence that any withdrawn Item of Equipment has been substituted in accordance with the terms of Paragraph 11 of the Lease. After payment in full of all the indebtedness secured hereby, the Lender shall, upon the written request of the Debtor, execute and deliver to the Debtor such instruments (in due form for filing and recording) as may be

reasonably requested and furnished by the Debtor, releasing the Equipment from this Agreement, and terminating and discharging the security interests created hereby or pursuant hereto.

4.3 Protection of Purchaser. No purchaser in good faith of property purporting to be released hereunder shall be bound to ascertain the authority of the Lender to execute the release, or to inquire as to any facts required by the provisions hereof for the exercise of such authority; nor shall any purchaser, in good faith, of any item or unit of the Collateral be under obligation to ascertain or inquire into the conditions upon which any such sale is hereby authorized.

Section 5. APPLICATION OF ASSIGNED RENT AND CERTAIN OTHER MONEYS RECEIVED BY THE LENDER.

5.1 Application of Assigned Rent. So long as no Event of Default or event which, but for the lapse of time or the giving of notice (or both) would constitute an Event of Default shall have occurred and be continuing, the amounts, if any, received from time to time by the Lender which constitute payment by the Lessee under the Lease of the installments of Basic Rent, shall be applied: first, to the payment of the installment of the aggregate unpaid principal and interest (first to interest and then to principal) then due on the Note; second, the balance, if any, of such amounts shall be paid to or upon the order of the Debtor.

5.2 Application of Casualty Payments. So long as no Event of Default or event which, but for the lapse of time or the giving of notice (or both), would constitute an Event of Default shall have occurred and be continuing, the amounts, if any, received from time to time by the Lender pursuant to the Lease (i.e., "Casualty Value") under circumstances which constitute payment for a Casualty Occurrence under Paragraph 18 of the Lease (defined as an event whereby any Item of Equipment is lost, stolen, destroyed or damaged beyond economic repair) with respect to any Item of Equipment shall be paid and applied as follows:

First, an amount equal to the accrued and unpaid interest due under the Note shall be paid to the holder thereof (after giving effect to all payments of installments of interest made or to be made on the date of receipt of payments for the Casualty Occurrence);

Second, an amount equal to the Loan Value of such Item of Equipment for which settlement is then being made shall be applied pro rata to each remaining payment under the Note equally as a prepayment of the principal of the Note to the holder of the Note;

Third, the balance, if any, to the Debtor.

As used herein, the "Loan Value," in respect of any Item of Equipment, shall be an amount equal to the product of (A) a

fraction, the numerator of which is one and the denominator of which is the aggregate number of Items of Equipment then under the Lease (including the Item of Equipment for which settlement is then being made), times (B) the aggregate unpaid principal amount of the Note immediately prior to the prepayment provided for in this Section 5.2 (after giving effect to all payments of installments of principal made or to be made on the date of receipt of payments for the Casualty Occurrence). The Lender shall calculate the Loan Value and a revised amortization schedule for the Note and submit such calculations to the Debtor upon receipt of payments for any Casualty Occurrence.

5.3 Default. If an Event of Default, or event which, but for the lapse of time or the giving of notice (or both), would constitute an Event of Default, shall have occurred and be continuing, all amounts received by the Lender shall be held until (a) such event or condition has been cured, or (b) such amounts are applied in the manner provided for in Section 6.6 hereof.

5.4 Excepted Payments. Notwithstanding any other provision of this Agreement, all payments constituting part of Excepted Rights in Collateral, if received by any holder of the Note, shall be paid to the Debtor.

#### Section 6. DEFAULTS AND OTHER PROVISIONS.

6.1 Events of Default. The term "Event of Default" shall mean one or more of the following events (whatever the reason for such Event of Default and whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) Failure to make payment of any installment of principal and interest on the Note within twenty (20) days after the same shall have become due and payable, whether at the due date thereof or at the date fixed for prepayment or by acceleration or otherwise, and any such failure shall continue unremedied for ten (10) days from written notice thereof, provided written notice of non-payment shall be given concurrently by the Lender to the Lessee if the Lender is then legally permitted to do so; or

(b) A Lease Event of Default shall have occurred and be continuing unless the Debtor shall have cured such Lease Event of Default and the corresponding Event of Default hereunder within the latest of (i) the expiration of the applicable grace period, or (ii) within ten (10) days of receiving notice of any such Event of Default; provided, however, that notwithstanding any provision to the contrary herein, the Lender shall have given a copy to the Debtor of any notice given by the Lender to the Lessee in connection with any Lease Event of Default concurrently with the giving of such notice to the Lessee; or

(c) Default on the part of the Debtor in the due observance or performance of any covenant or agreement to be observed or performed by the Debtor under this Agreement (other than the covenants referred to in Sections 6.1(a) and (b)), and such default shall continue unremedied for thirty days after written notice from the Lender to the Debtor specifying the default and demanding the same to be remedied; or

(d) Any representation or warranty on the part of the Debtor made herein or in the Lease or in any report, certificate, financial or other statement furnished in connection with this Agreement or the Lease or the transactions contemplated herein or therein shall prove to be false or misleading in any material respect when made; or

(e) The security interest granted hereunder shall cease to be a perfected and enforceable first priority security interest in the Collateral other than as a result of acts by the Lender, or any claim, lien or charge asserted against the Collateral shall not be discharged or removed or such security interest restored as a perfected and enforceable first priority security interest within thirty (30) calendar days after written notice from the Lender or holder of the Note to the Debtor demanding the discharge or removal or restoration thereof; or

(f) The entry of a decree or order by a court having jurisdiction for relief in respect of the Debtor under any bankruptcy, insolvency or similar act, law or statute now or hereafter in effect, or adjudging the Lessee bankrupt or insolvent, or approving a petition seeking reorganization, adjustment or composition of or in respect of the Lessee under Title 11 of the United States Code, as now constituted or hereafter in effect, or under any other applicable Federal or State bankruptcy law or other similar law, or the entry of an order for the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or similar official) of the Debtor or of any substantial part of its property, or the entry of an order for the winding-up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days; or

(g) The filing by the Debtor of any petition, application, answer or consent to or for liquidation, reorganization, arrangement or any other relief under any Chapter of Title 11 of the United States Code or any similar state or federal law or statute, as now or hereafter in effect, or the consent by it to the filing of any such petition or application for the relief requested therein, or the consent by it to the appointment or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Debtor or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the failure of the Debtor generally to pay its debts as such debts become due.

6.2 Lender's Rights. If any Event of Default shall occur and remains uncured at the end of the applicable cure period, the Lender shall have the rights, options, duties and remedies of a secured party, and the Debtor shall have the rights and duties of a debtor, under the Uniform Commercial Code of the State of Pennsylvania (regardless of whether such Code or a law similar thereto has been enacted in a jurisdiction wherein the rights or remedies are asserted), and:

(a) The entire unpaid principal balance of the Note and accrued interest thereon shall be immediately due and payable without notice, presentment or demand in the case of an Event of Default under Section 6.1(f) and (g) above, and, in the case of any other Event of Default, shall be immediately due and payable upon notice from the Lender to the Debtor of any acceleration hereunder, and thereupon all such amounts shall be forthwith payable, together with all costs and expenses of collection if collected by or through an attorney at law, notwithstanding any contrary provision contained in this Agreement or the Note;

(b) At the request of the Lender, the Debtor shall promptly execute and deliver to the Lender such instruments of title and other documents as the Lender may deem necessary or advisable to enable the Lender (or its duly designated agent or representative), at such time or times and place or places as the Lender reasonably may specify, to obtain possession of all or any part of the Collateral to which the Lender shall at the time be entitled hereunder; if the Debtor shall for any reason fail to execute and deliver such instruments and documents after such request by the Lender, (i) the Lender may obtain a judgment conferring on the Lender the right to immediate possession and requiring the Debtor to execute and deliver such instruments and documents to the Lender, to the entry of which judgment the Debtor hereby specifically consents, and/or (ii) the Lender personally or by agents or attorneys, shall have the right to take immediate possession of the Collateral, or any portion thereof, and for that purpose may pursue the same wherever it may be found, and may enter any premises, with or without notice, demand, process of law or legal procedure, and search for, take possession of, remove, keep and store the Collateral, or, to the extent permitted by law, use and operate or lease the Collateral until sold;

(c) Upon every such taking of possession, the Lender may, from time to time, at the expense of the Collateral, make all such expenditures for maintenance, insurance, repairs, replacements, alterations, additions and improvements to and of the Collateral, as it may reasonably deem proper, including the right to enter into any and all such agreements with respect to the maintenance, use, operation, storage, leasing, control, management or disposition of the Collateral or any part thereof as the Lender may reasonably determine; and the Lender shall be entitled to collect and receive directly all tolls, rents (including rental under the Lease),

revenues, issues, income, products and profits of the Collateral and every part thereof, except Excepted Rights in Collateral, without prejudice, however, to the right of the Lender under any provision of this Agreement to collect and receive all cash held by, or required to be deposited with, the Lender hereunder;

(d) The Lender may, if at the time such action may be lawful (subject to compliance with any mandatory legal requirements), either with or without taking possession and either before or after taking possession, and without instituting any legal proceedings whatsoever, and having first given notice of such sale by registered mail to the Debtor once at least ten days prior to the date of such sale, sell and dispose of said Collateral, or any part thereof, at public or private auction to the highest bidder, in one lot as an entirety or in separate lots, and either for cash or on credit and on such terms as the Lender may determine, and at any place (whether or not it be the location of the Collateral or any part thereof) designated in the notice above referred to; provided, however, that any such sale should be held in a commercially reasonable manner; provided, further, that if, prior to such sale and prior to the making of a contract for such sale, the Debtor should tender full payment of the total unpaid balance of the Note, together with interest thereon accrued and unpaid and all other payments due under the Note and this Agreement as well as reasonable expenses of the Lender in retaking possession of, removing, storing, holding and preparing the Equipment for and otherwise arranging for the sale and the Lender's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Lender, absolute right to the possession of, title to and interest in the Equipment shall pass to and vest in the Debtor. The power to effect any sale shall not be exhausted by any one or more sales as to any of the Collateral remaining unsold, but shall continue unimpaired until the entire Collateral shall have been sold or all amounts payable under the Note and this Agreement shall have been paid in full. Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales, or for any such adjourned sale or sales, without further published notice, and the Lender or any holder of the Note, or of any interest therein, or the Debtor may bid and become the purchaser at any such sale;

(e) The Lender may proceed to protect and enforce this Agreement and the Note by suits or proceedings in equity or at law or in bankruptcy and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted; or for foreclosure hereunder, or for the appointment of a receiver or receivers for the Collateral or any part thereof, for the recovery of judgment for the indebtedness hereby secured or for the enforcement of any other proper, legal or equitable remedy available under applicable law;

(f) The Lender may proceed to exercise all rights, privileges and remedies available to the Debtor under the terms of

the Lease and may exercise all such rights and remedies either in the name of the Lender or in the name of the Debtor for the use and benefit of the Lender.

6.3 Acceleration Clause. In case of any sale of the Collateral pursuant to any judgment or decree of any court or otherwise in connection with the enforcement of any of the terms of this Agreement, the principal amount of the Note, if not previously due, and the interest accrued thereon, shall at once become and be immediately due and payable; also in the case of any such sale, the purchaser, for the purpose of making settlement for or payment of the purchase price, shall be entitled to turn in and use the Note and any claims for interest matured and unpaid thereon, in order that there may be credited as paid on the purchase price the sum applicable to the Note, including principal and interest thereof, after allowing and giving credit for the proportion of the total purchase price required to be paid in actual cash.

6.4 Waiver by Debtor. To the extent permitted by law, the Debtor covenants that it will not at any time insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law now or at any time hereafter in force providing for the valuation or appraisal of the Collateral or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained or pursuant to a decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and, to the full extent legally permitted, hereby expressly waives for itself and on behalf of each and every person all benefit and advantage of any such law or laws and covenants that it will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to the Lender, but will suffer and permit the execution of every such power as though no such law or laws had been made or enacted; provided, however, that any such sale or sales shall be made in a commercially reasonable manner.

6.5 Effect of Sale. Any sale, whether under any power of sale contained herein or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Debtor in and to the property sold.

6.6 Application of Sale Proceeds. After an Event of Default shall have occurred and be continuing, the proceeds of any sale of the Collateral (or any part thereof), the proceeds derived from the exercise of any other remedy hereunder, and any other amounts received by the Lender pursuant to this Agreement shall be applied as follows:

First, to the payment of costs and expenses of foreclosure or suit, if any, and of such sale, and of all proper expenses, liability and advances, including reasonable actual legal expenses and attorneys' fees, incurred or made hereunder by the Lender, or the holders of the Note, and of all taxes, assessments or liens superior to the lien of this Agreement, except any taxes, assessments or other superior lien subject to which said sale may have been made, and of all costs and expenses associated with the maintenance of the Collateral; and

Second, to the payment to the holder of the Note of the amount then due, owing or unpaid on the Note for principal and interest, and in case such proceeds shall be insufficient to pay in full the whole amount so due, owing or unpaid upon the Note, then first to unpaid interest thereon, and second, to unpaid principal thereof; and

Third, to the payment of any other indebtedness secured by this Agreement to the holder of the Note; and

Fourth, to the payment of the surplus, if any, to the Debtor, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

6.7 Discontinuance of Remedies. In case the Lender shall have proceeded to enforce any right under this Agreement by foreclosure, sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely, then, and in every such case, the Debtor, the Lender and the holders of the Notes shall be restored to their former positions and rights hereunder with respect to the property subject to the security interest created under this Agreement.

6.8 Cumulative Remedies. No delay or omission of the Lender or of any holder of the Note to exercise any right or power arising from any default on the part of the Debtor shall exhaust or impair any such right or power or prevent its exercise during the continuance of such default. No waiver by the Lender, or any holder of the Note, of any such default, whether such waiver be full or partial, shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom except as may be otherwise provided herein. The Lender may exercise any one or more or all of the remedies hereunder and no remedy is intended to be exclusive of any other remedy but each and every remedy shall be cumulative and in addition to any and every other remedy given hereunder or otherwise existing now or hereafter at law or in equity; nor shall the giving, taking or enforcement of any other or additional security, collateral or guaranty for the payment of the indebtedness secured under this Agreement operate to prejudice, waive or affect the security of this Agreement or any rights, powers or remedies hereunder, nor shall the Lender or the holder of the Note be required to first look to, enforce or exhaust such other or additional security, collateral or guaranties.

Section 7. TRANSFER OF DEBTOR'S INTEREST.

The Debtor agrees that it will not sell or otherwise transfer any of its interest in the Equipment or the Lease, or any part thereof, without the prior written consent of the Lender. Notwithstanding any provision in this Agreement to the contrary, Debtor may grant a second lien on the Equipment to a third party provided such lien is subordinate to Lender's security interest hereunder and Lender, in its sole and absolute discretion, approves the terms of such subordination.

Section 8. THE NOTE.

8.1 Execution of the Note. The Note shall be signed on behalf of the Debtor by an authorized signatory who, at the date of actual execution thereof, shall be duly authorized to execute the same.

8.2 Payment of the Note.

(a) The principal and interest on the Note shall be payable on or before each payment date under the Note by wire transfer of immediately available funds, at Bankers Trust Company, ABA #02100-1033, 16 Wall Street, New York, New York 10005, Attention: Insurance Unit, Private Placement 01419540 for credit to The Penn Mutual Life Insurance Company, Acct. #092497, or to such other account as the holder of the Note shall designate to the Debtor from time to time in writing, and if no such designation is in effect, by check, duly mailed, first class, certified, postage prepaid, or delivered to the Lender at the address last furnished to the Debtor. All payments so made shall be valid and effective to satisfy and discharge the liability upon the Note to the extent of the sums so paid. All such payments shall be free and clear of, and without deduction for or an account of, wire or other charges. Each holder (or the person for whom such holder is a nominee) by its acceptance of the Note agrees that, before selling, transferring or otherwise disposing of the Note, it will advise the Debtor upon such transfer and notation of payment as provided in Sections 8.3 and 8.4.

(b) Except as provided in Section 8.2(c), no portion of the principal and/or interest due under the Note may be prepaid by Debtor.

(c) There shall be mandatory prepayment without penalty or premium of principal on the Note in an aggregate amount equal to the applicable Loan Value, plus interest accrued thereon, when a Casualty Occurrence exists and the Lessee has not provided substitute Equipment pursuant to the applicable provisions of the Lease and Section 5.2 herein. In addition, the outstanding principal of the Note may be prepaid in full, or in part, upon

purchase of any Item of Equipment by Lessee pursuant to Paragraph 21 of the Lease, at a premium, if any, equal to the present value of all remaining payments under the Note (discounted at an interest rate equal to fifty basis points over the yield on United States Treasury obligations with a maturity closest to the remaining life of the Note) reduced by the outstanding principal balance of the Note multiplied by a fraction the numerator of which is the number of Items of Equipment purchased by Lessee and the denominator of which is the number of Items of Equipment then subject to the Lease (including the Items of Equipment so purchased).

(d) If any payment hereunder or under the Note is due on a day other than a Business Day, payments required to be made on such day shall be made on the next succeeding Business Day.

(e) The Debtor shall pay to the Lender or any holder of the Note interest on overdue principal and any other amounts payable hereunder which are overdue at the rate of eight percent (8%) per annum whether as scheduled or upon acceleration or otherwise, but not in excess of the highest rate permitted by applicable law for the period of time such amounts are overdue and unpaid.

8.3 Transfers and Exchanges of Note; Lost or Mutilated Note.

(a) The holder of the Note (or reissued Note) may transfer such Note upon the surrender thereof at the principal office of the Debtor. The Debtor shall execute in the name of the transferee a new Note in a principal amount equal to the unpaid principal amount of the Note so surrendered and deliver the new Note to said holder for delivery to such transferee.

(b) The Note when presented or surrendered for exchange or transfer shall be accompanied by a written instrument or instruments of assignment or transfer, duly executed by the registered holder or by its attorney duly authorized in writing. The Debtor shall not be required to make a transfer or an exchange of the Note for a period of ten days preceding any installment payment date with respect thereto.

(c) No notarial act shall be necessary for the transfer or exchange of the Note pursuant to this Section 8.3, and the holder of the Note issued as provided in this Section 8.3 shall be entitled to any and all rights and privileges granted under this Agreement to the holder of such Note.

(d) In case the Note shall become mutilated or be destroyed, lost or stolen, the Debtor, upon the written request of the holder thereof, shall execute and deliver a new Note in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. The applicant for a substituted Note shall furnish to the Debtor such

security or indemnity as may be required by the Debtor to save it harmless from all risks in connection therewith, and the applicant shall also furnish to the Debtor evidence to its reasonable satisfaction of the mutilation, destruction, loss or theft of the applicant's Note and of the ownership thereof.

#### 8.4 New Note.

(a) Each new Note issued pursuant to Section 8.3(a) or (d) in exchange for or in substitution or in lieu of an outstanding Note shall be dated the date of such outstanding Note. The holder of the new Note, upon advice and consent of the Debtor, shall mark on the new Note (i) the dates to which principal and interest have been paid on such outstanding Note, (ii) all payments and prepayments of principal previously made on such outstanding Note which are allocable to such new Note, and (iii) the amount of each installment payment payable on such new Note. Interest shall be deemed to have been paid on such new Note to the date on which interest shall have been paid on such outstanding Note, and all payments and prepayments of principal marked on such new Note, as provided in clause (ii) above, shall be deemed to have been made thereon.

(b) Each new Note issued pursuant to Section 8.3(a) or (d) in exchange for, in substitution of, or in lieu of an outstanding Note shall be the valid obligation of the Debtor evidencing the same debt as the outstanding Note and shall be entitled to the benefits and security of this Agreement to the same extent as the outstanding Note.

(c) Upon the issuance of any Note pursuant to this Agreement, the Debtor shall prepare and deliver to the Lender a copy of an amortization schedule with respect to such Note setting forth the amount of the installment payments to be made on such Note after the date of issuance thereof and the unpaid principal balance of such Note after each such installment payment. The Lender shall deliver, or send by first class mail, postage prepaid, one copy of the applicable schedule to the holder of such Note at its address furnished to the Debtor for such purpose.

8.5 Cancellation of Note. If the Note is surrendered for the purpose of payment, redemption, transfer or exchange, such Note shall be delivered to the Debtor for cancellation or, if surrendered to the Debtor, shall be cancelled by it, and no Note or Notes shall be issued in lieu thereof except as expressly required or permitted by any of the provisions of this Agreement.

#### Section 9. MISCELLANEOUS.

9.1 Business Days. As used herein, the term "Business Day" means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in the States of Pennsylvania or Georgia are authorized or obligated to remain closed.

9.2 Successors and Assigns. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, premises and agreements in this Agreement contained by or on behalf of the Debtor or by or on behalf of the Lender shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

9.3 Partial Invalidity. The unenforceability or invalidity of any provision or provisions of this Agreement shall not render any other provision or provisions herein unenforceable or invalid.

9.4 Communications. All communications provided for herein shall be in writing and shall be deemed to have been given (unless otherwise required by the specific provisions hereof in respect of any matter) when delivered personally or when deposited in the United States mails, certified first class, postage prepaid, addressed as follows:

If to the Debtor: Railcar, Ltd.  
Suite 315  
1819 Peachtree Road, N.E.  
Atlanta, Georgia 30309-1847  
ATTN: Wilds L. Pierce, President

If to the Lender: The Penn Mutual Life Insurance Company  
Securities Investment Department  
- Private Placement  
Independence Square - VLM C1B  
530 Walnut Street  
Philadelphia, Pennsylvania 19172  
ATTN: Richard M. Fox, Investment Officer

or to the Debtor or the Lender at such other address as the Debtor or the Lender may designate by notice duly given in accordance with this Section to the other party.

9.5 Governing Law. This Agreement and the Note shall be construed in accordance with and governed by the laws of the State of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof, as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

9.6 Counterparts. This Agreement may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Agreement.

9.7 Table of Contents and Headings. The Table of Contents hereto and any headings or captions preceding the text of the several sections hereof are intended solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

9.8 Limitation of Liability. It is understood and agreed by the Lender that, except as provided in this Section, the liability of the Debtor or any assignee of the Debtor for all payments to be made by it under and pursuant to this Agreement and the Note shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment." As used herein and in the Note, the term "income and proceeds from the Equipment" shall mean: (a) if one of the Events of Default specified in Section 6.1 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are received by the Debtor or any assignee of the Debtor at any time after any such event and during the continuance thereof: (i) all amounts of operating revenues and amounts in respect of any Casualty Occurrence paid for or with respect to the Equipment or pursuant to the Lease and any and all other payments received under the provisions of the Lease or any other Collateral (except for Excepted Rights in Collateral), and (ii) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all reasonable costs and expenses of such sale, lease or other disposition; but (b) at any other time, only that portion of the amounts referred to in the foregoing clauses (a)(i) and (ii) as are indefeasibly received by the Debtor or any assignee of the Debtor and as shall equal the portion of the principal of the Note (including prepayments thereof required in respect of any Casualty Occurrence) and/or interest thereon due and payable under the terms of the Note and this Agreement, or as shall equal any other payments then due and payable under this Agreement. Nothing contained herein limiting the liability of the Debtor shall derogate from (a) the obligation of the Lender to pay over to the Debtor amounts received by the Lender under the Lease which exceed amounts owing and payable to the Lender under the Note and any other Financing Agreement; or (b) the right of the Lender to proceed against the Collateral for the full unpaid principal amount of the Note and interest thereon and all other payments and obligations hereunder and thereunder. Notwithstanding any other provision of this Agreement, the Debtor shall be personally liable to the Lender on a full recourse basis (a) in the event any representation or warranty made by the Debtor in Sections 2.4(a)(i)-(viii), (x), (xiii) and (xix) herein shall prove to have been incorrect in any material respect when the same was made to the extent of any claim related thereto, and (b) for any payment required pursuant to Section 8.2(c) (first sentence) to the extent not paid by the Lessee or any other party in connection with the Casualty Occurrence and payment for such loss or liability shall not be limited to the Collateral or the income or proceeds therefrom. Except as expressly provided in this Section 9.8, the Lender shall have no recourse against the properties and assets of the Debtor.

9.9 Marking of Equipment. The Debtor will not permit the identifying number of any Item of Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor which previously shall have been filed by or on behalf of the Debtor in all public offices where this Agreement shall have been filed.

9.10 Participation. Notwithstanding any other provision of this Agreement, the Lender may enter into participation agreements before, in conjunction with or after the closing hereof, with participating lenders whereby the Lender will allocate certain percentages of this Agreement and the Note to such participating lenders. The Debtor agrees that its obligations under this Agreement are undertaken for the benefit of, and as an inducement to, each of any such participants as well as the Lender.

9.11 Transaction Expenses. The Debtor shall pay on demand all reasonable and actual attorneys' fees and expenses incurred by Lender up to \$\_\_\_\_\_ in connection with the closing of the transactions contemplated herein, including without limitation the reasonable fees and expenses of Drinker Biddle & Reath, special counsel to the Lender, and the reasonable fees and expenses of special I.C.C. counsel, and the costs associated with filing and perfecting any security interests in the Collateral.

IN WITNESS WHEREOF, the Debtor and the Lender have executed this Agreement as of the day and year first above written.

DEBTOR:

RAILCAR, LTD.

ATTEST:

  
Eugene N. Martini  
Vice President

By:   
Wilds L. Pierce  
President

(CORPORATE SEAL)

LENDER:

THE PENN MUTUAL LIFE INSURANCE  
COMPANY

ATTEST:

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

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

(CORPORATE SEAL)

4914A/28

4914A

STATE OF FLORIDA  
COUNTY OF DuVAL

On this 29<sup>th</sup> day of MARCH, 1994, before me personally appeared Wilds L. Pierce and Eugene N. Martini, to me personally known, who being by me duly sworn, say that they are the President and Vice President respectively, of RAILCAR. LTD., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Bylaws, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Terry L. Young  
Notary Public

(SEAL)

My Commission expires:

**TERRY L. YOUNG**  
**NOTARY PUBLIC, STATE OF FLORIDA**  
My commission expires July 20, 1997  
Commission No. CC 302903  
Bonded thru Peterson - Becht Agency

9.9 Marking of Equipment. The Debtor will not permit the identifying number of any Item of Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor which previously shall have been filed by or on behalf of the Debtor in all public offices where this Agreement shall have been filed.

9.10 Participation. Notwithstanding any other provision of this Agreement, the Lender may enter into participation agreements before, in conjunction with or after the closing hereof, with participating lenders whereby the Lender will allocate certain percentages of this Agreement and the Note to such participating lenders. The Debtor agrees that its obligations under this Agreement are undertaken for the benefit of, and as an inducement to, each of any such participants as well as the Lender.

9.11 Transaction Expenses. The Debtor shall pay on demand all reasonable and actual attorneys' fees and expenses incurred by Lender up to \$\_\_\_\_\_ in connection with the closing of the transactions contemplated herein, including without limitation the reasonable fees and expenses of Drinker Biddle & Reath, special counsel to the Lender, and the reasonable fees and expenses of special I.C.C. counsel, and the costs associated with filing and perfecting any security interests in the Collateral.

IN WITNESS WHEREOF, the Debtor and the Lender have executed this Agreement as of the day and year first above written.

DEBTOR:

ATTEST:

RAILCAR, LTD.

\_\_\_\_\_  
Eugene N. Martini  
Vice President

By: \_\_\_\_\_  
Wilds L. Pierce  
President

(CORPORATE SEAL)

LENDER:

ATTEST:

THE PENN MUTUAL LIFE INSURANCE  
COMPANY

*George F. Koch*  
\_\_\_\_\_  
Name: George F. Koch  
Title: Associate Secretary

By: *LeRoy O. McClellan*  
\_\_\_\_\_  
Name: LeRoy O. McClellan  
Title: Assistant Vice President

(CORPORATE SEAL)

4914A/28

- 25 -

4914A



EXHIBIT A

(to the Loan and Security Agreement)

DESCRIPTION OF EQUIPMENT

TYPE AND DESCRIPTION OF CAR:	4,750 Cu. Ft. Aluminum Covered Hopper Cars
NUMBER OF CARS:	Fifty-Four (54)
PERMITTED USE:	Transportation of freight
RESTRICTIVE USE:	Gross rail load may not exceed 286,000 pounds
REPORTING MARK AND NUMBERS:	NS 258000 - 258053, inclusive
OWNER:	RAILCAR, LTD.

EXHIBIT B  
(to the Loan and Security Agreement)  
COPY OF LEASE

4914A/32

EXHIBIT B

(to Loan and Security Agreement)

**LEASE AGREEMENT**

This LEASE AGREEMENT ("Lease") is made and entered as of the 14th day of October, 1993, between RAILCAR, LTD., a Georgia corporation (hereinafter called "Lessor"), and NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation (hereinafter called "Lessee").

**RECITALS**

WHEREAS, Lessor owns certain railroad freight car equipment, hereinafter more specifically identified as the "Cars", and desires to lease such Cars to Lessee;

WHEREAS, Lessee desires to lease such Cars from Lessor all upon the rentals, terms and conditions set forth in this Lease.

**AGREEMENT**

1. Definitions. In addition to the definitions included elsewhere in this Lease, certain terms are defined for purposes of this Lease as follows:

"AAR" shall mean the Association of American Railroads and "Interchange Rules" shall mean the AAR interchange rules adopted by the AAR Mechanical Division, Operations and Maintenance Department as such rules may be amended and replaced and any successor thereto.

"Car Hire" shall mean compensation paid to an owner of car marks for use of a Car by a rail carrier in possession of a Car of which it is not the owner. Such compensation may include, but need not be limited to, hourly and mileage rates.

"Cars" shall mean the fifty-four (54) 4,750 cu. ft. aluminum covered hopper railroad cars, which on the date hereof bear RMCX reporting marks within the series 4000-4053 but which are to be restenciled by Lessee to bear Lessee's reporting numbers and marks NS 258000-258053. A single unit of such equipment shall be referred to as a "Car."

"Casualty Car" shall mean a Car which suffers an Event of Loss or is damaged beyond economic repair as determined by Lessee.

"Casualty Value" for any Car as of a date shall be the amount shown for that date on Exhibit B attached hereto and made a part hereof.

"Certificate of Acceptance" shall mean a certificate of acceptance substantially in the form of Exhibit A attached hereto

executed by Lessee or Lessee's designated representative or agent.

"Commencement Date" as to all the Cars shall be January 1.

"Delivery Date" for any Car shall mean the date on which such Car is delivered to and accepted by Lessee hereunder and shall be the date stated in the Certificate of Acceptance.

"Event of Loss" shall mean any of the events referred to in Section 18 hereof.

"Fixed Rent" as to any Car shall mean three hundred fifteen dollars (\$315.00) per Car per month.

"Initial Term" shall mean seven (7) years from and after December 1, 1993.

"Interim Rent" shall mean, with respect to any Car to which Interim Rent applies, an amount of daily rent per Car equal to ten dollars fifty cents (\$10.50).

"Lessee" shall mean Norfolk Southern Railway Company, its successors and permitted assigns.

"Lessor" shall mean Railcar, Ltd., its successors and permitted assigns.

"Lessor's Cost" shall mean twenty-six thousand two hundred seventy-five dollars (\$26,275.00) for each Car.

"Repair Work" shall mean all repairs, maintenance, modifications, additions or replacements required to keep and maintain the Cars in satisfactory condition for movement in the normal interchange of rail traffic (excepting ordinary wear and tear within the meaning of the Interchange Rules) consistent with Lessee's customary maintenance and repair standards.

"Replacement Cars" shall mean Cars of substantially similar description and condition to the Cars originally subject to this Lease which are substituted for Casualty Cars.

2. Lease of Cars. Lessor agrees to lease the Cars to Lessee and Lessee agrees to lease the Cars from Lessor. The Cars covered by this Lease are those which shall be delivered to and accepted by Lessee as hereinafter provided. This Lease shall become effective as to any Car immediately upon its acceptance by Lessee pursuant to Section 4. It is the intent of the parties that no agency, joint venture or partnership relationship shall arise or be created between Lessor and Lessee. Lessee's interest in the Cars shall be that of lessee only.

3. Delivery of Cars. (a) The parties acknowledge and agree that Lessor has delivered all the Cars to Lessee at Memphis, Tennessee. Acceptance of each Car is subject to inspection by Lessee or Lessee's agent at the point of delivery.

(b) Lessor shall be responsible for all costs, charges and expenses for the transportation and movement of each Car prior to the Delivery Date. From and after acceptance of a Car, Lessee shall be liable for all costs, charges and expenses of any kind whatsoever on account of or relating to switching, demurrage, detention, storage, transportation or movement of a Car after acceptance thereof by Lessee and prior to termination of this Lease with respect thereto.

4. Condition of Cars; Acceptance. The parties acknowledge that Lessor has delivered, prior to the execution hereof, all the Cars to Lessee in satisfactory condition for movement in the normal interchange of rail traffic in accordance with Rule 88 of the Interchange Rules. The Cars have been inspected by Lessee and Lessee has issued (or will issue) and will promptly deliver to Lessor a Certificate of Acceptance in the form of Exhibit A with respect to all Cars accepted. The Cars are conclusively deemed to be accepted and subject to this Lease and to meet all requirements of this Lease.

5. Use and Possession. Throughout the continuance of this Lease, (a) Lessee shall be entitled to possession of each Car from the Delivery Date as to such Car, (b) Lessee may use the Cars on the property or lines owned or operated by Lessee (either alone or jointly with another) or by any affiliate of Lessee, or upon lines over which the Lessee or any such affiliate shall have trackage or other operating rights, and (c) the Lessee shall be entitled to permit the use of the Cars upon connecting and other railroads in the usual interchange of traffic or over which through service may be afforded, but subject to all the terms and provisions of this Lease. Lessee may permit loading of the Cars to a maximum gross rail load of 286,000 pounds. Lessor, for itself, its successors and assigns, covenants that Lessee and its successors and permitted sublessees and assigns, so long as no default by Lessee has occurred or is continuing hereunder, may and shall peaceably and quietly have, hold, possess, use and enjoy the Cars as provided in this Lease without suit, molestation or interruption by Lessor or by reason of Lessor's acts. Lessee shall use the Cars in accordance with the Interchange Rules consistent with Lessee's customary operating and maintenance practices and in compliance with applicable laws.

6. Term. Except as otherwise provided herein with respect to early termination and Events of Loss, this Lease shall be effective as to each Car for the Initial Term of seven (7) years from December 1, 1993. All of the terms and provisions of this Lease Agreement shall apply and be in full force and effect with

respect to Cars accepted by Lessee prior to the Commencement Date. This Lease shall remain in full force until it expires or is terminated as to all of the Cars as provided herein.

7. Rental. Until the expiration or termination of this Lease as to any Car then subject hereto, Lessee shall pay Interim Rent (if applicable) and Fixed Rent (sometimes referred to together herein as "rent" or "rental") to Lessor as follows:

- (a) Interim Rent during the period from the Delivery Date as to such Car through and including the day prior to the Commencement Date.
- (b) Fixed Rent commencing on the Commencement Date and terminating at the expiration of this Lease as to such Car.

8. Payment. No rental payment hereunder shall be due from or payable by Lessee until the Commencement Date. Interim Rent as to each Car shall accrue on and from the Delivery Date as to such Car through and including the day prior to the Commencement Date. Lessor shall submit an invoice or invoices setting forth the Interim Rent due from Lessee for the period prior to the Commencement Date and Lessee shall pay such Interim Rent to Lessor within fifteen days after receipt and verification of Lessor's invoice (but not prior to the Commencement Date). Lessee shall pay Fixed Rent with respect to each Car commencing on the Commencement Date and ending on the date this Lease expires or is terminated as to such Car (except as otherwise expressly provided herein). For any period of less than a full calendar month during which a Car is subject to this Lease, the amount of Fixed Rent shall be prorated based on a 30-day Month. Lessee shall pay to Lessor the Fixed Rent in advance on the first day of each month during the Initial Term (except that the first Fixed Rent payment with respect to a Car shall be made on the first day of the month following the Commencement Date. Lessor hereby directs Lessee to send all Interim Rent and all Fixed Rent payments to Lessor at the address provided in Section 23 hereof, or at such other place as Lessor may specify in a written notice delivered to Lessee.

9. Car Hire. Lessee shall have the right to negotiate bilateral or multilateral contracts concerning Car Hire for the Cars, to establish Car Hire rates through arbitration and to avail itself of any other rights of a car owner under the rail industry's Code of Car Hire Rules, provided that such contracts, rates or rights shall apply to a Car only during such time as the Car is subject to this Lease. All Car Hire paid or allowed by railroads with respect to the Cars shall be property of Lessee. Lessee shall not be responsible or liable for the payment of any Car Hire with respect to any Car during the term of this Lease, whether or not such Car is on or off Lessee's lines of railroad.

10. Repairs and Expenses. During the period beginning on the Delivery Date as to each Car and continuing during the Initial Term of this Lease, Lessee shall perform or cause to be performed and shall pay all costs and expenses of all Repair Work without any abatement in rent or other loss, cost or expense to Lessor. Any parts, replacements or additions permanently affixed to any Car shall be accessions to such Car and title thereto shall be immediately vested in Lessor without cost or expense to Lessor.

11. Substitution of Cars. Lessor may (but shall not be obligated to), at any time and from time to time but only with the prior written consent of Lessee, replace any Casualty Cars with Replacement Cars and such Replacement Cars shall be deemed to be subject to all terms and conditions of this Lease from and after acceptance thereof by Lessee in accordance with Section 4. The parties shall execute amendments to this Lease and such other or further documents as may be reasonably required by either party hereto to evidence the withdrawal from and termination of this Lease with respect to Casualty Cars, or to include any Replacement Cars within the terms and provisions of this Lease and any permitted assignment hereof.

12. No Abatement of Rent. Rental payments on any Car shall be made without setoff or deduction of any kind and shall not abate if such Car is out of service for Repair Work or any other reason.

13. Insurance. Except as provided herein, Lessee shall, during the term of this Lease and at its expense, carry and maintain, public liability insurance and all risk insurance in respect of the Cars in such amounts and with such terms as are customary under Lessee's risk management program in respect of similar equipment owned or leased by Lessee; provided, however, that notwithstanding the foregoing, Lessee may self-insure in a manner customary under Lessee's risk management program. In the event of any insured property loss, the payment for such loss shall be made directly to the Lessee.

14. Taxes. During the period beginning on the Delivery Date as to a Car and continuing through the Initial Term of this Lease, Lessee shall pay when due all sales and use tax, property and ad valorem taxes, excise taxes and all other taxes and duties imposed on Lessee's interest in the Cars or on the ownership, possession, rental, car hire, delivery, transportation or use of the Cars, together with any interest and penalties (all such taxes, duties, fees, charges, interest and penalties being hereinafter called "Impositions"); provided, however, that, except as otherwise provided, this Section shall not apply to (i) Impositions imposed by any federal, state or local government or taxing authority or any subdivision thereof which are based upon or measured by Lessor's net income (including any minimum tax) or

which are in substitution for, or relieve Lessor from, any Imposition based upon or measured by Lessor's net income, (ii) business and occupation taxes, franchise taxes, gross receipts taxes and taxes upon Lessor's capital stock imposed by the United States or any state or political subdivision thereof, or (iii) interest, fines and penalties to the extent due to the acts or omissions of Lessor. Lessee shall not be required to pay any Imposition so long as it shall in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof and Lessor's interest in the Cars or this Lease is not materially and adversely impaired. Lessee shall prepare and file all reports and returns which are required to be made with respect to property and ad valorem taxes imposed on the Cars during the period beginning on the Delivery Date of the Cars and continuing through the Initial Term of this Lease.

15. Liens. Lessee covenants that it will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment or claim which if unpaid might become a lien or charge upon any of the Cars (except upon the leasehold interest of the Lessee therein) in favor of anyone claiming by, through or under the Lessee; but this provision shall not require the payment of any such debt, tax, charge, assessment obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings and Lessor's interest in the Cars or this Lease is not materially and adversely impaired. Lessee's rights and interests hereunder shall be those of a lessee only and Lessee shall not acquire any ownership or other interest in the Cars except as expressly contemplated herein.

16. Indemnity. (a) Lessee will indemnify Lessor against any loss, liability, damage, claim, expense (including reasonable attorneys' fees and expenses of litigation) or injury incurred or suffered by or asserted against Lessor, arising at any time out of Lessee's use, lease, possession or operation of the Cars during the term of this Lease ("Claims"), *excepting, however*, (i) any Claims accruing with respect to any of the Cars (A) which arise from the negligence or intentional act or omission of Lessor, its agents or employees or which arise from the nonperformance or default of Lessor to the extent attributable to such negligence, intentional act or omission, nonperformance or default, or (B) to the extent a railroad or railroads shall be obligated to assume full responsibility and satisfy the same and (ii) any loss, liability, damage, claim or expense (including attorneys' fees and expenses of litigation) relating to Impositions imposed by any federal, state or local government or taxing authority or any subdivision thereof which are based upon or measured by the Lessor's net income (including any minimum tax) or which are in substitution for, or relieve Lessor from, any Imposition based upon or measured by Lessor's net income.

(b) The foregoing indemnity shall survive the termination hereof, whether by reason of exercise of Lessee's purchase option or otherwise. The indemnity set forth in this Section 16 shall apply only to Claims actually incurred, suffered by or asserted against Lessor. Without limiting Lessor's rights upon default under Section 20 hereof, LESSEE SHALL NOT BE LIABLE UNDER THIS SECTION 16 FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES INCURRED BY LESSOR EXCEPT TO THE EXTENT LESSOR IS LIABLE THEREFOR TO A THIRD PARTY.

17. Marking; Inspection. Lessee may affix to each Car its corporate name and its logo, the corporate name(s) and logo(s) of its parent corporation and affiliates and such other identification or reporting markings as are customary in Lessee's operations. Except as provided in this Section and except for renewal and maintenance of lettering indicating the rights of Lessor or that the Car is leased to the Lessee or to a sublessee, no other lettering or marking shall be placed upon any of the Cars by Lessee except upon the written direction or with the consent of Lessor. Lessor may at its own cost, expense and risk inspect the Cars at reasonable times and locations, and Lessee shall, upon written request of Lessor, but no more than once every year, furnish to Lessor a list of all Cars then covered by this Lease.

18. Events of Loss. In the event that any Car shall be or become lost, stolen, destroyed, or (as determined by Lessee) damaged beyond economic repair or rendered unfit or unsuitable for Lessee's service, or taken or requisitioned in whole by condemnation or otherwise (any such event being hereinafter called an "Event of Loss"), Lessee shall promptly and fully notify Lessor with respect thereto. Within forty-five (45) days after written demand by Lessor, Lessee shall pay to Lessor the Casualty Value of such Car as of the date of such notice of Event of Loss as determined in accordance with Exhibit B hereto; provided, however, that there shall be credited against the amount owed by Lessee under Exhibit B the amount of any payment actually received by Lessor for such Casualty Car from a handling railroad or other party under and pursuant to the Interchange Rules, such credit not to exceed the amount owed (and any excess to be solely for Lessor's account). This Lease shall terminate with respect to a Casualty Car on the date Lessor shall receive notice of an Event of Loss with respect thereto, and thereafter Lessee shall have no further liability to Lessor hereunder with respect thereto excepting payment of rental accrued through such termination, liabilities arising or existing under Sections 10, 14, 15 and 16 hereof and the liability, if any, of Lessee to make payments pursuant to this Section. Upon payment of any amounts due from Lessee under this Section, Lessor shall deliver to Lessee a bill of sale to such Casualty Car transferring ownership thereof to Lessee. Provided that Lessor has received the Casualty Value for any Car and Lessee has no further obligations

hereunder to Lessor with respect to such Car, Lessee shall be entitled to the proceeds of any recovery in respect of such Car from insurance maintained by Lessee.

19. Return of Cars. Upon the expiration or upon the termination of this Lease with respect to any Car (other than pursuant to Section 18 hereof), Lessee shall, at its sole cost and expense and as promptly as practicable, surrender possession of such Car to Lessor by delivering same to Lessor at Memphis, Tennessee or at such other location(s) on the trackage or property owned or operated by Lessee or an affiliate of Lessee mutually agreeable to Lessor and Lessee ("Return Point"). Each Car shall be returned in satisfactory condition for movement in the normal interchange of rail traffic (ordinary wear and tear within the meaning of the Interchange Rules excepted) and in need of no Repair Work for which Lessee is responsible under Section 10. Lessee shall at its expense remove Lessee's railroad markings from the Cars; and, subject to Lessor's giving Lessee at least thirty days prior written notice, Lessee shall place on the Cars such reporting marks as Lessor shall specify, provided that Lessor shall pay Lessee \$125 for each Car so marked by Lessee. Until return of a Car to a Return Point, Lessee shall continue to be liable for and shall pay rental in respect of such Car at the rate being paid immediately prior to termination or expiration of this Lease, and Lessee shall in addition make all other payments and keep all obligations and undertakings required of Lessee under any and all provisions of this Lease as though such termination or expiration had not occurred. Upon return of a Car at a Return Point, all rent with respect to such Car shall cease to accrue. Except as provided herein, upon the return of a Car by Lessee to a Return Point, neither Lessor nor Lessee shall have any further obligations under this Lease with respect to such Car except for any claims or liabilities under this Lease accruing or arising out of events, circumstances or occurrences prior to such return. Notwithstanding any provision herein to the contrary, upon the reasonable written request of Lessor, Lessee shall, provide up to sixty (60) days of free storage with respect to any Car beginning the day immediately following the termination of this Lease (such storage to be provided on such tracks owned or operated by Lessee as Lessee may designate). Lessee shall not be responsible for any loss, damage or liability arising out of or relating to the period that a Car is stored on Lessee's tracks following termination of this Lease.

20. Default. If (i) Lessee shall fail to make any payment required hereunder within 20 days after same shall have become due, or (ii) Lessee shall default or fail, for a period of 20 days after receipt of written notice specifying such default, in the due observance or performance of any material covenant, condition or agreement required to be observed or performed on its part hereunder, or (iii) if a proceeding shall have been commenced by or against Lessee under any bankruptcy laws, Federal

or State, or for the appointment of a receiver, assignee or trustee of Lessee or its property, or (iv) if Lessee shall make a general assignment for the benefit of creditors (each an "Event of Default"), then and in any of said events Lessor may terminate this Lease by written notice to such effect, and retake the Cars and thereafter recover as liquidated damages (and not as a penalty) -- it being acknowledged by the parties that actual damages are difficult or impossible to estimate and that the following (the "Liquidated Damages") is a reasonable pre-estimate of the probable loss -- any and all costs and expenses of termination, retaking and reselling or re-leasing (including, without limitation, reasonable attorneys' fees) in addition to the present value (using a discount rate of six percent (6%)) of all rental for the unexpired balance of the Initial Term unpaid as of said date of termination, reduced by the present value (using a discount rate of six percent (6%)) of the fair market rental value of the Cars for the unexpired balance of the Initial Term as of said date whether or not such Cars are relet (such value to equal zero for any Car not returned by Lessee), plus, if any Car is not returned, the Casualty Value as of the date of termination but only to the extent such Casualty Value has not been paid pursuant to Section 18. If Lessor elects to receive such Liquidated Damages, Lessor may sell the Cars at public or private sale, with or without notice, advertisement, or publication, as Lessor may determine, or otherwise dispose of, hold, use, operate, or lease to others the Cars as Lessor in its sole discretion may determine free of any rights of and without duty to account to Lessee. The obligation to pay any deficiency or any sum or sums due and unpaid or any damages suffered by reason of Lessee's default hereunder shall survive the termination of the Lease and the retaking of the Cars. The remedies in this Lease shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies existing at law or in equity; provided, however, that payment of Liquidated Damages hereunder, if elected by Lessor, shall in that event be Lessor's sole and exclusive remedy for any default or breach by Lessee; and provided, further, that if Lessor elects to pursue any remedy other than payment of Liquidated Damages, Lessor shall be obligated to mitigate its damages.

21. Lessee's Purchase Option. (a) So long as no Event of Default shall have occurred and be continuing under this Lease, Lessee shall have the right, at its option, upon giving to Lessor at least sixty (60) days' written notice thereof, to purchase, at any time and from time to time during the Initial Term, any or all of the Cars for a cash purchase price per Car equal to (i) the present value (using a discount rate of six percent (6%)) of (A) all remaining rental payments with respect to such Car for the balance of the Initial Term plus (B) seven thousand dollars (\$7,000.00), plus (ii) any accrued but unpaid rental with respect to such Car and any applicable sales, excise or other tax imposed as a result of such sale (other than gross or net income taxes

attributable to such sale), plus (iii) the breakage costs, if any, incurred by Lessor under applicable Lessor financing covering such Car. Lessee may elect to purchase any one or more Cars and any Cars not so purchased shall remain subject to this Lease. The Cars shall be sold on an "AS-IS, WHERE-IS" basis, without any representation or warranty by or recourse to Lessor except a warranty of title to the extent of title held by Lessor, free and clear of all liens, claims and encumbrances created by or through Lessor. Lessor shall deliver to Lessee a bill or bills of sale covering the Car or Cars purchased by Lessee under this Section.

(b) So long as no Event of Default shall have occurred and be continuing under this Lease, Lessee shall be entitled, at its option, upon written notice to Lessor at least sixty (60) days prior to the expiration of the Initial Term, to purchase any or all of the Cars at the expiration of the Initial Term for a cash purchase price of seven thousand dollars (\$7,000.00) per Car, plus any accrued but unpaid rental hereunder and any applicable sales, excise or other tax imposed as a result of such sale (other than gross or net income taxes attributable to such sale). Lessee may elect to purchase any one or more Cars and any Cars not so purchased shall be returned by Lessee pursuant to the terms of this Lease. The Cars shall be sold on an "AS-IS, WHERE-IS" basis, without any representation or warranty by or recourse to Lessor except a warranty of title to the extent of title held by Lessor, free and clear of all liens, claims and encumbrances created by or through Lessor. Lessor shall deliver to Lessee a bill or bills of sale covering the Car or Cars purchased by Lessee under this Section.

22. Sublease and Assignment. The right to assign this Lease or the Cars by either party and the Lessee's right to sublease shall exist only as follows:

(a) Except as provided in this subsection, Lessee shall not assign or sublease this Lease or any of the Cars without the prior written consent of Lessor. Lessee may assign this Lease or sublet any of the Cars to an affiliate of Lessee or to a railroad classified as a Class I or Class II rail carrier. This Lease shall inure to the benefit of any successor to Lessee by merger, consolidation or sale of all or substantially all of Lessee's assets.

(b) All rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part (an "Assignment"), provided that any Assignment shall not materially and adversely affect Lessee's rights or interests hereunder and provided that Lessor gives Lessee prior written notice of any such Assignment. This Lease and Lessee's rights hereunder shall be subject and subordinate to any chattel mortgage, security

agreement or equipment trust or other security instrument covering the Cars heretofore or hereafter created by Lessor, provided that any such mortgage, agreement or instrument shall not materially adversely affect Lessee's rights or interests hereunder and that Lessor shall have given Lessee prior written notice stating the identity and mailing address of any secured party or assignee entitled thereunder to receive future rentals and any other sums payable by Lessee hereunder, and Lessee shall make payment of such rentals and other sums to the designated assignee identified in such written notice. Notwithstanding any provisions in this Section 22(b) to the contrary, so long as Lessee is not in default hereunder, Lessee's right to quiet enjoyment with respect to the Cars will not be disturbed.

The making of an assignment or sublease by Lessee or an assignment by Lessor shall not serve to relieve such party of any liability or undertaking hereunder nor to impose any liability or undertaking hereunder upon any such assignee or sublessee except as otherwise provided herein or unless expressly assumed in writing by such sublessee or assignee.

23. Notice. All notices, demands, consents or other communications required or permitted hereunder shall be in writing and shall be deemed to have been given if (i) sent by registered or certified mail, return receipt requested, postage prepaid, (ii) sent by telegraph or telex, (iii) sent by express mail or other responsible overnight delivery service or (iv) sent by telephone facsimile transmission, as follows:

- (a) if to Lessor, by mail or telephone facsimile, to

Railcar, Ltd.  
1819 Peachtree Road, N.E.  
Suite 315  
Atlanta, Georgia 30309  
Attention: Chief Financial Officer  
Telecopy: (404) 352-6798

- (b) if to Seller, by mail or telephone facsimile, to

Norfolk Southern Railway Company  
8 North Jefferson Street  
Roanoke, Virginia 24042  
Attention: Treasurer (with a copy to Assistant Vice  
President - Purchasing)  
Telecopy: 703-981-4167

or at such other addresses as may hereafter be furnished in writing by the respective parties if given in the manner required above. Any notice, demand, consent or communication given hereunder in the manner required above shall be deemed to have

been effected and received as of (i) the date hand delivered, (ii) the date three days after posting of the mail, (iii) the date of delivery to the telegraph company or sent by telex or telephone facsimile or (iv) the day after delivery to Express Mail or other responsible overnight delivery service.

24. Warranties. (a) EXCEPT AS EXPRESSLY PROVIDED HEREIN, LESSOR MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING SPECIFICALLY BUT NOT EXCLUSIVELY, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE DESIGN, WORKMANSHIP, CONDITION, OR QUALITY OF THE CARS OR PARTS THEREOF WHICH CARS HAVE BEEN ACCEPTED BY LESSEE HEREUNDER.

(b) IN NO EVENT AND UNDER NO CIRCUMSTANCES WILL LESSOR BE LIABLE TO LESSEE OR ANY OTHER PERSON OR ENTITY FOR ANY SPECIAL, COLLATERAL, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE OR KIND WHATSOEVER RESULTING FROM THE MANUFACTURE, LEASE, USE, POSSESSION OR OPERATION OF THE CARS DURING THE TERM OF THE LEASE OR ARISING BY REASON OF ANY IMPERFECTION OR DEFECT IN THE CARS, REGARDLESS OF WHETHER BASED IN TORT OR IN CONTRACT.

(c) The parties intend that Lessee, as the user and operator of the Cars under this Lease, shall, so long as an Event of Default shall not have occurred and be continuing, be entitled to assert or receive the benefit of, to the greatest extent permitted, all rights, benefits and claims arising under any manufacturer's warranty relating to the Cars or any of them. To that end, Lessor hereby assigns (to the extent it has the right to do so) to Lessee during the term of this Lease all of the rights and benefits of all warranties provided by any builder or rebuilder and/or suppliers with respect to the Cars or any part thereof, including the right to make claims thereunder. Upon Lessee's written request and sole expense, Lessor agrees to assert and prosecute for the benefit of Lessee all claims based on any and all manufacturer's warranties that are not assignable to Lessee. Lessee shall apply any funds recovered pursuant to warranties to repair the Cars.

25. Governing Law. The terms of this Lease and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Georgia.

26. Amendment. The terms of this Lease and the rights and obligations of the parties hereto may be changed or terminated only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

27. Counterparts. 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 may be evidenced by any such signed counterpart.

28. Severability; Waiver. If any term or provision of this Lease shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to other persons or circumstances shall not be affected thereby, and each provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law. Any party's failure to exercise or delay in exercising any right, power or remedy available to such party shall not constitute a waiver or otherwise affect or impair its rights to the future exercise of any such right, power, or remedy. No waiver, indulgence or partial exercise by any party of any right, power, or remedy shall preclude any further exercise thereof or the exercise of any additional right, power or remedy.

29. Past Due Payments. Any nonpayment of rentals or other sums due hereunder, whether during the period within which a default may be cured or for a longer period, and whether or not deemed a default or violation of this Lease, shall result in the obligation on the part of the Lessee to pay also an amount of interest equal to eight percent (8%) per annum (or if such rate may not lawfully be charged, then the highest rate which may lawfully be charged) of such overdue sum for the period of time such sum is overdue and unpaid.

30. Recording. Upon request by Lessor, Lessee shall join in the execution of a memorandum or short form of this Lease for use in recordation under 49 U.S.C.A. Section 11303 or such other recordation as Lessor reasonably deems appropriate. Such memorandum or short form of lease may describe the parties, the Cars being leased and the term of this Lease, including any options to extend, and shall incorporate the Lease by reference.

31. Benefit. Except as otherwise expressly provided herein, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of the parties and (to the extent provided in Section 22 hereof) their successors and assigns. Without limiting the generality of the foregoing, the Lessee's indemnities in Section 16 hereof shall apply to and inure to the benefit of any permitted assignee of Lessor, and if such permitted assignee is a trustee or secured party under an indenture under which evidence of indebtedness has been issued in connection with the financing of the Cars, then also to the benefit of the holder of such evidence of indebtedness.

32. Entire Agreement. This Lease sets forth the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all previous and contemporaneous agreements, arrangements, negotiations and understandings between the parties relating to the subject matter hereof.

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

RAILCAR, LTD., a Georgia corporation

By: Willy L. Pinn  
President

NORFOLK SOUTHERN RAILWAY COMPANY,  
a Virginia corporation

By: John P. Rappblow  
Title: VP Controller

EXHIBIT A

CERTIFICATE OF ACCEPTANCE

The undersigned, a duly authorized representative of Norfolk Southern Railway Company (the "Railroad"), for the purpose of accepting equipment that is to become subject to a Lease Agreement dated as of October 14, 1993, between the Railroad, as lessee, and Railcar, Ltd., as lessor (the "Equipment Agreement"), hereby certifies that the following described unit or units of railroad equipment (the "Equipment"):

Description: 4,750 cu. ft. Aluminum Covered Hopper Cars

Quantity:

Road Numbers:

Delivered at: Memphis, Tennessee

have been delivered to and have been accepted on behalf of the Railroad under the Equipment Agreement as of the date indicated below.

The execution of this certificate shall not in any way reduce, limit, alter or affect the Railroad's right to pursue any claim, in warranty or otherwise, against the builder of the Equipment for any defect, whether latent or patent.

\_\_\_\_\_  
Authorized Representative of  
Norfolk Southern Railway Company

Dated: \_\_\_\_\_, 1993

EXHIBIT B

CASUALTY VALUES

The Casualty Value for any Car shall be the amount shown below opposite the "date range" in which payment is made:

Period	Date Range		Casualty Value	Period	Date Range		Casualty Value
	from	to			from	to	
0		31-Oct-93	\$26,275				
1	1-Nov-93	30-Nov-93	\$26,091	43	1-May-97	31-May-97	\$17,490
2	1-Dec-93	31-Dec-93	\$25,906	44	1-Jun-97	30-Jun-97	\$17,262
3	1-Jan-94	31-Jan-94	\$25,721	45	1-Jul-97	31-Jul-97	\$17,034
4	1-Feb-94	28-Feb-94	\$25,535	46	1-Aug-97	31-Aug-97	\$16,804
5	1-Mar-94	31-Mar-94	\$25,347	47	1-Sep-97	30-Sep-97	\$16,573
6	1-Apr-94	30-Apr-94	\$25,159	48	1-Oct-97	31-Oct-97	\$16,341
7	1-May-94	31-May-94	\$24,970	49	1-Nov-97	30-Nov-97	\$16,108
8	1-Jun-94	30-Jun-94	\$24,780	50	1-Dec-97	31-Dec-97	\$15,873
9	1-Jul-94	31-Jul-94	\$24,589	51	1-Jan-98	31-Jan-98	\$15,637
10	1-Aug-94	31-Aug-94	\$24,397	52	1-Feb-98	28-Feb-98	\$15,401
11	1-Sep-94	30-Sep-94	\$24,204	53	1-Mar-98	31-Mar-98	\$15,163
12	1-Oct-94	31-Oct-94	\$24,010	54	1-Apr-98	30-Apr-98	\$14,923
13	1-Nov-94	30-Nov-94	\$23,815	55	1-May-98	31-May-98	\$14,683
14	1-Dec-94	31-Dec-94	\$23,619	56	1-Jun-98	30-Jun-98	\$14,442
15	1-Jan-95	31-Jan-95	\$23,422	57	1-Jul-98	31-Jul-98	\$14,199
16	1-Feb-95	28-Feb-95	\$23,224	58	1-Aug-98	31-Aug-98	\$13,955
17	1-Mar-95	31-Mar-95	\$23,025	59	1-Sep-98	30-Sep-98	\$13,709
18	1-Apr-95	30-Apr-95	\$22,825	60	1-Oct-98	31-Oct-98	\$13,463
19	1-May-95	31-May-95	\$22,624	61	1-Nov-98	30-Nov-98	\$13,215
20	1-Jun-95	30-Jun-95	\$22,422	62	1-Dec-98	31-Dec-98	\$12,966
21	1-Jul-95	31-Jul-95	\$22,219	63	1-Jan-99	31-Jan-99	\$12,716
22	1-Aug-95	31-Aug-95	\$22,016	64	1-Feb-99	28-Feb-99	\$12,465
23	1-Sep-95	30-Sep-95	\$21,811	65	1-Mar-99	31-Mar-99	\$12,212
24	1-Oct-95	31-Oct-95	\$21,605	66	1-Apr-99	30-Apr-99	\$11,958
25	1-Nov-95	30-Nov-95	\$21,398	67	1-May-99	31-May-99	\$11,703
26	1-Dec-95	31-Dec-95	\$21,190	68	1-Jun-99	30-Jun-99	\$11,447
27	1-Jan-96	31-Jan-96	\$20,981	69	1-Jul-99	31-Jul-99	\$11,189
28	1-Feb-96	29-Feb-96	\$20,771	70	1-Aug-99	31-Aug-99	\$10,930
29	1-Mar-96	31-Mar-96	\$20,559	71	1-Sep-99	30-Sep-99	\$10,669
30	1-Apr-96	30-Apr-96	\$20,347	72	1-Oct-99	31-Oct-99	\$10,408
31	1-May-96	31-May-96	\$20,134	73	1-Nov-99	30-Nov-99	\$10,145
32	1-Jun-96	30-Jun-96	\$19,920	74	1-Dec-99	31-Dec-99	\$9,880
33	1-Jul-96	31-Jul-96	\$19,704	75	1-Jan-00	31-Jan-00	\$9,615
34	1-Aug-96	31-Aug-96	\$19,488	76	1-Feb-00	29-Feb-00	\$9,348
35	1-Sep-96	30-Sep-96	\$19,270	77	1-Mar-00	31-Mar-00	\$9,080
36	1-Oct-96	31-Oct-96	\$19,052	78	1-Apr-00	30-Apr-00	\$8,810
37	1-Nov-96	30-Nov-96	\$18,832	79	1-May-00	31-May-00	\$8,539
38	1-Dec-96	31-Dec-96	\$18,611	80	1-Jun-00	30-Jun-00	\$8,267
39	1-Jan-97	31-Jan-97	\$18,389	81	1-Jul-00	31-Jul-00	\$7,993
40	1-Feb-97	28-Feb-97	\$18,166	82	1-Aug-00	31-Aug-00	\$7,718
41	1-Mar-97	31-Mar-97	\$17,942	83	1-Sep-00	30-Sep-00	\$7,442
42	1-Apr-97	30-Apr-97	\$17,716	84	1-Oct-00	31-Oct-00	\$7,164
					1-Nov-00	& thereafter	\$7,000

EXHIBIT C

(to the Loan and Security Agreement)

FORM OF SECURED NOTE

THIS NOTE HAS NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE. THE NOTE MAY NOT BE OFFERED OR SOLD UNLESS IT IS REGISTERED UNDER THE APPLICABLE SECURITIES LAWS OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.

SECURED NOTE

\$1,120,702.83

March \_\_\_\_, 1994

FOR VALUE RECEIVED, the undersigned, Railcar, Ltd. (the "Debtor") promises to pay to the order of The Penn Mutual Life Insurance Company (the "Lender") on or before November 1, 2000 or to such other person and/or such other place as the holder hereof may from time to time designate, the principal sum of One Million One Hundred Twenty Thousand Seven Hundred Two and 83/100ths Dollars (\$1,120,702.83) together with interest from the date hereof until maturity on the unpaid principal hereof outstanding from time to time, at a rate per annum (hereinafter called the "Interest Rate") equal to five and sixty-three hundredths percent (5.63%). The principal and interest hereof shall be payable in installments as follows, with each such payment first credited to interest due and any remainder to reduction of principal:

Monthly installments of principal and interest, each in the amount of Seventeen Thousand Ten and No/100ths Dollars (\$17,010.00) payable on May 1, 1994 and on the first day of each month thereafter with the last payment due and payable November 1, 2000.

If any payment hereunder is due on a day other than a Business Day (as defined in the Loan and Security Agreement described below), payments required to be made on such day shall be made on the next succeeding Business Day.

The Debtor shall pay to the holder hereof interest on overdue principal and any other amounts payable hereunder which are overdue at the rate of eight percent (8%) per annum whether as scheduled, or upon acceleration or otherwise, but not in excess of the highest rate permitted by law.

This Note is the secured note of the Debtor (the "Note") issued under and pursuant to and secured by that certain Loan and Security Agreement dated March \_\_\_\_, 1994 (the "Loan and Security Agreement") between the Lender and the Debtor. Reference is made to

the Loan and Security Agreement and all supplements and amendments thereto executed pursuant to the Loan and Security Agreement for a description of the collateral, the nature and extent of the security and rights and obligations of the Lender, the Debtor, and the holder of the Note.

The terms and provisions of the Loan and Security Agreement, the rights and obligations of the Lender, and the rights of the holder of this Note may be changed and modified to the extent permitted by, and as provided in, the Loan and Security Agreement.

During the continuance of an Event of Default under the Loan and Security Agreement beyond any applicable cure period, the principal hereof and the interest accrued and unpaid hereon may be declared immediately due and payable as provided in the Loan and Security Agreement.

Principal and interest and other amounts due hereunder shall be payable in immediately available funds at Bankers Trust Company, ABA #02100-1033, 16 Wall Street, New York, New York 10005, Attention: Insurance Unit, Private Placement 01419540 for credit to The Penn Mutual Life Insurance Company, Acct. # 092497, or any such other place as the holder hereof shall have designated to the undersigned in writing. All such payments shall be free and clear of, and without deduction for or on account of, wire or other charges.

This Note and the Loan and Security Agreement are governed by and construed in accordance with the laws of the State of Pennsylvania; provided, however, that the holder of this Note shall be entitled to all the rights conferred by any applicable Federal statute, rule or regulation.

It is understood and agreed that, except to the extent expressly provided otherwise in Section 9.8 of the Loan and Security Agreement, the liability of the Debtor or any assignee of the Debtor for all payments to be made by it under and pursuant to this Note shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment" as defined in Section 9.8 of the Loan and Security Agreement; and otherwise, the Lender or any holder of this Note shall have no recourse against the properties and assets of the Debtor.

This Note is subject to prepayment without penalty or premium only as provided in Section 8.2(c) of the Loan and Security Agreement.

IN WITNESS WHEREOF, the Debtor has caused this Note to be duly executed.

WITNESS:

RAILCAR, LTD.

\_\_\_\_\_  
4914A/33-34

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

Wilds L. Pierce  
President

4914A

EXHIBIT D

(to the Loan and Security Agreement)

OPINION OF  
COUNSEL FOR THE DEBTOR  
TO BE DELIVERED ON THE CLOSING DATE

March \_\_\_\_, 1994

The Penn Mutual Life Insurance Company  
Securities Investment Department - Private Placement  
Independence Square - V1M C1B  
530 Walnut Street  
Philadelphia, Pennsylvania 19172

Re: Loan and Security Agreement dated March \_\_\_\_, 1994,  
between Railcar, Ltd. (the "Debtor") and The Penn  
Mutual Life Insurance Company (the "Lender") (the  
"Agreement")

Gentlemen:

We have acted as counsel to the Debtor in connection with the condition imposed by Section 2.3(c)(i) of the Agreement. Pursuant to the terms of the Agreement, the Lender proposes to lend to the Debtor an aggregate principal amount of \$1,120,702.83, such loan to be secured by pledge of certain railroad cars and that certain Lease Agreement with Norfolk Southern Railway Company, a Virginia corporation, respecting such cars (the "Lease"), all as described in the Agreement.

The opinions hereinafter set forth are provided for the benefit of the Lender and may be relied upon only by it and may not be relied upon, quoted, referred to or filed with any other person or entity without our prior written permission, except that reference may be made to the opinions in any list of closing documents pertaining to the loan and pledge pursuant to the Agreement. All capitalized terms not otherwise defined herein have the same meanings as defined in the Agreement.

We have examined such public records and such agreements, instruments and corporate documents of the Debtor and have made such other investigations as we deemed reasonably necessary under the circumstances for us to express the opinions hereinafter set forth. In making all of our examinations, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to the original documents of all

documents submitted to us as copies, the authority and capacity of the person or persons who executed each of such documents on behalf of any person or entity (other than the person or persons who, on behalf of the Debtor, executed the Lease and the Agreement, the exhibits thereto and the other documents and agreements referred to therein), the correctness and accuracy of the representations made in the Agreement and exhibits thereto and in the other documents and agreements referred to therein, the correctness and accuracy of all certificates of the Debtor's officers and the correctness and accuracy of all certificates of various public officials.

The members of this firm are admitted to the Bar of the State of Georgia and are duly qualified to practice law in that State. We do not herein express any opinion concerning any matter respecting or affected by any laws other than the laws of the State of Georgia and the federal laws of the United States of America that are now in effect and that, in our experience, are normally applicable to transactions of the type contemplated by the Agreement. To the extent any matters are governed by the law of any state other than the State of Georgia, we have assumed that the law of such other state is identical to the law of the State of Georgia. We expressly disclaim any undertaking to advise you of changes to such pertinent laws that may hereafter come to our attention.

Based upon and subject to the foregoing, we are of the following opinions:

1. The Debtor is a corporation duly organized, validly existing and in good standing under the laws of the State of Georgia.
2. The Debtor has full corporate right, power and authority to enter into, execute and deliver the Loan and Security Agreement, the Lease and the Note (a copy of which is attached hereto) and to perform each and all of the matters and things provided for in said instruments.
3. The Loan and Security Agreement and the Lease have been duly authorized, executed and delivered by the Debtor and, assuming due authorization, execution and delivery by the other parties thereto, said Loan and Security Agreement and Lease constitute the legal, valid and binding obligations of the Debtor enforceable in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and except as enforcement is subject to general principles of equity (including but not limited to all matters of public policy), regardless of whether such enforceability is considered in a proceeding in equity or at law.

4. The Note (a copy of which is attached hereto) constitutes the legal, valid and binding obligation of the Debtor enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and except as enforcement is subject to general principles of equity (including but not limited to all matters of public policy), regardless of whether such enforceability is considered in equity or at law.

5. To the knowledge of such counsel, there are no proceedings pending or threatened against or affecting the Debtor or the transactions contemplated by the Loan and Security Agreement in any court or before any governmental authority or arbitration board or other tribunal which, if adversely determined, would materially affect the right, power and authority of the Debtor to enter into or perform the Loan and Security Agreement and the Lease.

6. To the knowledge of such counsel, no consent, approval or authorization of any governmental authority or any third party is required on the part of the Debtor in connection with the execution and delivery of the Loan and Security Agreement, or the offer, issue, sale or delivery of the Note (a copy of which is attached hereto).

7. Neither the execution and delivery by the Debtor of the Note, Loan and Security Agreement or the Lease, nor the consummation by the Debtor of the transactions contemplated by any such instrument, nor compliance by the Debtor with any provision thereof, conflicts with or will conflict with, or results in or will result in a breach of any of, the provisions of the certificate of incorporation or bylaws of the Debtor or, to the knowledge of such counsel, of any applicable law, judgment, order, writ, injunction, decree, rule or regulation of any court, administrative agency or other governmental authority, or of any agreement or other instrument known to such counsel to which the Debtor is a party or by which it is bound.

Very truly yours,

CUSHING & MORRIS

By: \_\_\_\_\_  
Kevin R. Armbruster, Partner

4914A/35-37

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