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19027

October 27, 1994

Mr. Vernon A. Williams  
Acting Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two (2) executed copies of an Equipment Lease Agreement, dated as of October 1, 1994, a primary document as defined in the Commission's Rules for the Recordation of Documents under 49 C.F.R. Section 1177.

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

Lessor: KeyCorp Leasing Ltd.  
54 State Street  
Albany, New York 12207

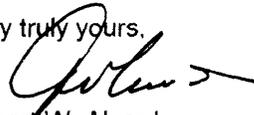
Lessee: Chicago, Central & Pacific Railroad Company  
402 East 4th Street  
Waterloo, Iowa 50704

A description of the railroad equipment covered by the enclosed document is 110 railcars bearing CC reporting marks and road numbers within the series 40002 through 40216 as shown on Schedule I attached to the Lease.

Also enclosed is a check in the amount of \$21.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return one stamped copy of the enclosed document to the undersigned.

Very truly yours,



Robert W. Alvord

*Counters - Alvord*

NOV 21 11 57 AM '94

**Interstate Commerce Commission**  
Washington, D.C. 20423

10/17/94

OFFICE OF THE SECRETARY

Robert W. Alvord  
Alvord And Alvord  
918 Sixteenth St., NW., Ste. 200  
Washington, DC. 20006-2973

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/27/94 at 12:00PM, and assigned recordation number(s) 10027.

Sincerely yours,



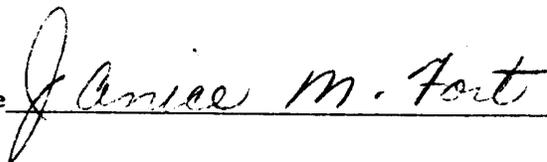
Vernon A. Williams  
Acting Secretary

Enclosure(s)

(0100416038)

\$ 21.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature



19027

0013

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**EQUIPMENT LEASE AGREEMENT**

Dated as of October 1, 1994

between

KEYCORP LEASING LTD.,  
Lessor

and

CHICAGO CENTRAL & PACIFIC RAILROAD COMPANY,  
Lessee

ROLLING STOCK

---

TO THE EXTENT, IF ANY, THAT THIS EQUIPMENT LEASE AGREEMENT CONSTITUTES CHATTEL PAPER (AS SUCH TERM IS DEFINED IN THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN ANY APPLICABLE JURISDICTION), NO SECURITY INTEREST IN THIS EQUIPMENT LEASE AGREEMENT MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART THAT CONTAINS THE RECEIPT THEREFOR EXECUTED BY KEYCORP LEASING LTD., AS LESSOR, ON OR IMMEDIATELY FOLLOWING THE SIGNATURE PAGE THEREOF.

---

FILED WITH THE INTERSTATE COMMERCE COMMISSION PURSUANT TO 49 U.S.C. §11303 ON  
OCTOBER \_\_, 1994 AT \_\_\_\_\_ M. RECORDATION NUMBER \_\_\_\_\_

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## EQUIPMENT LEASE AGREEMENT

THIS EQUIPMENT LEASE AGREEMENT, dated as of October 1, 1994 (the "*Head Lease*"), is entered into between KEYCORP LEASING LTD., a Delaware corporation (the "*Lessor*"), and CHICAGO CENTRAL AND PACIFIC RAILROAD COMPANY, a Delaware corporation (the "*Lessee*").

### RECITALS:

A. Lessee acquired the Equipment from Utility Rail Services, Inc., which Lessee currently leases to Iron Horse Properties, an Affiliate of Lessee ("*Iron Horse*"), pursuant to that certain Railcar Lease Agreement, dated as of August 1, 1990, between Lessee, as successor in interest to Utility Fuels, Inc., as lessor, and Iron Horse, as successor in interest to Lessee, as lessee, which was amended by Utility Fuels, Inc. First Amendment to Railcar Lease Agreement, dated as of March 12, 1993, and which was further amended by Utility Fuels, Inc. Second Amendment to Railcar Lease Agreement, dated as of June 7, 1993 (collectively, the "*Original Lease*").

B. Lessor proposes to acquire the Equipment from Lessee.

C. Lessor requires as conditions to acquiring the Equipment from Lessee that (1) Lessor and Lessee enter into this Head Lease and (2) with respect to the Equipment, the Original Lease be made subject and subordinate to this Head Lease.

D. The capitalized terms used in this Head Lease shall have the respective meanings defined in Annex A to the Participation Agreement, dated as of the date hereof, between Lessor and Lessee (the "*Participation Agreement*"), unless elsewhere defined herein.

### SECTION 1. ACQUISITION AND LEASING OF EQUIPMENT AND ACCEPTANCE UNDER HEAD LEASE.

1.1 *Acquisition and Leasing of Equipment.* Lessor hereby agrees (subject to the satisfaction of the conditions set forth in the Participation Agreement) to acquire the Equipment from Lessee pursuant to the Participation Agreement on the Closing Date therefor and simultaneously to lease such Equipment to Lessee hereunder, and Lessee hereby agrees to sell the Equipment to Lessor pursuant to the Participation Agreement on the Closing Date therefor and to simultaneously lease from Lessor hereunder, such Equipment, such leasing to be evidenced by the execution by Lessor and Lessee of this Head Lease.

1.2 *Acceptance of Equipment.* Lessee's execution and delivery of the Certificate of Acceptance covering the Equipment shall conclusively establish that such Equipment leased hereunder is acceptable to and accepted by Lessee without any conditions and for all purposes under this Head Lease.

**SECTION 2. RENT AND RENT PAYMENT DATES.**

2.1 *Rent for Equipment.* The Lessee agrees to pay the Lessor the following rent for each Unit:

(a) *Basic Rent.* The Lessee hereby agrees to pay the Lessor for each Unit:

(i) in arrears, in one hundred twenty (120) consecutive monthly installments, commencing on the one (1) month anniversary of the Basic Term Commencement Date and each subsequent monthly anniversary thereof occurring during the Basic Term, Basic Rent in an amount equal to the product of the Equipment Cost for such Unit multiplied by the Lease Rate Factor, as indicated in Schedule 2 hereto;

(ii) in arrears, in twenty-four (24) consecutive monthly installments, commencing on the one (1) month anniversary of the Renewal Term Commencement Date and each subsequent monthly anniversary thereof occurring during any Renewal Term pursuant to Section 20.2 hereof, Basic Rent in such amounts as provided in such Section 20.2.

(b) *Supplemental Rent.* In addition to the foregoing Rent, the Lessee agrees to pay to the Lessor, any and all Supplemental Rent, promptly as the same shall become due and owing, or, where no due date is specified, promptly after demand by Lessor, and in the event of any failure on the part of the Lessee to pay any Supplemental Rent, the Lessor shall have all rights, powers and remedies provided for herein or by law or equity or otherwise as in the case of nonpayment of Basic Rent.

2.2 *Business Days.* If any of the Rent Payment Dates is not a Business Day, the Rent payment otherwise payable on such date shall be payable on the immediately succeeding Business Day.

2.3 *Place and Manner of Rent Payment.* All payments by the Lessee hereunder shall be paid to the Lessor by electronic funds transfer to the account of the Lessor provided for payments in Section 24.1 hereof or as otherwise designated from time to time in writing by Lessor. The Lessee agrees that it will make payments due hereunder by electronic funds transfer by 12:00 P.M. (New York time) on the due date of such payment of Federal or otherwise immediately available funds to the party to whom such payment is to be made.

2.4 *Net Lease.* This Head Lease is a net lease and, except as otherwise expressly provided in the Operative Agreements, the Lessee shall pay all costs and expenses of every character, whether seen or unforeseen, ordinary or extraordinary, in connection with the use, operation, maintenance and repair of the Equipment, including the cost and expenses particularly set forth in this Head Lease. Notwithstanding any other provision of this Head Lease, it is intended that Basic Rent and Supplemental Rent shall be paid by the Lessee without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment or, except as expressly provided in this Head Lease, diminution or reduction. The obligations and

liabilities of the Lessee hereunder shall in no way be released, discharged or otherwise affected (except as may be expressly provided in this Head Lease) for any reason, including, without limitation:

- (a) any defect in the condition, quality or fitness for use of the Equipment or any Unit;
- (b) any damage to, abandonment, loss, scrapping or destruction of or any requisition or taking of the Equipment or any Unit;
- (c) any restriction, prevention or curtailment or the interference with any use of the Equipment or any Unit;
- (d) any defect in or any Lien on the Equipment or any Unit;
- (e) any change, waiver, extension, indulgence or other action or omission in respect of any obligation or liability of the Lessor;
- (f) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to the Lessee, the Lessor or any other Person, or any action taken with respect to this Head Lease by any trustee or receiver of the Lessee, the Lessor or any other Person, or by any court;
- (g) any claim that the Lessee has or might have against the Lessor or any other Person;
- (h) any alleged failure on the part of the Lessor to perform or comply with any of the terms hereof or any other agreement to which Lessor is a party;
- (i) any invalidity or unenforceability or disaffirmance of this Head Lease or any provision hereof or any of the other Operative Agreements or any provision thereof, in each case whether against or by the Lessee or otherwise;
- (j) any change in the tax or other laws of the United States or any state or political subdivision of either;
- (k) any assignment, novation, merger, consolidation, sale or transfer of assets, leasing or other similar transaction of or affecting the Lessee, except as expressly provided in this Head Lease; or
- (l) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Lessee shall have notice or knowledge of any of the foregoing.

To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Head Lease of any of the Units, except in accordance with the express terms hereof. If for any reason whatsoever this Head Lease shall be terminated in whole or in part by operation of law or otherwise, except as specifically provided herein, the

Lessee nonetheless agrees, to the maximum extent permitted by law, to pay to the Lessor an amount equal to each installment of Basic Rent and all Supplemental Rent due and owing, at the time such payment would have become due and payable in accordance with the terms hereof had this Head Lease not been terminated in whole or in part. Nothing contained herein shall be construed to waive any claim which Lessee might have under any of the Operative Agreements or otherwise or to limit the right of Lessee to make any claim it might have against Lessor or any other Person or to pursue such claim in such manner as Lessee shall deem appropriate. The Lessee hereby waives any and all existing or future claims of any right to assert any offset against the Rent payments due hereunder, and agrees to make the Rent payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf in connection with this Head Lease of the Equipment.

### SECTION 3. LEASE TERM.

The basic term of this Head Lease (the "*Basic Term*") shall mean the period for which each Unit is leased, commencing on the Basic Term Commencement Date and, subject to earlier termination pursuant to Sections 11, 15 and 20.1 hereof, shall expire at 11:59 p.m. (New York time) on the Basic Term Expiration Date applicable to such Unit. Subject and pursuant to the terms of Section 20.2 hereof, if the Lessee does not exercise its purchase option at the expiration of the Basic Term pursuant to Section 20.1 hereof, the Head Lease shall be renewed automatically for one (1) Renewal Term of two (2) years with respect to all Units of Equipment then subject to the Head Lease pursuant to Section 20.2(a) hereof; and upon the expiration of the first Renewal Term, the Lessee shall elect to (i) exercise its purchase option pursuant to Section 20.1 hereof, (ii) exercise its return option pursuant to Section 20.2(b) hereof, or (iii) renew the Head Lease for one (1) additional Renewal Term of two (2) years, with respect to all Units of Equipment then subject to the Head Lease pursuant to Section 20.2(b) hereof.

### SECTION 4. OWNERSHIP AND MARKING OF EQUIPMENT.

4.1 *Retention of Title.* The Lessor, as between the Lessor and the Lessee, shall and hereby does retain full legal title to the Equipment notwithstanding the acceptance thereof by the Lessee.

4.2 *Duty to Number and Mark Equipment.* The Lessee will cause each Unit to be numbered with a unique reporting mark, as shown on the registry of the AAR and shown on Schedule 1 attached hereto, and will commencing no later than six months after the Closing Date keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting colors upon at least one side of each Unit, in letters not less than one inch in height, a legend substantially as follows:

"THIS CAR IS LEASED PURSUANT TO A LEASE  
AGREEMENT RECORDED WITH THE INTERSTATE  
COMMERCE COMMISSION."

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Unit. Except as provided hereinabove, the Lessee will not place any such Units in operation or exercise any control or dominion over the same until the required legend shall have been so marked, and will replace promptly any such names and word or words which may be removed, defaced, obliterated or destroyed. The Lessee will not change the reporting mark of any Unit except in accordance with a statement of new reporting marks to be substituted therefor, which statement shall be delivered to the Lessor by the Lessee and a supplement to this Head Lease with respect to such new reporting marks shall be filed or recorded in all public offices where this Head Lease shall have been filed or recorded.

4.3 *Prohibition against Certain Designations.* Except as above provided, the Lessee will not allow the name of any Person to be placed on the Equipment as a designation that might reasonably be interpreted as a claim of ownership; *provided, however,* that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee, its sublessees or any of their respective Affiliates on railroad equipment used by it or its sublessees of the same or a similar type.

#### SECTION 5.           DISCLAIMER OF WARRANTIES.

**WITHOUT WAIVING ANY CLAIM THAT THE LESSEE MAY HAVE AGAINST ANY SELLER, SUPPLIER OR MANUFACTURER, THE LESSEE ACKNOWLEDGES AND AGREES THAT, (i) THE EQUIPMENT AND EACH UNIT THEREOF IS OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY AND ACCEPTABLE TO THE LESSEE, (ii) THE LESSEE IS SATISFIED THAT THE EQUIPMENT AND EACH UNIT THEREOF IS SUITABLE FOR ITS PURPOSES, (iii) THE LESSOR IS NOT A MANUFACTURER OR A DEALER IN PROPERTY OF SUCH KIND AND HAS NOT INSPECTED THE EQUIPMENT PRIOR TO DELIVERY TO AND ACCEPTANCE BY THE LESSEE, (iv) THE EQUIPMENT AND EACH UNIT THEREOF IS LEASED HEREUNDER SUBJECT TO ALL APPLICABLE LAWS AND GOVERNMENTAL REGULATIONS NOW IN EFFECT OR HEREAFTER ADOPTED AND IN THE STATE AND CONDITION OF EVERY PART THEREOF WHEN THE SAME FIRST BECAME SUBJECT TO THIS HEAD LEASE, WITHOUT REPRESENTATION OR WARRANTY BY THE LESSOR, (v) THE LESSEE LEASES THE EQUIPMENT AND EACH UNIT THEREOF "AS-IS", "WHERE-IS" AND "WITH ALL FAULTS", AND, LESSEE ACKNOWLEDGES THAT LESSOR HAS NOT MADE, AND EXPRESSLY DISCLAIMS, ANY AND ALL RIGHTS, CLAIMS, WARRANTIES OR REPRESENTATIONS EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, DESIGN, OPERATION, OR MERCHANTABILITY THEREOF OR AS TO THE TITLE, VALUE OR CONDITION OF THE EQUIPMENT, THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREOF OR CONFORMITY THEREOF TO SPECIFICATIONS, FREEDOM FROM PATENT, COPYRIGHT OR TRADEMARK INFRINGEMENT, THE ABSENCE OF ANY LATENT OR OTHER DEFECT, WHETHER OR NOT DISCOVERABLE, OR AS TO THE ABSENCE OF ANY OBLIGATIONS BASED ON STRICT LIABILITY IN**

**TORT, AND (vi) UNDER NO CIRCUMSTANCES WHATSOEVER SHALL THE LESSOR BE LIABLE OR RESPONSIBLE TO THE LESSEE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LIABILITY IN TORT, STRICT OR OTHERWISE),** it being agreed that all such risks, as among the Lessor and the Lessee, are to be borne by the Lessee, except that the Lessor, represents and warrants that on the Closing Date for any Unit of Equipment, the Lessor shall have received whatever title to such Unit of Equipment as was conveyed to the Lessor by the Lessee. The provisions of this Section 5 have been negotiated and, except to the extent otherwise provided in this Section 5 or in the Participation Agreement, the foregoing provisions are intended to be a complete exclusion and negation of any representations and warranties by the Lessor, express or implied, with respect to the Equipment that may arise pursuant to any law now or hereafter in effect, or otherwise, but shall not limit or otherwise restrict the representations and warranties of the Lessor in the Participation Agreement. The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the Lease Term to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their respective interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against the manufacturers or any prior owner thereof, *provided, however,* that if at any time a Lease Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights.

#### **SECTION 6. RULES, LAWS AND REGULATIONS.**

6.1 *Compliance with Law.* The Lessee agrees to comply in all material respects with all governmental laws, regulations, requirements and rules (including, without limitation, the rules, if any, of the Federal Railroad Administration, the Interstate Commerce Commission and the field manual of interchange rules or supplements thereto of the Mechanical Division, Association of American Railroads, as the same may be in effect from time to time) (the "*Interchange Rules*") with respect to the title, operation, use and maintenance of each Unit subject to this Head Lease; *provided, further,* that the Lessee may, in good faith and by appropriate proceedings diligently conducted, contest the validity or application of any such law, regulation, requirement or rule in any reasonable manner which does not result in a significant risk of a material and adverse effect on the rights or interest of the Lessor in the Units and which does not otherwise expose the Lessor to any risk of criminal sanctions, so long as any such proceedings are concluded prior to the date on which the Lessee is required to return such Unit to the Lessor. Lessee shall be responsible for obtaining use of the Units and shall bear all risk of failure to obtain such permissions, approvals and consents for use of the Units and shall bear all risk of failure to obtain such permissions, approvals and consents, or of cancellation thereof. The Lessor shall take, at no cost or expense to Lessor, all actions reasonably requested by the Lessee in order to assist the Lessee in obtaining such permissions, approvals or consents.

6.2 *Required Modifications.* In case any equipment or appliance is required to be altered, added, replaced or modified on any Unit in order to comply with any governmental laws, regulations, requirements and rules (a "*Required Modification*"), the Lessee agrees to make such Required Modification at its own expense; *provided, however,* that the Lessee may, in good faith and by appropriate proceedings diligently conducted, contest the validity or application of any

such law, regulation, requirement or rule in any reasonable manner which does not result in a significant risk of a material and adverse effect on the rights or interest of the Lessor in the Units and which does not otherwise expose the Lessor to any risk of criminal sanctions, so long as any such proceedings are concluded prior to the date on which the Lessee is required to return such Unit to the Lessor. Title to all Required Modifications shall, without further action by Lessee vest in Lessor.

#### SECTION 7. MAINTENANCE OF EQUIPMENT; MODIFICATIONS; FOREIGN USE.

7.1 *Maintenance.* The Lessee shall, at its own cost and expense, maintain and keep the Equipment and each Unit thereof in good operating condition and in good physical condition, ordinary wear and tear excepted, and in all events (i) in accordance with prudent industry maintenance practices, (ii) as may be required to comply with all applicable insurance policies and manufacturer's warranties (iii) in a manner consistent with maintenance practices used by the Lessee in respect of equipment owned or leased by the Lessee similar in nature to the Units, and (iv) in a condition suitable for interchange pursuant to applicable Interchange Rules.

7.2 *Modifications.* Except as otherwise required by the provisions of Section 6 hereof and so long as no Lease Event of Default has occurred and is continuing prior to the initiation by the Lessee of any modification, addition or improvement to any Unit (a "*Modification*"), the Lessee may make such Modification; *provided, however*, that no such Modification shall diminish the value, utility, condition or remaining useful life of such Unit below the value, utility, condition, or remaining useful life thereof immediately prior to such Modification, assuming such Unit was then in the condition required to be maintained by the terms of this Head Lease. Title to any Non-Severable Modifications shall be immediately vested in the Lessor, free and clear of all Liens (other than Permitted Liens), and Lessee shall take whatever actions as may be necessary to ensure that such title is vested in the Lessor, free and clear of all Liens (other than Permitted Liens). Title to any Severable Modifications which are not Required Modifications shall remain with the Lessee. If the Lessee shall at its cost cause any Severable Modification to be made to any Unit and such Severable Modification is reasonably necessary for the economic operation of any such Unit, the Lessor shall have the right, prior to the return of such Unit to the Lessor hereunder, to purchase such Severable Modification at its then Fair Market Sales Value. If the Lessor does not elect to purchase such Severable Modification, the Lessee may at any time remove any Severable Modification that are not Required Modifications at Lessee's cost and expense; *provided, however*, that prior to the return of the Units hereunder, Lessee shall, at its expense, remove any Severable Modifications that are not Required Modifications if the failure to remove any such Severable Improvement would diminish the value, utility, condition or remaining useful life of such Unit below the value, utility, condition, or remaining useful life thereof if such Severable Modification were not installed on such Unit, assuming such Unit was then in the condition required to be maintained by the terms of this Head Lease. Title to all Parts of any Unit (other than any Parts which are Severable Modifications but not Required Modifications) shall remain vested in Lessor until a replacement is made therefor. Title to all such replacement Parts shall be immediately vested in Lessor, and upon such replacement title to the Part so replaced shall be vested in Lessee.

7.3 *Foreign Use.* The Lessee shall not at any time allow any Unit to be located outside of the continental United States. In no event shall the Lessee make use of any Equipment in any jurisdiction not included in the insurance coverage maintained by Lessee pursuant to this Head Lease.

#### **SECTION 8. LIENS ON THE EQUIPMENT.**

8.1 *Lessee's Obligation.* The Lessee will not directly or indirectly create, incur, assume or suffer to exist any Lien on or with respect to any Units or the Lessee's leasehold interest therein under this Head Lease, except Permitted Liens and Lessor's Liens and the Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge any such Lien not excepted above if the same shall arise at any time. The Lessee shall protect, save and keep harmless each Indemnified Person from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including reasonable attorneys' fees) of whatsoever kind and nature that may be imposed on, incurred by or asserted at any time (whether before, during or after the Lease Term) against such Indemnified Person in any way relating to or arising out of any such Lien except Permitted Liens and Lessor's Liens.

8.2 *Lessor's Liens.* The Lessor hereby agrees for the benefit of the Lessee that at all times the Equipment shall be free and clear of any Lessor's Liens arising by or through Lessor, and that Lessor will, at its own cost and expense (and without any right of reimbursement from the Lessee), promptly take such action as may be necessary duly to discharge any such Lien attributable to it. Lessor further agrees to indemnify and hold harmless the Lessee from and against any loss, costs, expenses or charge (including reasonable legal fees and expenses) incurred, in each case, as a result of the imposition or enforcement of any such Lessor's Lien.

#### **SECTION 9. FILING.**

9.1 *Closing Date.* On or prior to the Closing Date, the Lessee will, at its expense, (i) cause this Head Lease to be duly filed and recorded with the ICC in accordance with 49 U.S.C. §11303, (ii) cause Uniform Commercial Code financing statements naming the Lessee as debtor and the Lessor as secured party, to be filed in such public offices as are deemed necessary or appropriate by the Lessor to perfect the right, title and interest of the Lessor in the Equipment, and (iii) file, register or record this Head Lease and all financing and continuation statements and similar instruments, in such other places within the United States as the Lessor may reasonably request in writing at least five (5) days prior to such Closing Date, and will furnish the Lessor with the proof thereof.

9.2 *Further Assurances.* The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, re-register or re-record whenever required) any and all amendments or supplements to this Head Lease, any financing statements or similar instruments, and any and all further instruments required by law or

reasonably requested in writing by the Lessor, for the purpose of protecting the Lessor's title to, and security interest in, any Unit.

9.3 *Costs.* Except as provided in Section 2.5 of the Participation Agreement, the Lessee will pay all costs, charges and expenses (including reasonable attorneys' fees) incident to any such filing, refiling, recording and rerecording or depositing and re-depositing of any such instruments or incident to the taking of such action.

#### SECTION 10. INSURANCE.

10.1 *Insurance Requirement.* (a) The Lessee will, at all times prior to the return of the Units to the Lessor, at its own expense, cause to be carried and maintained (i) "all risk" property insurance in respect of the Units at the time subject hereto and in an amount not less than \$5,000,000 per occurrence and (ii) public liability insurance in an amount not less than \$15,000,000 per occurrence with respect to third-party personal injury, death and property damage (including contractual liability insurance), and the Lessee will continue to carry such insurance in each case, in such amounts and for such risks and with such insurance companies of recognized responsibility in each case as is consistent with prudent industry practice for Persons using or leasing rail equipment similar to the Units, but in any event not less comprehensive in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Units. The Lessee warrants and affirms that it will satisfy all obligations under each such policy necessary to keep such insurance in full force and effect. All insurance maintained by Lessee hereunder may be subject to commercially reasonable deductibles and self-insurance practices consistent with prudent industry practice and Lessee's practice with respect to other equipment similar to the Units; *provided, however*, Lessee shall not self-insure or maintain deductibles greater than \$3,500,000 in the aggregate (so long as the Lessee has a tangible net worth not less than \$25,000,000) and otherwise Lessee shall not self-insure or maintain deductibles in any amount.

(b) All insurance policies required to be maintained by the Lessee pursuant to this Section 10.1 shall (i) name and insure the Lessor as an additional insured with respect to the public liability insurance and with respect to property insurance shall cover the interests of Lessor as its interests may appear under the Operative Agreements, (ii) name and insure the Lessor under a standard mortgage loss payable clause, under the property insurance policy, (iii) provide that the interests of the Lessor shall not be invalidated or, except as provided in clause (iv) below, cancelled, by any action or inaction by the Lessee or any other Person (other than claimant), (it being understood that this clause (iii) is not intended to expand or limit the scope of insurance coverage otherwise provided), (iv) provide that the Lessor will be furnished with at least thirty (30) day's prior written notice (or in the case of non-payment, of premiums, ten (10) day's) of any cancellation or material change in the types or limits of coverage during the term of any policy prior to such cancellation or change of coverage, (v) provide that such insurance is primary without any right of contribution from any other insurance carried by the Lessor, and (vi) without limiting the insurer's right to cancel coverage for non-payment of premium acknowledge that any obligation imposed on the Lessee (including without limitation the liability to pay premiums, calls,

commissions, or assessments) shall be the sole obligation of the Lessee and not the obligation of the Lessor.

(c) Within thirty (30) days following the expiration of any policy of insurance, the Lessee shall furnish the Lessor with a certificate signed by the insurer or a reputable independent insurance broker, showing the insurance then maintained by the Lessee pursuant to this Section 10.1, confirming all premiums then due thereon have been paid, and that such insurance meets all requirements of this Section 10. With respect to any renewal policy or policies, the Lessee shall furnish certificates or binders signed by reputable insurers or insurance brokers evidencing such renewal as soon as practicable, but in no event later than thirty (30) days after such renewal is effected or ten (10) days after the expiration date of the original policy or policies.

10.2 *Proceeds of Insurance.* Subject to the provisions of Section 10.1 hereof, to the extent permitted by the terms of applicable insurance coverage, the proceeds of the property or casualty insurance policy shall be payable to Lessee provided that no Lease Default or Lease Event of Default shall have occurred and be continuing (and after the occurrence and continuation of a Lease Default or Lease Event of Default such proceeds shall be paid to Lessor), *but only if* an amount equivalent to such proceeds have been previously paid to and received by Lessor.

10.3 *Additional Insurance.* In the event that the Lessee shall fail to maintain insurance as herein provided, the Lessor may at its option, upon ten (10) Business Days' prior written notice to the Lessee, provide such insurance and, in such event, the Lessee shall, upon demand from time to time, reimburse the Lessor for the cost thereof together with interest, from the date of payment thereof, on such amount, at the Late Rate. In addition, at any time the Lessor may at its own expense carry insurance with respect to its interest in the Units, provided that such insurance does not prevent the Lessee from carrying insurance required by this Section 10 or adversely affect such insurance or the cost thereof and provides that the insurer waives any right of subrogation against the Lessee with respect to claims thereunder (it being understood that all salvage rights shall remain with the Lessee's insurers at all times). Any insurance payments received from policies maintained by the Lessor pursuant to the previous sentence shall be retained by the Lessor without reducing or otherwise affecting the Lessee's obligations hereunder.

## SECTION 11. EVENT OF LOSS.

11.1 *Duty of Lessee to Notify Lessor.* In the event that any Unit shall (a) suffer an actual or constructive total loss or destruction, damage, contamination or wear which, in the Lessee's good faith opinion, makes repair uneconomical, (b) suffer theft or disappearance for a period in excess of one-hundred eighty (180) days, (c) be permanently returned to the manufacturer pursuant to any indemnity provisions, (d) have title thereto taken or appropriated by any governmental authority under the power of eminent domain or otherwise, (e) be taken or requisitioned for use by any governmental authority under the power of eminent domain or otherwise for a period extending beyond the earlier of (i) twelve (12) months after the date of such taking or requisition, or (ii) the last day of the Basic Term or any Renewal Term then in effect or (f) be banned from use in the normal course of interstate rail transportation for a period

extending beyond the earlier of (i) one hundred eighty (180) days or (ii) the last day of the Basic Term or Renewal Term then in effect as a result of any rule, regulation, order or other action of the United States government or any agency or instrumentality thereof, unless the Lessee shall have undertaken and be diligently pursuing such actions as shall be required to by the government or agency to permit normal use of such Unit (any such occurrence being hereinafter called an "Event of Loss"), the Lessee, in accordance with the terms of Section 11.2 hereof, shall promptly, but in no event more than thirty (30) days after a Responsible Officer of Lessee has knowledge of the occurrence of such an Event of Loss, and fully inform the Lessor of such Event of Loss. The date of occurrence of such Event of Loss shall be the date of such loss, destruction, damage, contamination, theft, disappearance, return, taking or requisition; provided that in the case of an Event of Loss specified in clause (b) above, the date of occurrence of such Event of Loss shall be deemed to be one hundred eighty (180) days after such theft or disappearance, and in the case of an Event of Loss specified in clause (e) or (f) above, the date of occurrence of such Event of Loss shall be deemed to be the earlier of (A) twelve (12) months in the case of clause (e) and one hundred eighty (180) days in the case of clause (f) after the date of such taking or requisition or ban, or (B) the last day of the Basic Term or any Renewal Term then in effect.

11.2 *Sum Payable for Event of Loss.* Except as provided in Section 11.7, on a Stipulated Loss Payment Date selected by Lessee, but in no event later than thirty (30) days after the occurrence or deemed occurrence of such Event of Loss for any Unit, the Lessee shall pay to the Lessor (a) an amount equal to the Stipulated Loss Value of each such Unit as of such Stipulated Loss Payment Date, (b) if such Stipulated Loss Payment Date is a Rent Payment Date, all Basic Rent payable on such date in respect of such Unit and (c) all other Rent then due and payable hereunder.

11.3 *Rent Termination.* Upon the payment of all sums required to be paid pursuant to Section 11.2 hereof in respect of any Unit or Units the Lease Term for such Unit or Units, and the obligation to pay Basic Rent for such Unit or Units shall terminate and no Basic Rent with respect to such Units shall thereafter be due.

11.4 *Disposition of Equipment.* Upon the payment of all sums required to be paid pursuant to Section 11.2 hereof in respect of any Unit or Units, the Lessor will convey to the Lessee all right, title and interest of Lessor and any Affiliate thereof, "as-is", "where-is", without recourse or warranty, except for a warranty against Lessor's Liens, in and to such Unit or Units and shall execute and deliver to Lessee such bills of sale and other documents and instruments as Lessee may reasonably request to evidence such conveyance. As to each separate Unit so conveyed to Lessee, the Lessee shall own such Unit free and clear of all claims of Lessor or any other Person claiming through Lessor, and shall have the unrestricted right to dispose of such Unit and retain any amounts arising from such disposition, plus any awards, insurance or other proceeds and damages (including any Association of American Railroads interline settlement paid upon an Event of Loss) received by the Lessee or the Lessor by reason of such Event of Loss; *provided, however,* that, with respect to any Event of Loss referred to in clauses (d) and (e) of Section 11.1 hereof, any excess of such condemnation awards over the amount of the Stipulated Loss Value of such Unit shall be divided between the Lessee and the Lessor in proportion to their respective interests in such Unit.

11.5 *Stipulated Loss Value.* The Stipulated Loss Value for any Unit as of any Stipulated Loss Payment Date shall be equal to the amount determined by multiplying the Equipment Cost for such Unit by the percentage on Schedule 3 hereto applicable for such Stipulated Loss Payment Date.

11.6 *Eminent Domain.* In the event that during the Lease Term the use of any Unit is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for a period which does not constitute an Event of Loss, the Lessee's obligation to pay all installments of Basic Rent shall continue for the duration of such requisitioning or taking. So long as no Lease Event of Default shall have occurred and be continuing, the Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for such requisition or taking of possession.

11.7 *Replacement of Unit.* In lieu of making the payment required by Section 11.2, the Lessee may, by election given in writing to Lessor, within the thirty (30) day period provided in Section 11.2 hereof, convey or cause to be conveyed within sixty (60) days after the end of such thirty (30) day period to Lessor a replacement railcar to be leased to Lessee, such railcar to be of the same car type (or otherwise approved by Lessor, which approval shall not be unreasonably withheld), the same or a later year of manufacture of the Unit replaced and free and clear of all Liens and to have a Fair Market Sales Value, utility, remaining economic useful life, residual value and condition at least equal to the Unit so replaced (assuming such Unit was in the condition required to be maintained by the terms of this Head Lease) (a "*Replacement Unit*"); *provided that*, if Lessee shall fail to perform its obligation to effect such replacement within such sixty (60) period then at the end of such sixty (60) day period Lessee shall immediately give Lessor notice of such failure and pay to Lessor the sum payable pursuant to Section 11.2 hereof.

At its own cost and expense, Lessee shall, prior to or concurrently with such replacement:

- (i) furnish Lessor with a bill of sale conveying to Lessor the Replacement Unit;
- (ii) cause a Lease Supplement, subjecting such Replacement Unit to this Head Lease, duly executed by Lessee, to be delivered to Lessor for execution, and upon such execution to be filed with the ICC pursuant to 49 U.S.C. §11303; and
- (iii) cause to be delivered to the Lessor an opinion of ICC counsel as to the due filing of such Lease Supplement with respect to such Replacement Unit and the perfection and priority of the Lien of the Head Lease in such Replacement Unit.

For all purposes of this Head Lease, upon passage of title in such Replacement Unit to the Lessor, such Replacement Unit shall be deemed to be part of the property leased hereunder and shall be deemed to be a Unit. Upon such passage of title, (a) Lessor will transfer to Lessee without recourse or warranty (except as to Lessor's Liens), all of Lessor's right, title and interest in and to the Unit with respect to which the Event of Loss occurred, (b) Lessee shall own such Unit free and clear of all claims of Lessor or any other Person claiming through Lessor, and shall have the unrestricted right to dispose of such Unit and retain any amounts arising from such disposition, and (c) any awards, insurance (other than insurance maintained pursuant to the second sentence of

Section 10.3 hereof) or other proceeds or damages (including any Association of American Railroads interline settlement paid upon an Event of Loss) received by the Lessor or any other Person in respect of such Unit shall be promptly paid to Lessee.

#### SECTION 12. SPECIAL TAX INDEMNITY.

12.1 *Tax Assumptions.* In entering into this Head Lease and the transactions contemplated hereby Lessor has made the following tax assumptions for each item of Equipment (the "*Tax Assumptions*"): (i) Lessor will be entitled to the benefit of cost recovery deductions for Federal income tax purposes under the Accelerated Cost Recovery System provided for in Section 168 of the Code and depreciation or cost recovery deductions for state income tax purposes for Lessor's Home State based upon one hundred percent (100%) of the Equipment Cost of each such item of Equipment and on the basis that each item of Equipment constitutes "7-year property" within the meaning of Section 168(e) of the Code, and that Lessor shall be entitled to use the method of depreciation specified in Section 168(b)(i) of the Code over the 7-year recovery period described in Section 168(c) of the Code (the "*Recovery Deduction*"); (ii) with respect to each item of Equipment, Lessor will be entitled to the benefit of deductions for Federal and Lessor's Home State income tax purposes for interest payable with respect to any indebtedness incurred by Lessor in connection with any financing by Lessor of any portion of the Equipment Cost of such item of Equipment (the "*Interest Deduction*"); and (iii) for each year of the Term, with respect to each item of Equipment, Lessor will be subject to tax as follows: (a) for each such year at a composite Federal and state corporate income tax rate that is equal to the highest marginal rate for corporations provided for under the Code and the laws of Lessor's Home State (the "*Highest Composite Marginal Tax Rate*") and that is actually in effect for each such year.

12.2 *Lessee's Tax Representations and Warranties.* Lessee represents and warrants to Lessor that (i) at the time Lessor becomes the owner of each item of Equipment such item will constitute tangible personal property; (ii) at all times during the Lease Term, with respect to each item of Equipment, such item will not constitute "tax-exempt use property" within the meaning of Section 168(h)(1)(A) of the Code or be used "predominantly outside the United States" within the meaning of Section 168(g) of the Code; (iii) assuming in determining the Recovery Deduction for each item of Equipment, each item of Equipment will constitute "7-year property" in the hands of Lessor within the meaning of Section 168(e) of the Code with respect to one hundred percent (100%) of Equipment Cost; (iv) neither the Lessee nor any Affiliate of the Lessee will claim Recovery Deductions, Interest Deductions or Amortization Deductions or otherwise take any tax position that is inconsistent with the intention of the Lessor and the Lessee that the Lessor be the owner and lessor of the Equipment and the Lessee be the lessee of the Equipment for federal, state and local income tax purposes; (v) all information provided to the Appraiser by the Lessee, its Affiliates and agents that is identified in the Appraisal as having been relied on by the Appraiser in reaching its conclusions, was, at the time it was so provided, and is, at the date hereof, accurate and complete in all material respects; and (vi) on the Closing Date, no improvements, modifications or additions to the Equipment (except for that certain Unit identified as CC 40131 which Lessee, at its sole cost and expense, is currently having repaired in accordance with Sections 6 and 7 hereof) will be required in order to render any Item of Equipment fit for its

intended use by the Lessee, other than those ancillary items that are of a kind customarily furnished by lessees of property.

12.3 *Indemnity.* (A) If by reason of (i) any act or failure to act of Lessee (regardless of whether any such act or failure to act is permitted or required by the terms of the Head Lease or otherwise), or (ii) the breach of or inaccuracy in law or in fact of any of Lessee's representations and warranties set forth in subsection 12.2 of this Section 12 or the breach of any of Lessee's representations and warranties set forth in any certificate or document delivered by Lessee in connection with the delivery and acceptance of any item of Equipment, or (iii) the sale or other disposition of any item of Equipment or the interest of Lessor therein after the occurrence of a Lease Event of Default, Lessor shall lose the benefit of, or shall not have or shall lose the right to claim, or shall suffer a disallowance or recapture of, or delay in claiming, all or any portion of the Recovery Deduction or (if Lessor finances any portion of its Equipment Cost) the Interest Deduction, with respect to any item of Equipment, or (B) if, for Federal, foreign, state or local income tax purposes, any item of income, loss or deduction with respect to any item of Equipment is treated as derived from, or allocable to, sources outside the United States (whether or not any foreign income taxes imposed as a result thereof may be credited against Federal, state or local income taxes of Lessor), or (C) if there shall be included in the gross income of Lessor for Federal, state or local income tax purposes any amount on account of any addition, modification, replacement or improvement to or in respect of any item of Equipment made or paid for by Lessee (any such loss, failure to have or loss of the right to claim, disallowance, recapture, delay in claiming, treatment, or inclusion referred to in any of the foregoing clauses (A) through (C) of this paragraph 12.3 being hereinafter called a "*Tax Loss*"), then a Tax Loss shall be deemed to have occurred, and Lessee shall pay to Lessor, within thirty (30) days from the date of written notice by Lessor to Lessee of a Tax Loss, such lump sum as shall (after deduction of all taxes required to be paid by Lessor in respect of the receipt or accrual of such payment under the laws of the United States, any state or any political subdivision thereof or any foreign taxing authority) be necessary to maintain Lessor's Economic Return that would have been applicable if such Tax Loss had not occurred, and Lessee shall also pay to Lessor an amount which, after the deduction of any additional taxes required to be paid by Lessor in respect of the receipt or accrual of such amount, shall be equal to the amount of any interest, penalty or additions to tax which may be imposed in connection with such Tax Loss. Lessor's Economic Return shall be determined by taking into account (i) the assumptions used by Lessor in originally calculating its Economic Return, including the Tax Assumptions (as such Tax Assumptions may have been revised pursuant to the next sentence hereof) and (ii) the Highest Composite Marginal Tax Rate actually in effect during each year from the date of such original calculations to the date of such Tax Loss, both dates inclusive. In the event Lessor shall suffer a Tax Loss with respect to which Lessee is required to pay an indemnity hereunder, and the full amount of such indemnity has been paid or provided for hereunder, the Tax Assumptions, without further act of the parties hereto, shall thereupon be and be deemed to be amended, if and to the extent appropriate, to reflect such Tax Loss. In the event any indemnity payments shall be paid to Lessor under this Section 12 with respect to any item(s) of Equipment, the Stipulated Loss Values with respect to such item(s) of Equipment shall be adjusted appropriately. The indemnification obligations of Lessee under this Section 12 shall survive the expiration or termination of this Head Lease and the return of the Equipment.

12.4 *Exceptions to Indemnity.* Lessee shall not be required to make any indemnity payment to Lessor provided for in this Section 12 with respect to an item of Equipment if Lessor shall have suffered a Tax Loss with respect to such item of Equipment solely as a result of the occurrence of (i) an Event of Loss with respect to such item of Equipment, if Lessee shall have paid to Lessor all of the amounts payable under Section 11 hereof, and to the extent that such payment compensates Lessor for such Tax Loss; or (ii) the failure of Lessor to claim the Recovery Deduction or (if Lessor finances any portion of its Equipment Cost) the Interest Deduction, as the case may be, in a timely and proper manner, unless such failure is due to Lessee's failure to provide Lessor with the information reasonably necessary to make such claim, or unless in the reasonable opinion of Lessor's tax counsel, there is no reasonable basis for such claim; or (iii) the failure of Lessor to have sufficient income to benefit from the Recovery Deduction or (if Lessor finances any portion of its Equipment Cost) the Interest Deduction, as the case may be, after giving effect to all permitted tax loss carry forwards and carry backs (but this exception shall only apply if the Recovery Deduction or Interest Deduction, as the case may be, would be otherwise available to Lessor); or (iv) a voluntary transfer or other voluntary disposition by Lessor of all or any part of its interest in such item of Equipment or the Head Lease, other than any such transfer or disposition pursuant to Sections 11 or 15 hereof.

12.5 *Consolidated Tax Returns; Lessor's Assigns.* For purposes of this Section 12, the term "Lessor" will include the corporation constituting Lessor, its successor(s) in interests, and assigns and any Consolidated Group (hereinafter defined) of which Lessor or its successors in interests or assigns is, or may become a member, and each member of such Consolidated Group. As used in this subsection 12.5 the term "Consolidated Group" means an affiliated group (within the meaning of Section 1504 of the Code) that files consolidated returns for Federal income tax purposes and any group filing combined or consolidated returns pursuant to the rules of any state taxing authority.

### SECTION 13. NOTICES OF CERTAIN EVENTS; ANNUAL REPORTS; INSPECTION.

13.1 *Notice of Certain Events.* The Lessee shall give written notice to the Lessor, within five (5) Business Days after becoming known to a Responsible Officer of Lessee, of any Lease Default or Lease Event of Default.

13.2 *Duty of Lessee to Furnish.* On or before the Closing Date, and on each June 30 thereafter, the Lessee will furnish, upon request, to the Lessor an accurate statement, as of the preceding December 31, (a) showing the amount, description and reporting marks of the Units then leased hereunder, the amount, description and reporting marks of all Units that may have suffered an Event of Loss during the twelve (12) months ending on such December 31 (or since the Closing Date, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Lessor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced.

13.3 *Lessor's Inspection Rights.* The Lessor (or its designee) shall have the right, but not the obligation, at its sole cost, expense and risk, except as provided below, by its respective

authorized representatives, to the extent within Lessee's control: (a) to inspect the Equipment and the Lessee's records with respect thereto and make copies thereof, during the Lessee's normal business hours and upon reasonable prior notice to the Lessee, subject to the Lessee's standard procedures and, if so elected by Lessee, accompanied by a representative of Lessee, and (b) to discuss the affairs, finances and accounts with the principal officers of the Lessee; *provided, however*, that the Lessee shall not be liable, except in the case of gross negligence or willful misconduct of the Lessee or of its employees or agents, for any injury to, or the death of, any Person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this Section 13.3 or Section 14.1 hereof. No such inspection shall interfere with the normal operations or business of Lessee.

#### **SECTION 14. RETURN OF EQUIPMENT UPON EXPIRATION OF LEASE TERM.**

##### **14.1 *Return of Equipment; Storage.***

(a) If Lessee does not exercise its purchase option at the end of the Basic Term, the first Renewal Term or the second Renewal Term pursuant to Section 20.1 hereof, then as soon as practicable on or after the expiration of the second Renewal Term of this Head Lease, and in any event not later than ten (10) days thereafter, the Lessee will, at its own cost and expense, deliver possession of all of the Units then subject to this Head Lease to one (1) location, selected by Lessor from a list of four (4) interchange points of any Class I Railroad within 500 miles of Chicago, designated by the Lessee by notice to Lessor not less than sixty (60) days prior to such delivery (the "*Return Location*"); *provided, however*, if Lessee exercises its return option at the end of the first Renewal Term pursuant to Section 20.2(b) hereof, then Lessee shall, as soon as practicable on or after the expiration of the first Renewal Term, and in any event not later than ten (10) days thereafter, at its own cost and expense, deliver possession of all of the Units then subject to this Head Lease to Lessor at the Return Location.

(b) At Lessor's request, Lessee shall, at its expense and risk, provide storage at the Return Location for each Unit (or at an alternative location, that is reasonably acceptable to Lessor, if the Return Location cannot accommodate all such Units so returned) for a period not exceeding ninety (90) days after Lessee's delivery of all of the Units then subject to the Head Lease, pursuant to Section 14.1(a) hereof. During any such storage period, the Lessee will permit the Lessor or any Person designated by it, including the authorized representative or representatives of any prospective purchaser or user of such Unit, to inspect the same, accompanied by a representative of Lessee; *provided, however*, that the Lessee shall not be liable, except in the case of gross negligence or willful misconduct of the Lessee or of its employees or agents, for any injury to, or the death of, any Person exercising, either on behalf of the Lessor or any prospective purchaser or user, the rights of inspection granted under this sentence. During any such storage period the Lessee shall be responsible for loss of or damage to such Units in accordance with the terms of this Head Lease. Upon the return of any Unit of Equipment, Lessee covenants that such Units shall be (i) free and clear of all Liens other than Lessor Liens and (ii) in the condition required by Sections 6 and 7 hereof. The Lessee shall on or prior to return of any Unit take such action and complete and execute, or obtain execution of, such certificates, including certificates required under Rule 88 (or any successor rule) of the AAR, and other

documents as shall be required by the AAR to assure that such Unit is permitted to enter interchange service after return to Lessor or its designee. If the Lessor or its agent shall inspect any Unit pursuant to this Section 14 and such Unit shall not be in the condition required by this Section 14, the Lessee, at its expense and risk, shall within sixty (60) days thereafter make such repairs and perform such work as shall be necessary to place such Units in the condition required by this Section 14. The Lessee will provide the Lessor with notice when such Unit has been repaired so as to be in the condition required by this Section 14 and is ready to be reinspected by the Lessor or its agent, and the Lessor or its agent shall have ten (10) days from the date of receipt of such notice to inspect, at the Lessee's sole cost and expense, such Unit. In the event any Unit is not returned to Lessor as hereinabove provided as a result of any action or inaction on the part of the Lessee, within ten (10) days after the date on which such return was required pursuant to the terms hereof, the Lessee shall pay to the Lessor, for each day thereafter as liquidated damages, and not as a penalty, for the failure of the Lessee to return such Unit to the Lessor in accordance with the terms of this Head Lease with respect to such Unit as required by the provisions of this Section 14, an amount equal to 100% of the daily equivalent of Basic Rent during the last month of the Renewal Term of such Unit. The provision for such payment shall not abrogate the Lessor's right under this Section 14 to have such Unit returned to it hereunder. Upon expiration of the Lease Term with respect to such Unit, compliance with the redelivery terms hereof and tender of such Unit at such storage location by Lessee, this Head Lease and the obligation to pay Basic Rent and all other Rent for such Unit accruing subsequent to the expiration of the Lease Term with respect to such Unit, compliance with the redelivery terms hereof and the tender of such Unit at such storage location by the Lessee, shall terminate.

14.2 *Condition.* Without limiting the Lessee's obligations under Section 14.1 hereof, each Unit redelivered hereunder shall be (i) in a condition suitable for the purpose and use for which it was originally intended (haulage of coke, coal, coal ash or rock) and (ii) in such operating condition and repair that such Unit can be put into service by Lessor for the hauling of coke, coal, coal ash or rock or by another party, without having to undergo additional maintenance, or rebuilding, as such terms are commonly understood in the industry. In addition, Lessee, at Lessee's sole cost and expense, shall remove or paint over all company logos of Lessee or any sublessee unless Lessee has granted Lessor a license to use Lessee's logo or Lessee has caused any sublessee to grant Lessor a license to use such sublessee's logo.

#### **SECTION 15. LEASE EVENTS OF DEFAULT.**

15.1 *Lease Events of Default.* Any of the following events shall constitute a Lease Event of Default hereunder:

(a) The Lessee shall default in the payment when due of (i) any installment of Basic Rent and such default shall continue unremedied for five (5) Business Days or (ii) any amount payable pursuant to Section 11.2 hereof and such default shall continue unremedied for five (5) Business Days;

(b) The Lessee shall default in the payment when due of any Supplemental Rent, other than as specified in Section 15.1(a) hereof, including

indemnity or tax indemnity payments, and such default shall continue unremedied for a period of ten (10) Business Days after receipt by the Lessee of written notice thereof;

(c) Any representation or warranty made by the Lessee in this Head Lease or in any other Lessee Agreement or in any statement or certificate furnished to the Lessor pursuant to or in connection with this Head Lease or any other Lessee Agreement is untrue or incorrect in any material respect as of the date of the making thereof and such incorrectness shall continue to be material and unremedied;

(d) The Lessee shall fail to maintain the insurance required pursuant to Section 10 hereof;

(e) The Lessee shall default in the observance or performance of any other of the covenants and agreements on the part of the Lessee contained herein or in the other Lessee Agreements, and such default shall continue for thirty (30) days after receipt by Lessee of written notice thereof, specifying the default and demanding the same to be remedied; provided, however, no Lease Event of Default shall occur under this paragraph (e) if (i) the Lessee is diligently attempting to cure such default, (ii) such default is capable of being cured but cannot be cured within such thirty (30) days, (iii) such default does not impair in any material respect the Lessor's interest in the Units and (iv) such default is cured within one hundred fifty (150) days after such written notice;

(f) The Lessee (i) shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or the major part of its property, or (ii) shall consent to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it, or (iii) shall make a general assignment for the benefit of creditors, or (iv) shall take any corporate action to authorize any of the foregoing;

(g) An involuntary case or other proceeding shall be commenced against the Lessee seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or the major part of its property, and such involuntary case or other proceeding shall remain undismisssed and unstayed for a period of sixty (60) days;

(h) any Indebtedness under a lending relationship between Lessee or CCP Holdings, Inc., as borrower, and Harris Bank, as lender, is accelerated; or

(i) Union Pacific shall have failed to deliver to Lessor any or all amounts of rents and other moneys that are due and payable by Union Pacific pursuant to the Union Pacific Sublease, and such failure shall continue for thirty (30) days after such time that such payment should have been made to Lessor, as set forth in the Notice of Assignment; *provided, however*, no Lease Event of Default shall occur under this paragraph (i) if Lessee is diligently attempting to cure such Default.

15.2 *Remedies.* Upon the occurrence of any Head Lease Event of Default and at any time thereafter so long as such Lease Event of Default is continuing under this Head Lease, the Lessor may, upon written notice to Lessee, at its option, declare this Head Lease to be in default and whenever any Lease Event of Default under any provision of Section 15.1(f) or (g) of this Head Lease shall have occurred, this Head Lease shall automatically be in default, and at any time after this Head Lease has been declared to be in default or has automatically become in default pursuant to the foregoing provisions, the Lessor may do one or more of the following as the Lessor in its sole discretion shall elect, to the extent permitted by and subject to compliance with any mandatory requirements of applicable law then in effect:

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

(b) By notice in writing to the Lessee, cancel this Head Lease, whereupon all right of the Lessee to the possession and use of the Equipment shall absolutely cease and terminate as though this Head Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may (i) demand that Lessee, and Lessee shall upon written demand of Lessor, at Lessee's expense, return to Lessor all or any of the Units (as specified in such demand) in the manner and condition required by, and otherwise in accordance with the provisions of Section 16 hereof, or (ii) by its agents enter upon the premises of the Lessee or other premises where any of the Equipment may be located and take possession of all or any of the Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successor or assigns, to use such Units for any purpose whatever;

(c) Sell any Unit at public or private sale, as the Lessor may determine, free and clear of any rights of the Lessee and without any duty to account to the Lessee with respect to such sale or for the proceeds thereof (except to the extent required by paragraph (f) below if the Lessor elects to exercise its rights under said paragraph), in which event the Lessee's obligation to pay Basic Rent with respect to such Unit hereunder due for any periods subsequent to the date of such sale shall terminate (except to the extent that Basic Rent are to be included in computations under paragraph (e) or (f) below if the Lessor elects to exercise its rights under either of said paragraphs);

(d) Hold, keep idle, operate, assign or lease to others any Unit as the Lessor in its sole discretion may determine, free and clear of any rights of the Lessee and without any duty to account to the Lessee with respect to such action or inaction or for any proceeds with respect thereto; *provided, however*, that Lessee's obligation to pay Basic Rent with respect to any Unit of Equipment due for any period after the date upon which the Lessee shall have been deprived of the possession and use of such Unit of Equipment pursuant to this Section 15 shall be reduced by the net proceeds, if any, received by the Lessor from leasing such Unit to any Person other than the Lessee;

(e) Whether or not the Lessor shall have exercised, or shall thereafter at any time exercise, any of its rights under paragraph (a), (b), (c) or (d) above with respect to any Unit, the Lessor, by notice to the Lessee specifying a payment date which shall be not earlier than ten (10) Business Days after the date of such notice, may demand that the Lessee pay to the Lessor, and the Lessee shall pay to the Lessor, on the Stipulated Loss Payment Date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent for such Unit due after the payment date specified in such notice), any unpaid Rent for such Unit due for periods on or prior to the payment date specified in such notice, plus whichever of the following amounts the Lessor, in its sole discretion, shall specify in such notice: (i) an amount equal to the excess, if any, of (A) the present value of all future Basic Rent for such Unit, over (B) the present value of the Fair Market Rental Value (determined as hereafter in Section 15.4 provided) of such Unit or, if the Lessor has leased such Unit to others pursuant to paragraph (d) above, for the period of such lease the periodic rent payable thereunder, in each case for the remainder of the Basic Term or any Renewal Term then in effect, as the case may be, as of the payment date specified in such notice, such present values to be computed on the basis of a per annum rate of discount equal to the Prime Rate, compounded monthly, from the respective dates upon which such rents would be paid; or (ii) an amount equal to the excess, if any, of the Stipulated Loss Value for such Unit as of such Stipulated Loss Payment Date, over the Fair Market Sales Value of such Unit (determined as hereafter in Section 15.4 provided) as of the payment date specified in such notice;

(f) If the Lessor shall have sold any Unit pursuant to paragraph (c) above, the Lessor, in lieu of exercising its rights under paragraph (e) above with respect to such Unit may, if it shall so elect, demand that the Lessee pay to the Lessor, and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent and any other Basic Rent for such Unit due subsequent to the Rent Payment Date next preceding such sale), any unpaid Basic Rent for such Unit due for periods up to and including the Rent Payment Date next preceding the date of such sale and, if that date is a Rent Payment Date, the Basic Rent due on that date, plus (i) the amount, if any, by which the Stipulated Loss Value of such Unit computed as of the Rent Payment Date next preceding the date of such sale or, if such sale occurs on a Rent Payment Date, then computed as of such Rent Payment Date,

exceeds the net proceeds of such sale and (ii) any Supplemental Rent due and owing; and

(g) The Lessor may, in lieu of exercising its rights under paragraph (e) above: (i) retain all Rent theretofore paid by the Lessee or received by the Lessor in respect of any Unit, including any such Rent then in the Lessor's possession which, had this Head Lease not been declared in default, would otherwise be payable to the Lessee hereunder; (ii) recover from the Lessee all Rent accrued and unpaid under any of the terms hereof as of the date of the declaration of default; and (iii) on any Stipulated Loss Payment Date, transfer title to and the ownership interest in such Unit to the Lessee by quit-claim bill of sale (except as to the absence of any Lessor's Liens), and recover from the Lessee as liquidated damages for loss of a bargain, but not as a penalty (in lieu of the Basic Rent for such Unit due subsequent to the date of the declaration of default), in the Lessor's sole discretion, an aggregate sum equal to the Stipulated Loss Value of such Unit calculated as of such Stipulated Loss Payment Date.

15.3 *Other Liabilities.* In addition, the Lessee shall be liable, except as otherwise provided in Section 15.2 above, for any and all unpaid Rent due hereunder before or during the exercise of any of the foregoing remedies, and for legal fees and other costs and expenses incurred by reason of the occurrence of any Lease Event of Default or the exercise of the Lessor's remedies with respect thereto, including without limitation the repayment in full of any costs and expenses necessary to be expended in repairing or modifying any Unit in order to cause it to be in compliance with all maintenance and regulatory standards imposed by this Head Lease.

15.4 *Valuation.* For purposes of Section 15.2 hereof, the Fair Market Rental Value and Fair Market Sales Value for any Unit shall be determined by appraisal as specified in the definition of "Fair Market Rental Value" or "Fair Market Sales Value", as the case may be, with any appraisal expenses to be borne by the Lessee.

15.5 *Cumulative Remedies.* The remedies in this Head Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity.

15.6 *No Waiver.* No delay or omission to exercise any right, power or remedy accruing to the Lessor upon any breach or default by the Lessee under this Head Lease shall impair any such right, power or remedy of the Lessor, nor shall any such delay or omission be construed as a waiver of any breach or default, or of any similar breach or default hereafter occurring; nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default.

#### **SECTION 16. RETURN OF EQUIPMENT UPON LEASE EVENT OF DEFAULT.**

16.1 *Lessee's Duty to Return.* (a) If the Lessor shall cancel this Head Lease pursuant to Section 15.2 hereof and shall not exercise any right to cause Lessee to purchase the Equipment, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of

delivering possession of any Unit to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

(i) Forthwith place such Unit upon such available storage locations under Lessee's control as reasonably directed by the Lessor and such Units shall be in the same condition as if such Units were being redelivered on or after the expiration of the Basic Term or any Renewal Term;

(ii) Permit the Lessor to store such Unit at such location without charge for insurance, rent or storage for up to 365 days until such Unit has been sold, leased or otherwise disposed of by the Lessor, and during such period of storage by Lessee shall continue to maintain all insurance required by Section 10.1 hereof; and

(iii) Transport such Unit to a railroad interchange point on the lines of any Class I railroad within 500 miles of Chicago chosen by Lessor from a list of two (2) such locations designated by Lessee.

(b) Each such Unit will be free and clear of all Liens, other than Lessor's Liens, and in the condition required by Sections 6 and 7 hereof and otherwise in compliance with Section 14 hereof.

16.2 *Lessor Appointed Lessee's Agent.* Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 16, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Units to the Lessor pursuant to this Section 16, to demand and take possession of such Unit, in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit.

16.3 *Specific Performance.* Upon application to any court of equity having jurisdiction, Lessor shall be entitled to a decree against Lessee requiring specific performance of the provisions of this Section 16.

#### **SECTION 17. LESSOR'S RIGHT TO PERFORM.**

If the Lessee fails to make any payment required to be made by it hereunder or fails to perform or comply with any of its other agreements contained herein, the Lessor may itself make such payment or perform or comply with such agreement, after giving not less than five (5) Business Days' prior notice thereof to the Lessee in a reasonable manner, but shall not be obligated hereunder to do so, and the amount of such payment and of the reasonable expenses of the Lessor incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the Late Rate, to the extent permitted by applicable law, shall be deemed to be Supplemental Rent, payable by the Lessee to the Lessor on demand.

**SECTION 18. QUIET ENJOYMENT.**

18.1 *Quiet Enjoyment.* Neither Lessor nor any Person deriving its rights through, under or from Lessor shall, so long as no Lease Event of Default shall have occurred and be continuing, take or cause to be taken any action contrary to Lessee's rights and the rights of any sublessee of Lessee under the Head Lease, including, without limitation, the right to possession, use and quiet enjoyment of the Equipment.

**SECTION 19. USE AND POSSESSION; SUBLEASES; ASSIGNMENT BY LESSEE.**

19.1 *Lessee's Rights to the Equipment.* Subject to the exercise of Lessor's rights under Section 15.2 hereof, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any Affiliate, subject to Section 7.3 hereof in any lawful manner for which the Units were originally designed or as the Units may be modified pursuant to the terms hereof; *provided, however*, in no event shall the Units be used to carry or transport Hazardous Substances.

19.2 *Subleases.* The Lessee shall not, without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, enter into any sublease with respect to any Unit. No sublease shall in any way discharge or diminish any of the Lessee's obligations hereunder, and the Lessee shall remain primarily liable hereunder for the performance of all the terms, conditions and provisions of this Head Lease and the other Lessee Agreements to the same extent as if such sublease had not been entered into. Each sublease consented to by Lessor shall (a) be expressly subject and subordinate to all of the provisions of this Head Lease and to the rights and remedies of Lessor under this Head Lease in respect of the Units covered by such sublease, (b) be for a term not extending beyond the end of the Basic Term Expiration Date or the end of the Renewal Term then in effect, and (c) shall not be less restrictive than this Head Lease or include any term or provision which could reasonably be expected to result in material adverse consequences to the Lessor. In addition, if the Lessee enters into any such sublease, the Lessee shall deliver to Lessor a copy of any such sublease as soon as practicable after execution thereof, and Lessee shall pay all of Lessor's reasonable out-of-pocket expenses incurred in connection with such transaction, as set forth in Section 19.5 hereof.

19.3 *Assignment by Lessee.* Lessee shall not, at any time, assign or transfer its leasehold interest hereunder to any Person without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Each assignment consented to by Lessor shall provide that (i) such assignee or transferee shall have duly assumed the obligations of the Lessee hereunder, (ii) upon the effectiveness of such assignment or transfer, no Lease Default or Lease Event of Default shall have occurred and be continuing, (iii) the Lessee shall remain obligated under the Head Lease, and (iv) Lessee shall pay all of Lessor's reasonable out-of-pocket expenses incurred in connection with such assignment or transfer.

19.4 *Noncomplying Subleases or Assignments.* Any assignment of this Head Lease or sublease or transaction which constitutes or operates as an assignment or sublease of any Unit by the Lessee in violation of Section 19.2 or 19.3 shall be void. In connection with any sublease

permitted by Section 19.2 or any assignment permitted by Section 19.3, Lessee shall deliver to Lessor a legal opinion of independent counsel, selected by Lessee and reasonably acceptable to Lessor, stating that under the laws of any applicable jurisdiction (i) all filings, notices, recordings or other actions necessary or appropriate to perfect the ownership interests and security interest of the Lessor in Units located in such jurisdiction have been made or taken and (ii) the Head Lease is enforceable against such sublessee or assignee.

19.5 *Delivery of Documents; Assignment of Subleases; Expenses.* Lessee shall promptly deliver the original "chattel paper" copy of each sublease to the Lessor and Lessee shall deliver a certified copy of the Union Pacific Sublease to Lessor. Lessee hereby grants Lessor a security interest in each such sublease including the Union Pacific Sublease, provided that so long as no Event of Default shall have occurred and be continuing, the Lessee may exercise its rights under such sublease, including, without limitation, the collection, application and enjoyment of rents thereunder. Lessee agrees to indemnify and hold Lessor harmless against any and all reasonable out-of-pocket expenses, claims, demands and liabilities of whatever nature relating to or in any way arising out of such sublease or assignment, including, without limitation all reasonable out-of-pocket costs, damages, charges, attorneys' fees and expenses arising out of or necessitated by assertion of any such claim or demand with respect to such sublease or assignment.

19.6 *Trip Leasing; Interline Marketing Agreements.* Notwithstanding the restrictions on Lessee's right to sublease any Unit or assign its leasehold interest as set forth in this Section 19, Lessee shall not be restricted from entering into, in the ordinary course of Lessee's business, trip leasing agreements or interline marketing agreements.

## **SECTION 20. OPTIONS TO PURCHASE; RENEW.**

20.1 *Purchase Option.* The Lessee shall have the right, upon the notice required by Section 20.3 hereof, to purchase all, but not less than all, of the Units then leased hereunder upon the expiration of the Basic Term or upon the expiration of the first or second Renewal Term. The purchase price for such Units shall be: (i) upon the termination of the Basic Term, an amount equal to the then Fair Market Sales Value of such Units, but which amount shall not exceed fifty-one percent (51%) of the Equipment Cost thereof and shall not be less than forty-seven and one-half percent (47.5%) of the Equipment Cost thereof; (ii) upon the termination of the first Renewal Term, equal to the amount determined by multiplying the Equipment Cost of all such Units by thirty-six percent (36%); and (iii) upon the termination of the second Renewal Term, an amount equal to the then Fair Market Sales Value of all such Units which amount shall not exceed thirty-four percent (34%) of the Equipment Cost thereof. If the Lessee shall have exercised an option to purchase hereunder and the Lessor shall have received the Purchase Price, the Lessor shall convey to the Lessee at the end of the Basic Term, or at the end of the then current Renewal Term, as the case may be, all right, title and interest of the Lessor in and to the Units purchased on an "as-is, where-is" basis, without recourse or warranty except a warranty against Lessor's Liens. The Lessee agrees that it will make payment of the purchase price of the Units purchased under this Section 20.1 by electronic funds transfer, by Noon (New York time) on the due date of such payment, of Federal or otherwise immediately available funds.

*20.2 Automatic Renewal at Expiration of Basic Term; Automatic Renewal at Expiration of First Renewal Term; Basic Rent During any Renewal Term.* (a) If the Lessee does not exercise its purchase option upon the expiration of the Basic Term pursuant to Section 20.1 hereof or if the Lessee's purchase option is not consummated for any reason, the Head Lease shall be automatically renewed with respect to all but not less than all of the Units then subject to the Head Lease for one (1) noncancelable Renewal Term of two (2) years commencing on the Renewal Term Commencement Date for such Units.

(b) The Lessee shall have the right, upon the notice required by Section 20.3 hereof, to return all, but not less than all, of the Units then leased hereunder upon the expiration of the first Renewal Term to the Lessor in the condition required by Sections 6 and 7 hereof and otherwise in compliance with Section 14 hereof. If the Lessee does not exercise and consummate its return option upon the expiration of the first Renewal Term under this Section 20.2(b) and if the Lessee does not exercise and consummate its purchase option upon the expiration of the first Renewal Term pursuant to Section 20.1 hereof, the Head Lease shall be automatically renewed with respect to all but not less than all of the Units then subject to the Head Lease for one (1) noncancelable Renewal Term of two (2) years commencing on the Renewal Term Commencement Date for such Units.

In case the Head Lease is renewed under (a) or (b) above, all of the provisions of this Head Lease shall be applicable during any Renewal Term for such Units, except that the Stipulated Loss Values for such Units shall be determined in accordance with Section 20.5 hereof, and Basic Rent for such Units during any Renewal Term shall be Thirty-Two Thousand Three Hundred Fifty-Three and 75/100 Dollars (\$32,353.75) and shall be payable pursuant to Section 2.1(a)(ii) hereof.

*20.3 Lessee's Notice.* (a) The Lessee shall provide a notice to the Lessor no less than one-hundred fifty (150) days prior to the expiration of the Basic Term indicating whether the Lessee will exercise its purchase option pursuant to Section 20.1. In the event that such notice is not timely provided by the Lessee, then the Head Lease shall be automatically renewed pursuant to Section 20.2(a) hereof.

(b) The Lessee shall provide a notice to the Lessor no less than one-hundred fifty (150) days prior to the expiration of the first Renewal Term indicating whether the Lessee will exercise its purchase option pursuant to Section 20.1 or its return option pursuant to Section 20.2(b). In the event that both such notices are not timely provided by the Lessee, then the Head Lease shall be automatically renewed pursuant to Section 20.2(b) hereof.

(c) The Lessee shall provide a notice to the Lessor no less than one-hundred fifty (150) days prior to the expiration of the second Renewal Term indicating whether the Lessee will exercise its purchase option pursuant to Section 20.1. In the event that such notice is not timely provided by the Lessee, then Lessee will be deemed to have elected to return such Units to the Lessor in the condition required by Sections 6 and 7 hereof and otherwise in compliance with Section 14 hereof.

20.4 *Determination of Fair Market Sales Value.* Not more than one (1) year nor less than six (6) months prior to the expiration of the Basic Term for the Units or any Renewal Term then in effect for the Units, the Lessee may notify the Lessor that the Lessee desires a determination of the Fair Market Sales Value of such Units as of such expiration date. The Lessee's request for a determination of Fair Market Sales Value shall not obligate the Lessee to exercise any of the options provided in Sections 20.1 or 20.2 hereof.

20.5 *Stipulated Loss Value During any Renewal Term.* The Stipulated Loss Value of any Unit during any Renewal Term shall be determined on the basis of the Fair Market Sales Value of such Unit as of the first day of such Renewal Term, reduced in equal monthly increments to the estimated Fair Market Sales Value of such Unit as of the last day of such Renewal Term.

20.6 *Re-delivery of Equipment.* Unless the Lessee has elected to exercise its purchase option in respect of such Units as provided in Section 20.1 hereof, the Lessee, at its sole cost and expense shall return such Units to the Lessor at the end of the applicable Renewal Term in the condition required by Sections 6 and 7 hereof and otherwise in compliance with Section 14 hereof.

#### **SECTION 21. INTEREST ON OVERDUE RENT.**

Notwithstanding anything to the contrary contained herein, any nonpayment of Rent due hereunder shall result in the additional obligation on the part of the Lessee to pay as Supplemental Rent an amount equal to interest at the Late Rate for the period of time during which such Rent is overdue and not paid.

#### **SECTION 22. LESSEE'S INDEMNITIES.**

##### *22.1 General Tax Indemnity.*

(a) *Indemnitee Defined.* For purposes of this Section 22.1, "Indemnitee" means the Lessor and each of its Affiliates, successors, transferees or assigns permitted under the terms of the Operative Agreements.

(b) *Taxes Indemnified.* Whether or not any Unit is accepted under the Head Lease, or a closing occurs with respect thereto, and subject to the exclusions stated in subsection (c) below, the Lessee agrees to pay to and indemnify, defend and hold harmless each Indemnitee for its own account on an After-Tax Basis against, all Taxes, howsoever imposed (whether imposed upon any Indemnitee, the Lessee, all or any part of the Equipment or otherwise), by any federal, state or local government, political subdivision, or taxing authority in the United States, by any government or taxing authority of or in a foreign country or of or in a territory or possession of the United States, or by any international authority, upon or with respect to or in connection with, based upon or measured by, in whole or in part:

(i) the Equipment or any part of any of the Equipment or interest therein;

(ii) the acquisition, modification, manufacture, remanufacture, financing, refinancing, ownership, delivery, leasing, subleasing, possession, use, storage, operation, return, transfer of title, maintenance, repair or sale of or with respect to the Equipment, or any part of any of the Equipment or interest therein;

(iii) the rentals, receipts, income or earnings arising from the acquisition, modification, manufacture, substitution, replacement, delivery, leasing, subleasing, possession, use, storage, location, control, operation, return, transfer of title, maintenance, repair or sale of or with respect to the Equipment or any part of any of the Equipment or interest therein or any amounts paid or payable pursuant to any of the Operative Agreements or any document related thereto or the recordation, filing, or delivery for such purposes of any statement, certificate, document or instrument; or

(iv) the Operative Agreements or amendments or supplements thereto, their execution, issuance or subsequent transfer or the transactions contemplated thereby.

(c) *Taxes Excluded.* The indemnity provided for in Section 22.1(b) above shall not extend to any of the following:

(i) Taxes on, based on, or measured by or with respect to the gross or net income, receipts, capital, net worth or conduct of business of such Indemnitee (including any franchise taxes, minimum or alternative minimum Taxes and any Taxes on or measured by items of tax preference but excluding any sales, use, property or rental Taxes) ("*Income Taxes*") except Indemnified Foreign Income Taxes;

(ii) Taxes imposed by a foreign government or foreign taxing authority to the extent such Income Taxes exceed the portion of such Income Taxes that such government or authority imposes on the transactions contemplated by the Operative Agreements as the result of the location, operation, use, leasing or rental in its jurisdiction of any Unit or the location in its jurisdiction of the Lessee or any sublessee (to that extent, "*Indemnified Foreign Income Taxes*");

(iii) With respect to any Unit, Taxes relating to such Unit for any period following the expiration of the Lease Term with respect to such Unit, or early termination of the Head Lease with respect to such Unit and return of such Unit by the Lessee in accordance with the terms of the Head Lease;

(iv) Taxes which arise out of or are caused by any breach by an Indemnitee of any of its representations, warranties or covenants in any of the Operative Agreements, or the gross negligence or willful misconduct of such Indemnitee;

(v) Taxes to the extent such Taxes result from the failure of such Indemnitee to file tax returns, reports or statements properly and on a timely basis (unless such failure is caused by the failure of the Lessee to perform properly and on a timely basis its obligations under Section 22.1);

(vi) Taxes which become payable by reason of any transfer by such Indemnitee of all or any portion of its interest in the Equipment or any part thereof, other than a transfer (A) attributable to the exercise of remedies as a result of a Lease Event of Default (but, as to the Lessor, excluding net income taxes if amounts received by the Lessor equal or exceed Stipulated Loss Value), (B) pursuant to an Event of Loss (but, as to the Lessor, excluding net income taxes if amounts received by the Lessor equal or exceed Stipulated Loss Value), or (C) attributable to the exercise of a purchase option by the Lessee (but excluding Income Taxes); or

(vii) Taxes for which the Lessee is obligated to indemnify the Lessor pursuant to Section 12 hereof.

(d) *Procedures.* Any amount payable to an Indemnitee pursuant to this Section 22.1 shall be paid within 30 days after receipt of a written demand therefor from such Indemnitee accompanied by a written statement describing in reasonable detail the basis for such indemnity and the computation of the amount so payable, provided that such amount need not be paid prior to the earliest of (i) Noon, New York time on the date on which such Taxes are paid, or (ii) in the case of any verification requested pursuant to this Section 22.1(d), the date of completion of such verification. Within 15 days following the Lessee's receipt of the computation of the amount of the indemnity, the Lessee may request that an accounting firm to be jointly selected by such Indemnitee and reasonably acceptable to Lessee determine whether such computations of the Indemnitee are correct. Such accounting firm shall make the determination contemplated by this Section 22.1(d) within 30 days of its selection. The computations of such accounting firm shall be final, binding and conclusive upon the parties and the Lessee shall have no right to inspect the books, records or tax returns of the Indemnitee to verify such computation or for any other purpose. All fees and expenses of the accountant payable under this Section 22.1(d) shall be borne by the Lessee unless the correct amount is less than 95% of the amount proposed by the Indemnitee, in which event such fees and expenses will be borne by the Indemnitee.

(e) *Repayments.* If any Indemnitee obtains a return or refund of all or any part of any Tax paid by Lessee, such Indemnitee shall pay Lessee, but not before Lessee makes all payments theretofore due to such Indemnitee pursuant to this Section 22.1 and any other payments theretofore due such Indemnitee under any Operative Agreement, an amount equal to the amount of such refund, including interest received attributable thereto, plus any net Tax benefit (or minus any net tax detriment) realized by such Indemnitee as a result of any refund received and payment by such Indemnitee made pursuant to this sentence. If any Indemnitee pays Lessee any refund of all or part of any Tax paid by Lessee and it is subsequently determined that such Indemnitee was not entitled to the refund, such determination shall be treated as the

imposition of a Tax for which Lessee is obligated to indemnify such Tax Indemnitee pursuant to the provisions of this Section 22.1.

(f) *Reports.* Lessee will provide, within a reasonable time, such information as may be reasonably requested by an Indemnitee or required to enable an Indemnitee to timely and properly fulfill its tax and other filing requirements with respect to the transactions contemplated by the Operative Agreements. If any report, return or statement is required to be filed with respect to any Tax that is subject to indemnification under this Section 22.1, Lessee shall timely file the same (except for any such report, return or statement which the Indemnitee is required by law to file in its own name).

(g) *Payment.* Lessee shall pay any Tax for which it is liable pursuant to this Section 22.1 directly to the appropriate taxing authority or upon demand of an Indemnitee to such Indemnitee on demand, but in no event more than five Business Days before the date such Tax is due, in immediately available Dollars. Any such demand for payment from an Indemnitee shall specify in reasonable detail the payment and the facts upon which the right to payment is based. Each Indemnitee shall promptly (and in any event within 15 days) forward to Lessee any notice, bill or advice in the nature of a notice or bill received by it concerning any Tax. As soon as practicable after each payment by Lessee of any Tax, Lessee shall furnish the appropriate Indemnitee the original or a certified copy of a receipt for Lessee's payment of such Tax or such other evidence of payment of such Tax as is reasonably acceptable to such Indemnitee. Lessee shall also furnish promptly upon request such data as is available to the Lessee in the ordinary course of its business operations and not otherwise available to such Indemnitee which such Indemnitee may require to enable such Indemnitee to comply with the requirements of any taxing jurisdiction.

(h) *Withholding Tax on Rent.* Any payment by Lessee of Rent to an Indemnitee or other amounts to be paid by Lessee to any Indemnitee hereunder shall be made free and clear of and without deduction or withholding for or on account of any and all Taxes imposed by any government of or any political subdivision or taxing authority of any country or any political subdivision thereof or any international taxing authority, unless Lessee is compelled by law to withhold or deduct such Taxes from such payments (such requirement shall not negate any exclusion set forth in Section 22.1(d) hereof), in which event Lessee shall pay to such Indemnitee such additional amounts as may be necessary or ensure that, after such deduction or withholding, such Indemnitee receives the full amount it would have received had payment not been subject to any such Taxes. If any Indemnitee is required to execute any form or document in order for payments to it to qualify for exemption from, or reduction of, withholding tax imposed by any Taxing Authority with respect to such payments, such Indemnitee shall execute such form or document and deliver it in accordance with applicable regulations to qualify for such exemption or reduction.

(i) *Scope, Termination and Survival.* All indemnities, obligations, adjustments and payments provided for in this Section 22.1 shall, to the extent herein provided, survive, and remain in full force and effect, notwithstanding the expiration or other termination of this Participation Agreement or any other Operative Agreement and the payment of full of all sums payable under the Operative Agreements.

22.2 *General Indemnification and Waiver of Certain Claims.*

(a) *Claims Defined.* For the purposes of this Section 22.2, "Claims" shall mean any and all costs, liabilities (including those based on negligence or strict or absolute liability without fault in tort or otherwise), losses, damages, penalties, actions, judgments, causes of action, suits and other legal proceedings of whatever nature or claims which may be imposed on, incurred by, suffered by, or asserted against an Indemnified Person, as defined herein, including, without limitation, under the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, (including without limitation Claims arising out of death, personal injury or property damage or other loss or harm to any Person whatsoever, including without limitation any passengers, shippers or other persons wherever located, and Claims relating to any laws, rules or regulations pertaining to such operation, possession, use, maintenance, overhaul or testing, including environmental control, noise and pollution laws, rules or regulations), and, except as otherwise expressly provided in this Section 22.2, shall include, but not be limited to, all reasonable out-of-pocket costs, disbursements and expenses (including reasonable legal fees and expenses) paid or incurred by an Indemnified Person in connection therewith.

(b) *Indemnified Person Defined.* For the purposes of this Section 22.2, "Indemnified Person" means the Lessor and each of its agents, servants, successors, transferees or assigns permitted under the terms of the Operative Agreements, provided that as a condition of any obligations of Lessee to pay any indemnity or perform any action under this Section 22.2 with respect to any persons who are not signatories hereto, such persons at the written request of Lessee shall expressly agree in writing to be bound by all the terms of this Section 22.2.

(c) *Claims Indemnified.* Whether or not any Unit is accepted under the Head Lease, or a closing occurs with respect thereto, whether or not indemnified pursuant to any other Operative Agreement and whether or not the transactions contemplated hereunder are consummated and whether or not the Head Lease has terminated or expired, and subject to the exclusions stated in subsection (d) below, Lessee agrees to indemnify, defend and hold harmless each Indemnified Person on an After-Tax Basis against Claims resulting from or arising out of:

(i) the operation, possession, use, maintenance, improvement, modification, sublease, return, storage, disposition, repair, overhaul, financing, mortgaging, sale, ownership, lease, rental, preparation, installation, non-use, condition, restoration, abandonment, dismantling, application, disposition, transfer, testing or registration of the Equipment, or any Unit or any Part thereof by the Lessee, any sublessee or any other Person whatsoever, whether or not such operation, possession, use, maintenance, improvement, modification, sublease, return, storage, disposition, repair, overhaul, financing, mortgaging, sale, ownership, lease, rental, preparation, installation, non-use, condition, restoration, abandonment, dismantling, application, disposition, transfer or testing or registration is in compliance with the terms of the Head Lease;

(ii) the manufacture, construction, assembly, acquisition, design, purchase, acceptance, rejection, delivery or condition of the Equipment or any

Unit or any Part thereof, including, without limitation, latent and other defects, whether or not discoverable, and patent, trademark or copyright infringement;

(iii) any breach of or failure to perform or observe, or any other non-compliance with, any covenant, condition or agreement to be performed, or other obligation of Lessee under any of the Operative Agreements and any amendments, modifications, consents or supplements to any thereof, or the falsity of any representation or warranty of the Lessee in any of the Operative Agreements or in any document or certificate delivered in connection therewith;

(iv) the imposition of any Lien (or incurrence of any liability to refund or pay over any amount as a result of the Lien) on the Equipment, any Unit or any Part thereof or any interest therein;

(v) any violation of applicable laws, rules, regulations or orders, including environmental laws, securities laws and ERISA; or

(vi) any Lease Event of Default under the Head Lease.

Without limiting the generality of the foregoing, this indemnity shall apply to any claim or penalty arising from (A) violations of laws, or in tort (by application of the doctrine of strict liability or otherwise), (B) the active or passive negligence of any Indemnitee, (C) latent or other defects, whether or not discoverable by such indemnitee, Lessee or any other Person, (D) loss of or damage to any property or the environment, (E) hazardous materials or any other waste, and (F) death of or injury to any Person.

(d) *Claims Excluded.* The following are excluded from the Lessee's agreement to indemnify under this Section 22.2:

(i) Claims attributable to acts or events occurring after (A) with respect to the exercise by Lessee of a purchase option under Section 20 of the Head Lease or the occurrence of an Event of Loss under Section 11 of the Head Lease with respect to any Units, the last to occur of (x) the passage of title of such Units and (y) the payment of all amounts due from the Lessee in connection with any such event or (B) in all other cases, the last to occur of (x) with respect to each Unit, the earlier to occur of the termination of the Head Lease or the expiration of the Head Lease Term of the Head Lease or (y) with respect to each Unit, the return of such Unit to the Lessor in accordance with the terms of the Head Lease it being understood that so long as any Unit is in storage as provided in Section 14.1 of the Head Lease, the date of return thereof for purposes of this clause (i) shall be the earlier of the actual return thereof or the expiration of the 90-day free storage period);

(ii) with respect to any Indemnified Person, Claims which are Taxes, whether or not the Lessee is required to indemnify therefor under Section 22.1 hereof;

(iii) with respect to any Indemnified Person, Claims attributable to the gross negligence or willful misconduct of, or to the breach of any contractual obligation by, or the falsity or inaccuracy of any representation or warranty of, such Indemnified Person under any Operative Agreement to which such Indemnified Person is a party, other than to the extent such gross negligence or willful misconduct was imputed to such Indemnified Person as a result of its ownership of the Equipment, any Unit or any Part thereof or as a result of Lessee acting on behalf of such Indemnitee; or

(iv) with respect to any Indemnified Person, Claims attributable to any breach by such Indemnified Person of the warranty of quiet enjoyment set forth in Section 7 hereof; or

(v) with respect to the Lessor, any transfer by the Lessor of any interest in the Equipment (other than in connection with the exercise of a remedy under the Head Lease upon the occurrence of a Lease Event of Default and other than any transfer in connection with a Event of Loss or upon the exercise by Lessee of any option pursuant to Section 11 or Section 20 of the Head Lease); or

(vi) with respect to any Indemnified Person, Claims to the extent attributable to transactions or business activities or such Indemnified Person not related to the Operative Agreements or the transactions contemplated thereby.

(e) *Insured Claims.* In the case of any Claim indemnified by the Lessee hereunder which is covered by a policy of insurance maintained by the Lessee pursuant to Section 10 of the Head Lease or otherwise, each Indemnified Person agrees to provide reasonable cooperation to the insurers in the exercise of their rights to investigate, defend or compromise such Claim as may be required to retain the benefits of such insurance with respect to such Claim.

(f) *Claims Procedure.* An Indemnified Person shall promptly notify the Lessee of any Claim as to which indemnification is sought, provided, however, that the failure to give such notice shall not release the Lessee from any of its obligations under this Section 22, except to the extent that such failure to give notice shall have materially impair Lessee's ability to defend such claim. Subject to the rights of insurers under policies of insurance maintained by the Lessee, the Lessee shall have the right in each case at the Lessee's sole expense to investigate, and the right in its sole discretion to defend or compromise any Claim for which indemnification is sought under this Section 22.2, provided that at such time (i) no Lease Event of Default shall have occurred and be continuing, (ii) such proceeding will not, in the reasonable opinion of counsel to such Indemnitee, involve a risk to such Indemnified Person or any Affiliate thereof of criminal liability or any material risk to such Indemnified Person or any Affiliate thereof of (x) claims not fully indemnified against by Lessee, or (y) the sale, forfeiture or loss of, or the creation of any Lien (other than any Permitted Lien) on, all or any part of the Equipment; and

(iii) control of such proceeding by Lessee will not, in the reasonable opinion of such Indemnified Person, be inappropriate under applicable standards of legal professional conduct due to actual or potential conflicting interests between them. If any action, suit or proceeding is brought against any Indemnified Person in connection with any Claim, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense (subject to Lessee's right to settle or compromise any such clause) resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and reasonably acceptable to such Indemnified Person and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. Nothing contained in this Section 22.2(f) shall be deemed to require an Indemnified Person to contest any Claim or to assume responsibility for or control of any judicial proceeding with respect thereto. Notwithstanding the foregoing, any Indemnified Person shall have the right to employ separate counsel in such action and participate therein, and the fees and expenses of such counsel shall be at the expense of the Lessee if (A) the employment of counsel has been specifically authorized by Lessee, or (B) the named parties to such action (including any impleaded parties) include both such Indemnified Person and Lessee and representation by the same counsel would be inappropriate under applicable standards of professional conduct due to actual or potential conflicting interest between them.

(g) *Subrogation.* To the extent that a Claim indemnified by the Lessee under this Section 22.2 is in fact fully paid by the Lessee and/or an insurer under a policy of insurance maintained by the Lessee, the Lessee and/or such insurer as the case may be shall be subrogated to the extent of such payment to the rights and remedies of the Indemnified Person (other than under insurance policies maintained by such Indemnified Person) on whose behalf such Claim was paid with respect to the transaction or event giving rise to such Claim. Should an Indemnified Person receive any refund, in whole or in part, with respect to any Claim fully and finally paid by the Lessee hereunder, it shall promptly pay over the amount refunded to the Lessee.

(h) *Waiver of Certain Claims.* The Lessee hereby waives and releases any Claim now or hereafter existing against any Indemnified Person arising out of death or personal injury to personnel of the Lessee, loss or damage to property of the Lessee, or the loss of use of any property of the Lessee, which may result from or arise out of the condition, use or operation of the Equipment during the Lease Term, including without limitation any latent or patent defect whether or not discoverable.

## **SECTION 23. FINANCIAL AND OTHER REPORTS AND COVENANTS OF THE LESSEE.**

23.1 *Reports.* The Lessee agrees that it will furnish directly to the Lessor the following:

(a) Unless included in Form 10K, as soon as available and in any event within one hundred twenty (120) days after the last day of each fiscal year, the annual audited financial statements of the Lessee, including balance sheets, and related statements of income and retained earnings and statement of cash flows, for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in

accordance with GAAP, which statements will have been certified by a firm of independent public accountants of recognized national standing selected by the Lessee; and

(b) As soon as available, one copy of each Annual Report on Form 10-K (or any successor form) and Form 8-K (or any successor form) filed by Lessee with the Securities and Exchange Commission or any successor agency and, so long as Lessee is a public company, such information as is sent by it to its shareholders generally.

23.2 *Maintenance of Existence.* The Lessee covenants that it shall at all times maintain its corporate existence and all franchises and qualifications in good standing, *provided*, that the foregoing shall not limit the right of Lessee (a) to merge or consolidate with or into any Person, or (b) to cause or permit any Person to merge or consolidate with or into Lessee, and *provided further that* (i) such assignee or transferee shall have expressly assumed the obligations of the Lessee under the Operative Agreements, (ii) upon the effectiveness of such merger, consolidation, or acquisition, no Lease Default or Lease Event of Default shall have occurred and be continuing, (iii) such assignee or transferee (after giving effect to such merger or acquisition) shall have a net worth not less than the net worth of the Lessee immediately prior to such merger, consolidation or acquisition, and (iv) Lessee shall pay all of Lessor's reasonable out-of-pocket expenses incurred in connection with such merger, consolidation, or acquisition.

23.3 *Compliance With Law.* The Lessee shall at all times comply in all material respects with any law, rule, regulation, order or decree applicable to Lessee or its operations or properties, except to the extent that failure to comply would not reasonably be expected to have a Material Adverse Effect, *provided*, that Lessee may in good faith and by appropriate proceedings contest the validity or application of any such law, rule, regulation, order or decree as provided in this Head Lease.

#### SECTION 24. TRANSFER OF LESSOR'S INTEREST.

Lessor may transfer or assign all or any part of its interest in this Head Lease and/or the Equipment without the consent of Lessee. In connection with any such transfer or assignment, such assignee or transferee shall have expressly assumed in writing pursuant to an assumption agreement, in form and substance reasonably acceptable to Lessee, the due and punctual performance and observance of all of the covenants and obligations of Lessor under this Head Lease and the other Operative Agreements. Notwithstanding any other provision contained herein or in any other Operative Agreement, the restrictions and conditions set forth in this Section 24 shall not apply in the event that an Event of Default shall have occurred and be continuing under this Head Lease.

#### SECTION 25. MISCELLANEOUS.

25.1 *Notices.* Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail and courier service, (b)

in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of notice by such a telecommunications device, upon confirmation of receipt thereof (if sent during business hours on a Business Day, or otherwise on the next succeeding Business Day), in each case addressed to each party hereto at its address set forth below or, in the case of any such party hereto, at such other address as such party may from time to time designate by written notice to the other parties hereto:

If to the Lessor:

KeyCorp Leasing Ltd.  
54 State Street  
Albany, New York 12207  
Attention: Leveraged Lease Manager  
Fax No.: (518) 486-8172  
Confirmation No.: (518) 487-4462

with a copy to:

KeyCorp Leasing Ltd.  
54 State Street  
Albany, New York 12207  
Attention: General Counsel  
Fax No.: (518) 487-4683  
Confirmation No.: (518) 487-4464

Payment Instructions:

Key Bank USA N.A.  
54 State Street  
Albany, New York 12207  
ABA Number: 021311192  
For credit to: KeyCorp Leasing Ltd.  
Attention: Dave Halverson  
Confirmation No.: (518) 486-8484  
Reference: Chicago Central & Pacific Railroad Company

If to the Lessee:

Chicago Central & Pacific Railroad Company  
402 East 4th Street  
Waterloo, Iowa 50704  
Attention: President  
Fax No.: (319) 292-3313  
Confirmation No.: Phone: (319) 236-9200

25.2 *Execution in Counterparts.* This Head Lease, and any amendment or supplement hereto, shall be delivered in New York and may be executed in any number of counterparts, each executed counterpart constituting an original, and in each case such counterparts shall constitute but one and the same instrument; *provided, however*, that to the extent that this Head Lease constitutes chattel paper (as such term is defined in the Uniform Commercial Code ("*UCC*")), no security interest in this Head Lease may be created through the transfer or possession of any counterpart hereof other than the counterpart bearing the receipt therefor executed by the Lessor on the signature page hereof, which counterpart shall constitute the only "original" hereof for purposes of the UCC.

25.3 *Governing Law; Severability.* This Head Lease, as extended, amended, modified, renewed or supplemented, shall be governed by and construed in accordance with the internal laws and decisions (as opposed to conflicts of law provisions) of the State of New York; *provided, however*, that the parties shall be entitled to all rights conferred by any applicable Federal statute, rule or regulation. Whenever possible, each provision of this Head Lease shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Head Lease shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Head Lease.

25.4 *Headings and Table of Contents.* The headings of the sections of this Head Lease and the Table of Contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

25.5 *Successors and Assigns.* This Head Lease shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and permitted assigns.

25.6 *True Lease.* It is the intent of the parties to this Head Lease that it will be a true lease and not a "conditional sale," and that the Lessor shall at all times be considered to be the owner of each Unit which is the subject of this Head Lease for the purposes of all Federal, state, city and local income taxes or for franchise taxes measured by net income, and that this Head Lease conveys to the Lessee no right, title or interest in any Unit except as lessee. To the extent that Article 2A ("*Article 2A*") of the UCC applies to the characterization of this Head Lease, the parties hereby agree that this Head Lease is a "Finance Lease" as defined therein. Lessee acknowledges: (i) that Lessee has selected the "Supplier" (as defined in the UCC) and has directed Lessor to purchase the Equipment from the Supplier in connection with this Head Lease, and (ii) that Lessee has been informed in writing in this Head Lease, before Lessee's execution of this Head Lease, that Lessee is entitled under Article 2A to the promises and warranties, including those of any third party, provided to Lessor by the Supplier, and that Lessee may communicate with the Supplier and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

25.7 *Amendments and Waivers.* No term, covenant, agreement or condition of this Head Lease may be terminated, amended or compliance therewith waived (either generally or in a particular instance, retroactively or prospectively) except by an instrument or instruments in

writing executed by each party hereto; *provided, however*, any breach or default, once waived in writing, shall not be deemed continuing for any purpose of the Operative Agreements.

25.8 *Survival*. All warranties, representations, indemnities and covenants made by any party hereto, herein or in any certificate or other instrument delivered by any such party or on the behalf of any such party under this Head Lease, shall be considered to have been relied upon by each other party hereto and shall survive the consummation of the transactions contemplated hereby on any Closing Date regardless of any investigation made by any such party or on behalf of any such party.

25.9 *1168 Matters*. Notwithstanding any provision herein to the contrary, it is intended, as between Lessor and Lessee that the transactions contemplated by this Head Lease are intended to be entitled to the full benefits of Section 1168 of the Bankruptcy Code. Without limiting the generality of the foregoing, Lessor and Lessee acknowledge that this Head Lease is a "lease" of rolling stock equipment and accessories within the meaning of Section 1168 of the Bankruptcy Code. To the extent permitted by law, so long as Section 1168 is in effect, Lessee agrees that it will not, in connection with any bankruptcy proceedings involving Lessee, take a position in the United States Bankruptcy Court that is inconsistent with the rights of Lessor under Section 1168.

IN WITNESS WHEREOF, the parties hereto have caused this Equipment Lease Agreement to be executed by their respective officers thereunder duly authorized as of the day and year first above written.

Lessor:

KEYCORP LEASING LTD.

By 

Name: David M. Churchill  
Title: Senior Vice President

Lessee:

CHICAGO CENTRAL & PACIFIC RAILROAD COMPANY

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

Name:  
Title:

STATE OF NEW YORK            )  
  ) ss.:  
COUNTY OF ALBANY            )

On this 25 day of October, 1994, before me the subscriber personally appeared David M. Churchill, to me personally known, who being by me duly sworn, says that he is the Senior Vice President of KEYCORP LEASING LTD., that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledges that the execution of the foregoing instrument was the free act and deed of said corporation.

Mark P. Maraglio  
NOTARY PUBLIC

My Commission Expires: March 30, 1995

**MARK P. MARAGLIO**  
Notary Public, State of New York  
No. 4643412  
Qualified in Greene County  
Commission Expires March 30, 1995

IN WITNESS WHEREOF, the parties hereto have caused this Equipment Lease Agreement to be executed by their respective officers thereunder duly authorized as of the day and year first above written.

Lessor: KEYCORP LEASING LTD.

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

Lessee: CHICAGO CENTRAL & PACIFIC RAILROAD COMPANY

By: R. Kevin Trout  
Name: R. Kevin Trout  
Title: Chief Financial Officer

STATE OF Iowa )  
 ) ss  
COUNTY OF Blackhawk )

On this 24<sup>th</sup> day of October, 1994 before me personally appeared R. Kevin Grant, to me personally known, who being by me duly sworn, says that he/she is Chief Financial Officer of CHICAGO CENTRAL & PACIFIC RAILROAD COMPANY, a Delaware corporation, that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and he/she acknowledges that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

My Commission Expires: 10-10-97

[SEAL]

Manufacturer	Chicago Central & Pacific Railroad Road Number	Sequential Number
	CC 40157	80
	CC 40158	81
	CC 40162	82
	CC 40163	83
	CC 40164	84
	CC 40166	85
	CC 40168	86
	CC 40169	87
	CC 40170	88
	CC 40176	89
	CC 40178	90
	CC 40181	91
	CC 40182	92
	CC 40184	93
	CC 40185	94
	CC 40187	95
	CC 40189	96
	CC 40194	97
	CC 40195	98
	CC 40197	99
	CC 40198	100
	CC 40201	101
	CC 40202	102
	CC 40203	103
	CC 40205	104
	CC 40207	105
	CC 40208	106
	CC 40209	107
	CC 40211	108
	CC 40212	109
	CC 40216	110

Manufacturer	Chicago Central & Pacific Railroad Road Number	Sequential Number
	CC 40076	38
	CC 40078	39
	CC 40081	40
	CC 40082	41
	CC 40085	42
	CC 40088	43
	CC 40089	44
	CC 40091	45
	CC 40093	46
	CC 40094	47
	CC 40097	48
	CC 40098	49
	CC 40099	50
	CC 40101	51
	CC 40102	52
	CC 40103	53
	CC 40104	54
	CC 40105	55
	CC 40107	56
	CC 40109	57
	CC 40110	58
	CC 40111	59
	CC 40113	60
	CC 40114	61
	CC 40115	62
	CC 40118	63
	CC 40119	64
	CC 40120	65
	CC 40122	66
	CC 40125	67
	CC 40126	68
	CC 40127	69
	CC 40131	70
	CC 40135	71
	CC 40136	72
	CC 40138	73
	CC 40141	74
	CC 40142	75
	CC 40148	76
	CC 40152	77
	CC 40154	78
	CC 40155	79

**SCHEDULE I**

<b>Manufacturer</b>	<b>Chicago Central &amp; Pacific Railroad Road Number</b>	<b>Sequential Number</b>
Trinity Industries, Inc.	CC 40002	1
	CC 40004	2
	CC 40010	3
	CC 40011	4
	CC 40016	5
	CC 40017	6
	CC 40018	7
	CC 40019	8
	CC 40021	9
	CC 40022	10
	CC 40023	11
	CC 40024	12
	CC 40029	13
	CC 40030	14
	CC 40031	15
	CC 40033	16
	CC 40034	17
	CC 40036	18
	CC 40038	19
	CC 40046	20
	CC 40047	21
	CC 40048	22
	CC 40051	23
	CC 40053	24
	CC 40054	25
	CC 40056	26
	CC 40057	27
	CC 40058	28
	CC 40059	29
	CC 40060	30
	CC 40062	31
	CC 40064	32
	CC 40067	33
	CC 40068	34
	CC 40069	35
	CC 40070	36
	CC 40071	37

**SCHEDULE 2**

**BASIC RENT**

Equipment Cost

Aggregate: \$3,575,000  
Per Unit: \$32,500

Lease Rate Factor

.9050%

KEYCORP LEASING LTD.  
STIPULATED LOSS SCHEDULE

AFTER PAYMENT #	MO	YR	STIP LOSS AMOUNT DUE	
0	10	1994	110.00%	+ TAX IF APPLICABLE
1	11	1994	109.67%	+ TAX IF APPLICABLE
2	12	1994	109.34%	+ TAX IF APPLICABLE
3	1	1995	109.01%	+ TAX IF APPLICABLE
4	2	1995	108.67%	+ TAX IF APPLICABLE
5	3	1995	108.34%	+ TAX IF APPLICABLE
6	4	1995	108.00%	+ TAX IF APPLICABLE
7	5	1995	107.66%	+ TAX IF APPLICABLE
8	6	1995	107.31%	+ TAX IF APPLICABLE
9	7	1995	106.97%	+ TAX IF APPLICABLE
10	8	1995	106.62%	+ TAX IF APPLICABLE
11	9	1995	106.27%	+ TAX IF APPLICABLE
12	10	1995	105.92%	+ TAX IF APPLICABLE
13	11	1995	105.57%	+ TAX IF APPLICABLE
14	12	1995	105.21%	+ TAX IF APPLICABLE
15	1	1996	104.86%	+ TAX IF APPLICABLE
16	2	1996	104.50%	+ TAX IF APPLICABLE
17	3	1996	104.13%	+ TAX IF APPLICABLE
18	4	1996	103.77%	+ TAX IF APPLICABLE
19	5	1996	103.40%	+ TAX IF APPLICABLE
20	6	1996	103.03%	+ TAX IF APPLICABLE
21	7	1996	102.66%	+ TAX IF APPLICABLE
22	8	1996	102.29%	+ TAX IF APPLICABLE
23	9	1996	101.92%	+ TAX IF APPLICABLE
24	10	1996	101.54%	+ TAX IF APPLICABLE
25	11	1996	101.16%	+ TAX IF APPLICABLE
26	12	1996	100.78%	+ TAX IF APPLICABLE
27	1	1997	100.39%	+ TAX IF APPLICABLE
28	2	1997	100.00%	+ TAX IF APPLICABLE
29	3	1997	99.61%	+ TAX IF APPLICABLE
30	4	1997	99.22%	+ TAX IF APPLICABLE
31	5	1997	98.83%	+ TAX IF APPLICABLE
32	6	1997	98.43%	+ TAX IF APPLICABLE
33	7	1997	98.03%	+ TAX IF APPLICABLE
34	8	1997	97.63%	+ TAX IF APPLICABLE
35	9	1997	97.23%	+ TAX IF APPLICABLE
36	10	1997	96.82%	+ TAX IF APPLICABLE
37	11	1997	96.41%	+ TAX IF APPLICABLE
38	12	1997	96.00%	+ TAX IF APPLICABLE
39	1	1998	95.59%	+ TAX IF APPLICABLE
40	2	1998	95.17%	+ TAX IF APPLICABLE
41	3	1998	94.76%	+ TAX IF APPLICABLE
42	4	1998	94.33%	+ TAX IF APPLICABLE
43	5	1998	93.91%	+ TAX IF APPLICABLE
44	6	1998	93.49%	+ TAX IF APPLICABLE
45	7	1998	93.06%	+ TAX IF APPLICABLE
46	8	1998	92.62%	+ TAX IF APPLICABLE
47	9	1998	92.19%	+ TAX IF APPLICABLE

KEYCORP LEASING  
STIPULATED LOSS SCHEDULE

AFTER PAYMENT #	MO	YR	STIP LOSS AMOUNT DUE	
48	10	1998	91.75%	+ TAX IF APPLICABLE
49	11	1998	91.32%	+ TAX IF APPLICABLE
50	12	1998	90.87%	+ TAX IF APPLICABLE
51	1	1999	90.43%	+ TAX IF APPLICABLE
52	2	1999	89.98%	+ TAX IF APPLICABLE
53	3	1999	89.53%	+ TAX IF APPLICABLE
54	4	1999	89.08%	+ TAX IF APPLICABLE
55	5	1999	88.62%	+ TAX IF APPLICABLE
56	6	1999	88.16%	+ TAX IF APPLICABLE
57	7	1999	87.70%	+ TAX IF APPLICABLE
58	8	1999	87.24%	+ TAX IF APPLICABLE
59	9	1999	86.77%	+ TAX IF APPLICABLE
60	10	1999	86.30%	+ TAX IF APPLICABLE
61	11	1999	85.83%	+ TAX IF APPLICABLE
62	12	1999	85.36%	+ TAX IF APPLICABLE
63	1	2000	84.88%	+ TAX IF APPLICABLE
64	2	2000	84.40%	+ TAX IF APPLICABLE
65	3	2000	83.91%	+ TAX IF APPLICABLE
66	4	2000	83.43%	+ TAX IF APPLICABLE
67	5	2000	82.94%	+ TAX IF APPLICABLE
68	6	2000	82.44%	+ TAX IF APPLICABLE
69	7	2000	81.95%	+ TAX IF APPLICABLE
70	8	2000	81.45%	+ TAX IF APPLICABLE
71	9	2000	80.95%	+ TAX IF APPLICABLE
72	10	2000	80.44%	+ TAX IF APPLICABLE
73	11	2000	79.94%	+ TAX IF APPLICABLE
74	12	2000	79.43%	+ TAX IF APPLICABLE
75	1	2001	78.91%	+ TAX IF APPLICABLE
76	2	2001	78.39%	+ TAX IF APPLICABLE
77	3	2001	77.87%	+ TAX IF APPLICABLE
78	4	2001	77.35%	+ TAX IF APPLICABLE
79	5	2001	76.82%	+ TAX IF APPLICABLE
80	6	2001	76.29%	+ TAX IF APPLICABLE
81	7	2001	75.76%	+ TAX IF APPLICABLE
82	8	2001	75.22%	+ TAX IF APPLICABLE
83	9	2001	74.69%	+ TAX IF APPLICABLE
84	10	2001	74.14%	+ TAX IF APPLICABLE
85	11	2001	73.60%	+ TAX IF APPLICABLE
86	12	2001	73.05%	+ TAX IF APPLICABLE
87	1	2002	72.49%	+ TAX IF APPLICABLE
88	2	2002	71.94%	+ TAX IF APPLICABLE
89	3	2002	71.38%	+ TAX IF APPLICABLE
90	4	2002	70.82%	+ TAX IF APPLICABLE
91	5	2002	70.25%	+ TAX IF APPLICABLE
92	6	2002	69.68%	+ TAX IF APPLICABLE
93	7	2002	69.11%	+ TAX IF APPLICABLE
94	8	2002	68.53%	+ TAX IF APPLICABLE
95	9	2002	67.95%	+ TAX IF APPLICABLE
96	10	2002	67.37%	+ TAX IF APPLICABLE
97	11	2002	66.78%	+ TAX IF APPLICABLE
98	12	2002	66.19%	+ TAX IF APPLICABLE
99	1	2003	65.60%	+ TAX IF APPLICABLE
100	2	2003	65.00%	+ TAX IF APPLICABLE
101	3	2003	64.40%	+ TAX IF APPLICABLE

KEYCORP LEASING  
STIPULATED LOSS SCHEDULE

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AFTER PAYMENT #	MO	YR	STIP LOSS AMOUNT DUE	
102	4	2003	63.79%	+ TAX IF APPLICABLE
103	5	2003	63.18%	+ TAX IF APPLICABLE
104	6	2003	62.57%	+ TAX IF APPLICABLE
105	7	2003	61.95%	+ TAX IF APPLICABLE
106	8	2003	61.33%	+ TAX IF APPLICABLE
107	9	2003	60.71%	+ TAX IF APPLICABLE
108	10	2003	60.08%	+ TAX IF APPLICABLE
109	11	2003	59.45%	+ TAX IF APPLICABLE
110	12	2003	58.82%	+ TAX IF APPLICABLE
111	1	2004	58.18%	+ TAX IF APPLICABLE
112	2	2004	57.53%	+ TAX IF APPLICABLE
113	3	2004	56.89%	+ TAX IF APPLICABLE
114	4	2004	56.24%	+ TAX IF APPLICABLE
115	5	2004	55.58%	+ TAX IF APPLICABLE
116	6	2004	54.92%	+ TAX IF APPLICABLE
117	7	2004	54.26%	+ TAX IF APPLICABLE
118	8	2004	53.60%	+ TAX IF APPLICABLE
119	9	2004	52.92%	+ TAX IF APPLICABLE
120	10	2004	51.00%	+ TAX IF APPLICABLE

KEYCORP LEASING LTD.  
STIPULATED LOSS SCHEDULE

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AFTER PAYMENT #	MO	YR	STIP LOSS AMOUNT DUE	
121	11	2004	50.92%	+ TAX IF APPLICABLE
122	12	2004	50.31%	+ TAX IF APPLICABLE
123	1	2005	49.70%	+ TAX IF APPLICABLE
124	2	2005	49.08%	+ TAX IF APPLICABLE
125	3	2005	48.47%	+ TAX IF APPLICABLE
126	4	2005	47.84%	+ TAX IF APPLICABLE
127	5	2005	47.22%	+ TAX IF APPLICABLE
128	6	2005	46.59%	+ TAX IF APPLICABLE
129	7	2005	45.95%	+ TAX IF APPLICABLE
130	8	2005	45.32%	+ TAX IF APPLICABLE
131	9	2005	44.68%	+ TAX IF APPLICABLE
132	10	2005	44.03%	+ TAX IF APPLICABLE
133	11	2005	43.38%	+ TAX IF APPLICABLE
134	12	2005	42.73%	+ TAX IF APPLICABLE
135	1	2006	42.08%	+ TAX IF APPLICABLE
136	2	2006	41.42%	+ TAX IF APPLICABLE
137	3	2006	40.75%	+ TAX IF APPLICABLE
138	4	2006	40.09%	+ TAX IF APPLICABLE
139	5	2006	39.42%	+ TAX IF APPLICABLE
140	6	2006	38.74%	+ TAX IF APPLICABLE
141	7	2006	38.06%	+ TAX IF APPLICABLE
142	8	2006	37.38%	+ TAX IF APPLICABLE
143	9	2006	36.69%	+ TAX IF APPLICABLE
144	10	2006	36.00%	+ TAX IF APPLICABLE

KEYCORP LEASING LTD.  
STIPULATED LOSS SCHEDULE

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AFTER PAYMENT #	MO	YR	STIP LOSS AMOUNT DUE	
145	11	2006	35.98%	+ TAX IF APPLICABLE
146	12	2006	35.38%	+ TAX IF APPLICABLE
147	1	2007	34.73%	+ TAX IF APPLICABLE
148	2	2007	34.08%	+ TAX IF APPLICABLE
149	3	2007	33.42%	+ TAX IF APPLICABLE
150	4	2007	32.76%	+ TAX IF APPLICABLE
151	5	2007	32.10%	+ TAX IF APPLICABLE
152	6	2007	31.43%	+ TAX IF APPLICABLE
153	7	2007	30.75%	+ TAX IF APPLICABLE
154	8	2007	30.07%	+ TAX IF APPLICABLE
155	9	2007	29.38%	+ TAX IF APPLICABLE
156	10	2007	28.69%	+ TAX IF APPLICABLE
157	11	2007	28.00%	+ TAX IF APPLICABLE
158	12	2007	27.30%	+ TAX IF APPLICABLE
159	1	2008	26.59%	+ TAX IF APPLICABLE
160	2	2008	25.88%	+ TAX IF APPLICABLE
161	3	2008	25.16%	+ TAX IF APPLICABLE
162	4	2008	24.44%	+ TAX IF APPLICABLE
163	5	2008	23.71%	+ TAX IF APPLICABLE
164	6	2008	22.98%	+ TAX IF APPLICABLE
165	7	2008	22.24%	+ TAX IF APPLICABLE
166	8	2008	21.50%	+ TAX IF APPLICABLE
167	9	2008	20.75%	+ TAX IF APPLICABLE
168	10	2008	20.00%	+ TAX IF APPLICABLE