



RECORDATION NO. 18994-A, B+C  
FILED 1894

SEP 28 1994 10 AM

A PROFESSIONAL ASSOCIATION OF ATTORNEYS AT LAW INTERSTATE COMMERCE COMMISSION

4200 FIRST BANK PLACE  
601 SECOND AVENUE SOUTH  
MINNEAPOLIS, MINNESOTA 55402-4302  
612 339-6321 • FACSIMILE 612 338-0535

2100 MINNESOTA WORLD TRADE CENTER  
30 EAST SEVENTH STREET  
SAINT PAUL, MINNESOTA 55101-4901  
612 222-6321 • FACSIMILE 612 222-8905

Thomas J. Doyle

September 28, 1994

Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

LICENSING BRANCH  
SEP 28 10 03 AM '94  
OFFICE OF THE SECRETARY

Dear Secretary:

I have enclosed two originally executed counterparts and one copy of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a lease (with attachments), a primary document, dated May 20, 1994.

The names and addresses of the parties to the documents are as follows:

- Lessor: NorRail, Inc.  
308 12th Avenue South  
Buffalo, Minnesota 55313
- Lessee: The Indiana & Ohio Rail Corp.  
2856 Cypress Way  
Cincinnati, Ohio 45212

You may note that on the first page of the Lease Agreement itself, the reference to the Lessee is to "Indiana & Ohio Rail Corp." However, you will find that there are three attachments to the Lease Agreement, being a letter and Equipment Schedule No. 1 and Equipment Schedule No. 2. You will see that the letter corrects the Lessee's legal name to that of "The Indiana & Ohio Rail Corp." We request that this lease be indexed under that correct legal name of the Lessee.

*Celebrating 50 Years  
of Service to Our Clients*

*Counterparts - May 20, 1994*

Page Two  
Secretary, Interstate Commerce Commission  
September 21, 1994

A description of the equipment covered by the document follows:

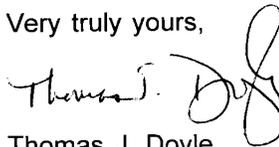
<u>Type of Equipment</u>	<u>Quantity</u>	<u>AAR Designation</u>	<u>Identifying Marks</u>
Pressure differential tank cars manufactured by Union Tank Car, 3000 cubic foot capacity	17		See attachment
Pressure differential tank cars manufactured by Union Tank Car, 3800 cubic foot capacity	4		See attachment

Pursuant to 49 C.F.R. §1177.3(c), we concurrently submit instruments of assignment that relate to the above-referenced lease. Accordingly, the fee of \$18.00 which is enclosed is for recordation of the above-referenced lease, and for recordation of the concurrently submitted instruments of assignment. Please return two originals of the lease, stamped to evidence recording, to the individual who tenders the lease for filing (or if you receive it by mail, to me at the address shown below my signature, below).

A short summary of the document to appear in the index follows: Master Lease Agreement dated May 20, 1994 between NorRail, Inc., 308 12th Avenue South, Buffalo, Minnesota 55313 as lessor, and The Indiana & Ohio Rail Corp., 2856 Cypress Way, Cincinnati, Ohio 45212 as lessee, covering 17 X 3000 cubic foot pressure differential tank cars and 4 X 3800 cubic foot pressure differential tank cars.

I have compared the enclosed copy of the Lease Agreement with the original of the Lease Agreement and found the copy to be complete and identical in all respects to the original document. I declare under penalty of perjury that the foregoing is true and correct.

Very truly yours,



Thomas J. Doyle  
4200 First Bank Place, 601 Second Avenue South  
Minneapolis, Minnesota 55402-4302

ATTACHMENT TO LETTER TO ICC

CAR NUMBERS

<u>Previous Car Number</u>	<u>New Car Number</u>
1. UTLX80220	1. INOX5005
2. UTLX80229	2. INOX5000
3. UTLX80205	3. INOX5001
4. UTLX80296	4. INOX5002
5. UTLX80230	5. INOX5003
6. UTLX80231	6. INOX5004
7. UTLX80213	7. INOH3303
8. UTLX80203	8. INOH3301
9. UTLX80236	9. INOH3302
10. UTLX80227	10. INOH3305
11. UTLX80219	11. INOH3304
12. UTLX80225	12. INOH3307
13. UTLX80285	13. INOH3308
14. UTLX80167	14. INOH3300
15. UTLX80239	15. INOH3310
16. UTLX80269	16. INOH3309
17. UTLX80298	17. INOH3306
18. UTLX80378	18. INOX5006
19. UTLX80389	19. INOX5007
20. UTLX80379	20. INOX5008
21. UTLX80380	21. INOX5009

LEASE NO. 1575

RECORDATION NO. **18994**  
FILED 1425  
SEP 28 1994 10 AM  
INTERSTATE COMMERCE COMMISSION

**NorRail, Inc.**  
**Master Lease Agreement**

This Lease Agreement is made the 20th day of May, 1994, between NorRail, Inc. with an office at 308 12th Avenue South, Buffalo, Minnesota 55313 ("NorRail") and Indiana & Ohio Rail Corp. with an office at 2856 Cypress Way, Cincinnati, OH 45212 ("Lessee"). The parties agree as follows:

**1. LEASE**

NorRail agrees to lease to Lessee, and Lessee agrees to lease from NorRail, the equipment ("Equipment") described in Equipment Schedule(s) referencing this Lease Agreement. Each Equipment Schedule shall constitute a separate lease. In the event of a conflict between the terms and conditions of this Lease Agreement and the terms and conditions of any Equipment Schedule or any amendment, addendum or rider thereto, the terms and conditions of such Equipment Schedule, amendment, addendum or rider shall prevail. Otherwise, the terms and conditions of this Lease Agreement apply as to each separate lease of Equipment from NorRail by Lessee. Any reference to "Lease" shall mean this Lease Agreement, the Equipment Schedule(s) and any amendments, addenda or riders thereto. Unless otherwise specifically indicated, any reference to a section or paragraph is to the identified section or paragraph of this Lease.

**2. DEFINITIONS**

- (a) **"Delivery Date"** means the date determined in accordance with the applicable Equipment Schedule.
- (b) **"Commencement Date"** means, as to all Equipment designated on any Equipment schedule, where the Delivery Date for the Item of Equipment (an Item of Equipment shall mean a quantity of one as described on such Equipment Schedule) last to be delivered falls on the first day of the month, that date, or in any other case, the first day of the month following the month in which the Item of Equipment last to be delivered is delivered.
- (c) **"Daily Rental"** means 1/30th of the amount set forth as the Monthly Rental for each Item of Equipment on the applicable Equipment Schedule.
- (d) **"Stipulated Loss Value"** means, as to each Item of Equipment, the value indicated on the Schedule of Stipulated Loss Value for that Item of Equipment

at the next rental payment date after the date of a "Total Loss" (as defined in Section 13(b), below).

Certain other terms are defined elsewhere in this Lease. Each term defined above or elsewhere in this Lease is used throughout this Lease, with the meaning given it in this Lease.

### **3. TERM OF LEASE**

The term of this Lease as to each Item of Equipment designated on any Equipment Schedule shall commence on the Delivery Date for such Item of Equipment and shall continue for an initial period ending that number of months from the Commencement Date as is specified on the applicable Equipment Schedule ("Initial Term"). The term of this Lease for all such Equipment shall be automatically extended for successive three-month periods until terminated by either party giving to the other not less than six months' prior written notice of termination. Any such termination shall be effective only on the last day of the Initial Term or the last day of any such successive period.

### **4. RENT AND OTHER AMOUNTS**

- (a) **Monthly Rental.** The basic monthly rental ("Monthly Rental") payable hereunder for each Item of Equipment is as set forth in the applicable Equipment Schedule. Monthly Rental for each Item of Equipment shall begin to accrue on the Delivery Date of such Item of Equipment and shall be due and payable by Lessee in advance on the first day of each month whether or not Lessee has received any notice that such payment is due. If the Delivery Date does not fall on the first day of the month, the rental for that period of time from the Delivery Date until the first day of the succeeding month shall be an amount equal to the Daily Rental multiplied by the number of days from (and including) the Delivery Date to (but not including) the first day of the succeeding month and shall be due and payable on the Delivery Date.
- (b) **Net Lease.** Each Equipment Schedule constitutes a net lease. Upon Lessee's acceptance as provided herein of Equipment identified on an Equipment Schedule, none of Lessee's obligations in this Lease or the said Schedule are subject to cancellation, termination, modification, repudiation, excuse or substitution without NorRail's written consent. As between NorRail and Lessee, Lessee shall be responsible for all costs and expenses of every nature whatsoever arising out of or in connection with or related to this Lease or the Equipment. The general obligation of the preceding sentence is not in any way limited by the fact that one or more provisions of this Lease specify particular costs or types of costs that must be paid, reimbursed or borne (directly or by liability for indemnification) by Lessee. If Lessee fails to pay or perform any

obligation under this Lease, NorRail may, at its option, pay or perform the obligation. Any payment so made or expense so incurred by NorRail shall become additional rent, in addition to Monthly or Daily Rental due, and shall be due and payable by Lessee upon demand.

- (c) **No Abatement.** All amounts payable by Lessee under this Lease shall be absolute and unconditional and shall not be subject to any abatement, reduction, offset, defense, counterclaim, interruption, deferment or recoupment for any reason whatsoever (even if Equipment is out of service for maintenance, repair, modifications or otherwise), and all such amounts shall be and continue to be payable in all events.
- (d) **Holdover Rent.** Until any Item of Equipment is returned to NorRail as provided in this Lease or at the end of the Initial Term or any extension, Lessee shall continue to pay Monthly Rental for such Equipment and shall keep, pay or perform all of Lessee's other obligations under this Lease as though the expiration or other termination had not occurred. As to any Item of Equipment not returned to NorRail on expiration or termination of this Lease, or when otherwise required by this Lease, Lessee shall pay the greater of (i) then-current market rent as reasonably determined by NorRail or (ii) 150% of the rent in effect immediately prior to expiration or termination, or the time return is required. If the Equipment has not been returned to NorRail within three (3) months of expiration or termination of this Lease, or the time when return otherwise is required under this Lease, Lessee shall pay to NorRail (i) the last Stipulated Loss Value of the Equipment or (ii) if greater, and if NorRail demands appraisal, the fair market value of the Equipment as determined by an appraiser chosen by NorRail and reasonably acceptable to Lessee, provided that if NorRail and Lessee cannot agree on an appraiser, each party shall choose an appraiser and such appraisers shall choose a third appraiser who shall determine such fair market value. One-half of all appraisal costs shall be paid by Lessee, and one-half by NorRail. Nothing in this section shall give Lessee the right to retain possession of any Item of Equipment after expiration or other termination of this Lease with respect to such Item of Equipment, or when return otherwise is required under this Lease.
- (e) **Late Fee.** Whenever any payment required under any provision of this Lease is not made by Lessee when due hereunder, Lessee shall pay to NorRail a late fee in the amount of ten percent (10%) of the amount of each late payment, but only to the extent allowed by law. Such late fee is due and payable not later than one month after the due date of the late payment. Late fees shall not be imposed on past due late fees.

## **5. TAXES**

In addition to the Monthly Rental set forth in the Equipment Schedule(s) and any other payments required under this Lease, Lessee shall report and pay directly to the appropriate taxing authority(ies) an amount equal to all taxes, levies, imposts, duties, charges and registration fees, assessments and other governmental charges of whatsoever kind or character (collectively, "Taxes") paid, payable or required to be collected by NorRail, however designated, which are levied or based on the rental, on the Lease or on the Equipment or its purchase, sale, ownership, delivery, possession, use, lease, operation, control or value (including, without limitation, sales, use, excise, gross receipts or gross revenue, value added, personal property, stamp, documentary, and ad valorem taxes), any penalties or interest in connection therewith not arising from negligence on the part of NorRail, and taxes or amounts in lieu thereof paid or payable by NorRail in respect of the foregoing (all of which penalties, interest and amounts are included in the term "Taxes"), but excluding taxes on NorRail's net income. Lessee shall pay all Taxes before the same become delinquent, without any proration whatsoever. Lessee shall promptly (a) provide evidence satisfactory to NorRail (if and as NorRail requests) of the timely filing of the returns or declarations and the payment of Taxes, or (b) notify NorRail, in sufficient time for NorRail to timely make all required reports, when by law or local custom Lessee cannot file same, and promptly pay to NorRail the amount of the Taxes it must so report.

#### **6. MILEAGE CHARGES AND REPORTS AND ACCESS**

- (a) **Mileage Charges.** Lessee, at Lessee's expense, shall collect or cause to be collected all payments made by other railroad companies for their use of the Equipment, including per diem payments and mileage charges (which payments made to Lessee are hereinafter collectively referred to as "Mileage Charges"). Such Mileage Charges shall be the property of Lessee.
- (b) **Excess Mileage Calculation.** As to each Item of Equipment, within thirty (30) days after the close of every calendar year for any part of which the Item of Equipment is leased by Lessee, and within thirty (30) days after the expiration or termination of the Lease or, if later, the return of the Item of Equipment, Lessee shall submit to NorRail a written report of the mileage (empty and loaded) traveled by that Item of Equipment for the year or other period since the Delivery Date or the period covered by the last mileage report. With every mileage report, Lessee shall also remit (as additional rent) the excess mileage charge described below. As to any Item of Equipment traveled more than 30,000 miles during the year or other period, Lessee agrees to pay the sum of three cents (\$.03) multiplied by the number of miles in excess of 30,000 that such Item of Equipment traveled during the year or other period. The calculations and payments set forth herein shall be prorated for any fractional part of a year.
- (c) **Reports.** Lessee agrees to keep records pertaining to the movement of the Equipment, and Lessee agrees to furnish NorRail, upon its request, with complete

reports of the Equipment movements, including: car number; interchange receipt and delivery; loaded and empty miles; commodity; origin; destination; full junction routing; and all information which Lessee may receive from railroad companies or other sources which may be reasonably requested by NorRail. In addition, without limiting the foregoing, on NorRail's request Lessee shall make available to NorRail any or all of the following, to the extent the same may relate to any Item of Equipment: any documents required by or filed with the Association of American Railroads ("AAR"), any registrations, certifications or licensure, or applications for any of the same, any reports required to be filed or filed with the Interstate Commerce Commission or any other regulatory agency or agencies (state, federal or other), any logs or other records of repair, maintenance, modification or alteration, and any and all other records of any nature whatsoever otherwise kept by or available to Lessee. NorRail or its agents shall have free access to the Equipment at all reasonable times for the purpose of inspection and for any other purpose.

## **7. INSPECTION AND DELIVERY**

- (a) **Initial Inspection.** Prior to delivery of an Item of Equipment to Lessee, NorRail shall arrange for a mutual inspection (the "Initial Inspection") of each Item of Equipment by representatives of NorRail and Lessee. The purpose of this Initial Inspection shall be to ascertain that the Equipment meets or exceeds the standards in effect under the Interchange Rules of the AAR and the applicable rules of any governmental agency (including without limitation the Federal Railroad Administration) or other organization having jurisdiction, and to check corrosion and commodity-related damage as contemplated by Section 8(e) of this Agreement.
- (b) **Delivery and Return.** NorRail shall have the sole right and option to make all the arrangements for (i) the initial Delivery to Lessee of each Item of Equipment to the Equipment Location stated in the applicable Equipment Schedule, and (ii) the return delivery from Lessee to NorRail of each Item of Equipment to a location of NorRail's choice within the continental United States upon the termination of the applicable Equipment Schedule (by expiration, on default or otherwise) as to such Item of Equipment. NorRail's obligation to deliver the Equipment to Lessee shall be subject to all delays resulting from causes beyond its control.
- (c) **Delivery Costs.** Delivery (including insurance) costs with respect to the Equipment to the Equipment location shall be paid by Lessee. Re-delivery to a location of NorRail's choice within the continental United States shall be paid by NorRail. Lessee shall make the Equipment available to NorRail at a designated interchange point on the Lessee's system.

## **8. POSSESSION AND USE**

- (a) **Use.** Throughout the term of this Lease, and so long as Lessee shall not be in default under this Lease, Lessee shall be entitled to the possession, use and quiet enjoyment of the Equipment in accordance with the terms of this Lease.
- (b) **Intended and Lawful Use.** Lessee agrees to use the Equipment only in conformity with its intended use, and within the load limit stenciled thereon. Lessee shall not transport or store any substances, materials, or goods which the Equipment is not designed to accept. Lessee agrees that the Equipment shall at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same are operated and in which the same may be located, in compliance with all lawful acts, rules, regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, and in accordance with all rules established by the AAR, except that either NorRail or Lessee may by appropriate proceedings timely instituted and diligently conducted, contest the application of any such act, rule, regulation or order at the expense of the contesting party. Lessee shall ensure that all commodities loaded in the Items of Equipment comply with all applicable tariffs, laws, rules and regulations.
- (c) **Markings.** At NorRail's election, Items of Equipment may be marked to indicate the rights of NorRail, of an assignee, mortgagee, trustee, pledgee or security holder of NorRail, or of a lessor to NorRail. Lessee shall maintain such marks. Lessee shall be responsible for all costs associated with any marking changes made at its request. Lessee may place any marking or lettering on any Item of Equipment or remove or change any reporting mark or NorRail's lettering only upon the written consent of NorRail.
- (d) **Corrosion.** NorRail makes no representation concerning the suitability of the Items of Equipment, or their linings, paint, coatings, sealants, or similar items, for use in the loading or shipping of commodities which contain active or passive chemical or physical properties which may result in damage or deterioration to the Items of Equipment, or to their linings, paint, coatings, sealants or similar items. Unless immediately after the Initial Inspection a joint inspection report setting forth the nature and amount of any then existing damage is signed by both parties, it shall be conclusively presumed that the Item of Equipment was free of corrosion and all other commodity-related damage at the Commencement Date for such Item of Equipment. If any Item of Equipment suffers corrosion or similar deterioration or damage due to any commodity placed or allowed to accumulate in or on the Item of Equipment, or to which the Item of Equipment is exposed, Lessee shall be liable for the cost of correcting such deterioration or damage at the time the Item of Equipment is returned to NorRail, regardless of whether or not such condition is due to Lessee's negligence. Such corrosion, deterioration or damage shall not be considered "normal wear and tear."

**9. MAINTENANCE AND MODIFICATIONS**

- (a) **Maintenance.** During the term of this Lease and thereafter until the Item of Equipment is returned to NorRail, Lessee is responsible for all maintenance of the Equipment, routine or otherwise. If Lessee and NorRail are parties to any separate agreement with respect to maintenance or repair of the Equipment, such agreement, and the rights and obligations of the parties thereunder, is and shall be entirely separate and distinct from this Lease, and neither party to any such separate agreement shall have any right to claim offset or recoupment with respect to any amount due under this Lease, or excuse for any default under, breach or non-performance of, this Lease because of any actual or alleged violation or non-performance under such separate agreement. Without limiting the foregoing, Lessee shall have no right to withhold or reduce any rent or other amounts payable to NorRail under this Lease because of any actual or alleged breach or non-performance by NorRail under any such separate agreement. Lessee's failure to report in writing any defect in the Equipment at the earlier of ten (10) days after the Initial inspection or the first loading of the Equipment shall constitute acceptance of the Equipment by Lessee and shall be conclusive evidence of the fit and suitable condition thereof on the Delivery Date.
- (b) **Parts.** Any equipment, maintenance parts, or other items not specified in the Equipment Schedule(s) which are used on or in connection with the Equipment must be acquired by Lessee at its own expense.
- (c) **Modifications.** With NorRail's prior written consent, Lessee may, at its own expense, make modifications or add attachments to the Equipment, provided such modifications or attachments do not interfere with the normal and satisfactory operation or maintenance of the Equipment, and further provided the modifications or attachments do not cause the Equipment to fail to meet or exceed the standards in effect under the AAR Interchange Rules and/or applicable rules of any governmental agency or other organization having jurisdiction. In addition, Lessee shall, at its own expense, make modifications or add attachments to the Equipment as may at any time or from time to time, be required by the United States Department of Transportation or any other governmental agency, or by any non-governmental organization having jurisdiction over the operation, safety or use of railroad equipment, or as may otherwise be required by law or rule of law, regulation or ordinance. All modifications or attachments shall be removed by Lessee and the Equipment restored, at Lessee's expense, to its original condition, reasonable wear and tear only excepted, no later than the termination of this Lease as to the applicable Item of Equipment. Without limiting NorRail's rights under the preceding sentence, modifications and attachments not removed upon termination of the Lease shall become the property of NorRail.

- (d) **AEI.** Lessor agrees to install proper and correct I.D. tags in accordance with AAR specification on each car. Lessee will be responsible for all maintenance after Commencement of the Lease.

#### **10. RETURN OF EQUIPMENT**

- (a) **Return Standards.** Subject only to reasonable wear and tear, at the termination of this Lease as to the applicable Equipment Schedule (by expiration, or default or otherwise) Lessee shall, at its expense, promptly return the Equipment to NorRail: (i) in as good condition, order, repair and appearance as when delivered to Lessee, (ii) in interchange condition in accordance with the standards set by the Interchange Rules of the AAR and by any other applicable AAR and Federal Railroad Administration rules and regulations (and rules and regulations of any other governmental agency or other organization having jurisdiction), interchange condition to include the replacement of missing material, (iii) free of damage described in AAR Interchange Rule 95, (iv) in condition suitable for loading, (v) empty, clean, and free of all residue, accumulations or deposits from commodities, and (vi) free of corrosion and any other commodity-related damages, and (vii) free of marking, logos or special paint placed on the Equipment by Lessee, and with the same repaired and painted over so as to return the Equipment to its condition when delivered to Lessee; all of the foregoing standards collectively being the "Return Standards." Prior to return of an Item of Equipment to NorRail, Lessee shall, at the earliest possible time, arrange for a mutual inspection of each Item of Equipment, at a single location agreeable to NorRail, by representatives of NorRail and Lessee, to ascertain if the Equipment meets or exceeds the Return Standards. If NorRail and Lessee cannot agree on whether the Equipment does or does not meet the Return Standards, they shall jointly select an independent inspector, whose determination on whether the Return Standards are or are not met shall bind NorRail and Lessee (and whose cost and expenses shall be borne one-half by NorRail and one-half by Lessee). Lessee agrees to pay NorRail within thirty (30) days of receipt of an invoice for repairs, replacements and cleaning for which Lessee is responsible. NorRail may invoice Lessee before having such work performed.
- (b) **Storage After Return.** Following the termination of this Lease as to the applicable Equipment Schedule, Lessee agrees to allow NorRail to store such Equipment on its tracks free of charge for a period not to exceed sixty days. While the Equipment is stored on Lessee's tracks, NorRail or its agents shall have free access to the Equipment at all reasonable times for the purpose of inspection and for any other purpose.

#### **11. OWNERSHIP AND ASSIGNMENT**

- (a) **Ownership.** This is a contract of lease only and Lessee shall have no equity or property interest in the Equipment other than the rights acquired as a Lessee hereunder.

(b) **Assignment.** Lessee at its expense and upon prior written notice to NorRail, may assign this Lease or sublease the Equipment to its parent or any subsidiary corporation or to a corporation which shall have acquired all or substantially all of the property of Lessee by merger, consolidation or purchase. Other than as described in the preceding sentence, Lessee shall not assign or otherwise encumber this Lease or any of its rights hereunder. So long as Lessee shall not be in default under this Lease, Lessee may sublease the Equipment to others for a term of six months or less (but in no event extending beyond the original term of this Lease or any extension thereof), provided that Lessee must obtain NorRail's prior approval to any such sublease and each such sublease must expressly be made subject and subordinate to all of the terms of this Lease. NorRail shall not unreasonably withhold approval of the sublease so long as NorRail determines the sublease does not impair any of its rights or remedies against Lessee under this Lease. To that end, no sublease of any Equipment shall in any way discharge or diminish any of Lessee's obligations under this Lease. Lessee shall not, with regard to the Equipment, or any interest therein, including the revenues thereon, or with regard to this Lease, directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim arising by, through, or under it, except those created for the benefit of NorRail or any Financier. Lessee shall notify NorRail in writing within five (5) days after any attachment, tax lien or other judicial process shall be attached to any Item of Equipment. Lessee shall promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time. If Lessee fails to take action as described in the previous sentence, NorRail may, at Lessee's expense, take such action and Lessee shall pay the cost thereof within ten (10) days of receiving an invoice from NorRail for such costs. Upon any permitted assignment or sublease, Lessee shall execute and deliver to NorRail, or any assignee of NorRail, at Lessee's expense, such documentation as NorRail or such assignee may require, including but not limited to documentation to evidence and put third parties on notice of NorRail's or its assignee's interest in the Equipment. No permitted assignment or sublease shall relieve Lessee of any of its obligations hereunder.

## **12. WARRANTIES AND DISCLAIMER OF WARRANTIES**

(a) **Lessee's Inspection.** Lessee covenants, represents and warrants that, as of the Delivery Date set forth in the applicable Equipment schedule, it shall have (i) thoroughly inspected the Equipment, (ii) determined for itself that all Items of Equipment are of a size, design, capacity and manufacture selected by it, and (iii) satisfied itself that the Equipment is suitable for Lessee's purposes. Lessee authorizes NorRail to insert in each Equipment Schedule the serial numbers and/or other identifying data of the Equipment.

(b) **Lessee's General Warranties.** Lessee hereby covenants, represents and warrants with respect to this Lease and each Equipment Schedule executed hereunder that:

- (i) The execution, delivery and performance thereof by Lessee have been duly authorized by all necessary corporate action;
- (ii) The individual executing such was duly authorized to do so;
- (iii) The Lease and each Equipment Schedule constitute legal, valid and binding agreements of Lessee enforceable in accordance with their respective terms; and
- (iv) The Equipment is personal property and when subjected to use by Lessee will not be or become fixtures under applicable law.

(c) ***Disclaimer.*** LESSEE AGREES THAT FOR PURPOSES OF WARRANTIES, RISK OF LOSS, DETERMINING WHEN LESSEE'S PROMISES UNDER THIS LEASE BECOME IRREVOCABLE AND INDEPENDENT, AND OTHER ASPECTS OF THE RELATIONSHIP BETWEEN LESSEE AND NORRAIL, (but not necessarily for any other purposes) THIS LEASE SHALL BE TREATED AS IF IT IS A "FINANCE LEASE" WITHIN THE MEANING OF MINNESOTA STATUTES CHAPTER 336.2A (UNIFORM COMMERCIAL CODE - LEASES). WITHOUT LIMITING THE PRECEDING SENTENCE, AS TO WARRANTIES, LESSEE ACKNOWLEDGES AND AGREES THAT NORRAIL IS NOT THE MANUFACTURER OF THE EQUIPMENT OR THE MANUFACTURER'S AGENT; THAT NORRAIL SUPPLIES THE EQUIPMENT "AS IS" AND WITH ALL FAULTS; AND THAT NORRAIL EXPRESSLY EXCLUDES AND DISCLAIMS ANY REPRESENTATION, WARRANTY OR COVENANT THAT THE EQUIPMENT DOES NOT INFRINGE UPON THE RIGHTFUL CLAIM OF ANY OTHER PERSON, OR MEETS PARTICULAR SPECIFICATIONS, OR IS MERCHANTABLE OR FIT FOR ANY PARTICULAR PURPOSE. INSTEAD, LESSEE ACKNOWLEDGES AND AGREES THAT IT IS LESSEE'S RESPONSIBILITY TO DETERMINE WHETHER THE EQUIPMENT INFRINGES ON THE RIGHTFUL CLAIM OF ANOTHER, IS MERCHANTABLE, OR IS FIT FOR LESSEE'S INTENDED PURPOSES, BY MEANS OF LESSEE'S INITIAL INSPECTION OF THE EQUIPMENT. All risks that the Equipment infringes upon the design or other rightful claim of any other person (other than claims involving clear title), or does not meet specifications, or is not merchantable, or is not fit for a particular purpose, or is otherwise defective, as between NorRail and Lessee, are to be borne by Lessee. Lessee agrees to look solely to the manufacturer of the Equipment for any and all warranty claims and any and all warranties made by the manufacturer or the supplier to NorRail are hereby assigned to Lessee, to the extent permitted by the manufacturer or the supplier, for the term of the applicable Equipment Schedule. Lessee agrees that NorRail shall not under this Lease be responsible for the maintenance, operation or service of the Equipment or for delay or inadequacy of any or all of the foregoing. NorRail shall not be responsible for any direct, indirect, special or consequential loss or damage resulting from the delivery, operation or use of the

Equipment or otherwise (including strict liability in tort). Lessee will defend, indemnify and hold NorRail harmless on an after-tax basis against any and all claims, demands and liabilities arising out of or in connection with the design, manufacture, possession or operation of the Equipment, including strict liability in tort. NorRail shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Items of Equipment or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Equipment or any risks relating thereto; (iii) any incidental, indirect or consequential damages of any nature, including but not limited to interruption of service, loss of business or anticipated profits; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Items of Equipment.

**13. RISK OF LOSS**

- (a) **Insurance.** Until the Equipment is returned to NorRail as provided in this Lease, and while the Equipment is stored on Lessee's tracks following termination of this Lease as to the applicable Equipment Schedule, Lessee relieves NorRail of responsibility for all risks of physical damage to or loss or destruction of the Equipment howsoever caused. During the term of this Lease as to any Equipment Schedule, and while the Equipment is stored on Lessee's tracks following termination of this Lease as to the applicable Equipment Schedule, Lessee shall, at its expense, keep in effect all-risk, physical loss and damage insurance and public liability insurance policies covering the Equipment designated in such Equipment Schedule. (With NorRail's written consent, Lessee may self-insure such risks as are specified in NorRail's consent.) The all-risk insurance policy shall be for an amount not less than the applicable Stipulated Loss Value as indicated on the Schedule of Stipulated Loss Value. The public liability insurance policy shall be in such amount as is reasonably acceptable to NorRail. NorRail, its successors and assigns, shall be named as additional insureds and/or loss payees on such policies, which shall be written by one or more insurance companies of recognized responsibility reasonably acceptable to NorRail. Evidence of such insurance coverage shall be furnished to NorRail not later than the Delivery Date set forth in the applicable Equipment Schedule and from time to time thereafter as NorRail may demand. Such policies shall provide not less than thirty (30) days' written notice shall be given NorRail prior to cancellation of such policies for any reason. Lessee hereby irrevocably appoints NorRail as Lessee's attorney-in-fact coupled with an interest to make claim for, receive payment of, and execute any and all documents that may be required to be provided to the insurance carrier in substantiation of any such claim for loss or damage under said insurance policies, and to endorse Lessee's name to any and all drafts or checks in payment of the loss proceeds.

- (b) **Destruction or Loss.** If any of the Items of Equipment, or the fittings, appliances, or appurtenances thereto, shall be damaged, ordinary wear and tear excepted, or destroyed by any cause other than the gross negligence or willful misconduct of NorRail, Lessee shall pay for the repair or replacement of such Equipment in accordance with this paragraph. Lessee shall make or cause to be made such inspections of, and maintenance and repairs to, the Items of Equipment as may be required from time to time. Should any Item of Equipment be damaged whereby such damage is billable to another carrier, Lessee shall be responsible for recovering such sums and applying them to the expense of repair or replacement. Should NorRail receive any payments from a third party for damage to an Item of Equipment, such amounts shall be applied to reduce the amount owed by Lessee to NorRail under this paragraph. Lessee shall promptly and fully notify NorRail in writing of any damage, destruction, or loss of any Item of Equipment. If an Item of Equipment is lost, stolen, condemned, destroyed or damaged such that the estimated cost of repair (determined under Section 13(c)) exceeds the "depreciated value" of the Item of Equipment as defined in and determined in accordance with AAR Interchange Rule 107, then such Item of Equipment shall be deemed to have suffered a "Total Loss" for purposes of this Lease. On the next rental payment date after the date of a Total Loss, Lessee shall pay NorRail the sum of (i) the Stipulated Loss Value of such Item of Equipment, plus (ii) any unpaid rent due in respect of such Item of Equipment to and including the next rental payment date plus (iii) any other payments owing under this Lease with respect to any period(s) ending on or before, or any actions, omissions, events or other matters occurring or with respect to any time or times on or before, that next rental payment date, plus (iv) interest on each of the aforesaid amounts at the rate of 10% per annum from that rental payment date to the date the amounts are paid in full. If the Total Loss occurs after the last rental payment date has passed (for example, if the Total Loss occurs while the Equipment is stored on Lessee's tracks after termination of this Lease), the Stipulated Loss Value for purposes of the preceding sentence shall be the one stated on the Schedule of Stipulated Loss Value for the last rental payment date, and the amount payable under the preceding sentence shall be paid by Lessee to NorRail on the first business day of the calendar month after the month in which the Total Loss occurs. If it is determined that an Item of Equipment can be repaired, Lessee shall cause such Item of Equipment to be promptly repaired, at Lessee's expense. All proceeds of insurance received by NorRail or Lessee under the all-risk insurance policy referred to in the preceding paragraph of this Section shall be applied toward the cost of such repair or replacement.
- (c) **Determination of Repair Costs.** For purposes of determining whether a Total Loss has occurred, repair costs shall be estimated by the carrier on whose line the Item of Equipment was derailed or otherwise destroyed or damaged. If the carrier is unable to estimate repair costs, NorRail shall do so. If NorRail estimates repair costs and Lessee disagrees with the estimate, Lessee may

demand a second estimate, at Lessee's expense, from an independent estimator selected jointly by NorRail and Lessee, which second estimate then shall bind both NorRail and Lessee.

**14. EVENTS OF DEFAULT AND REMEDIES**

**(a) Events of Default.** The occurrence of any one of the following shall constitute an Event of Default hereunder:

- (1) Lessee fails to pay any installment of rent or any other payment required under this Lease on or before the fifth day following the date when the same becomes due and payable (and if no due date for a payment is otherwise stated in this Lease, it shall be deemed due and payable immediately upon NorRail's demand for payment);
- (2) Lessee attempts to sell, encumber or sublet any Item of Equipment or attempts to assign or sublet this Lease, except as expressly permitted herein;
- (3) Lessee fails to observe or perform any of the other obligations required to be observed or performed by Lessee hereunder and such failure shall continue uncured for ten days after written notice thereto to Lessee by NorRail;
- (4) Lessee has not obtained replacement insurance coverage (complying with this Lease) by the earlier of the effective date of the cancellation or the tenth day after notice is given that insurance coverage to be obtained and maintained by Lessee will be canceled;
- (5) Any warranty, representation or statement made or furnished to NorRail by or on behalf of Lessee proves to have been false in any material respect when made or furnished;
- (6) Lessee ceases doing business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they become due, is generally not paying its debts as they mature, files a voluntary petition in bankruptcy, files a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar arrangement under any present or future statute, law or regulation, or files an answer admitting the material allegations of a petition filed against it in any such proceeding; or Lessee consents to or acquiesces in the appointment of a custodian, trustee, receiver or liquidator of it or all of any substantial part of its assets or properties; or Lessee or its shareholders take any action looking to Lessee's dissolution or liquidation; or any order for relief is entered against Lessee under the federal bankruptcy laws;

- (7) On the thirtieth day after the commencement of any proceedings against Lessee seeking reorganization, arrangement, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, if such proceedings have not then been dismissed, or on the thirtieth day after the appointment without Lessee's consent or acquiescence of any custodian, trustee, receiver or liquidator of it or of all or any substantial part of its assets and properties, if such appointment has not then been vacated; or
  - (8) The default by Lessee under any other Equipment Schedule or other agreement between Lessee and NorRail or any assignee of NorRail.
- b. Remedies.** Upon the occurrence of an Event of Default, in addition to any other right or remedy available to NorRail at law, in equity, and/or under any other provision of this Lease, NorRail may at its option do any one or more, or all, of the following:
- (1) By notice to Lessee terminate this Lease as to any or all Equipment Schedules;
  - (2) Proceed by any lawful means to enforce performance by Lessee of this Agreement or to recover damages for breach thereof (and Lessee agrees to bear NorRail's costs and expenses, including reasonable attorneys fees, in securing such enforcement);
  - (3) Whether or not this Lease is terminated as to any or all Equipment Schedules, take possession of any or all of the Equipment listed on any or all Equipment Schedules, wherever situated, and for such purpose, enter upon any premises without liability for so doing (except that NorRail shall be liable for damages resulting from the willful misconduct or gross negligence of NorRail) or NorRail may cause Lessee, and Lessee hereby agrees, to return the Equipment to NorRail as provided in this Lease;
  - (4) Recover from Lessee all sums due and payable by Lessee up to and including the occurrence of the Event of Default, and recover from Lessee, in addition, both (a) actual damages to NorRail plus all costs and expenses incurred by NorRail on account of the Event of Default and in NorRail's pursuit of any one or more rights or remedies as to such Event of Default (including but not limited to all court costs and attorneys' fees) plus (b), as liquidated damages for loss of a bargain and not as a penalty, either (i) as to each Item of Equipment returned to NorRail following the Event of Default and complying with the Return Standards, an amount equal to all Monthly Rent to be paid by Lessee with respect to each such Item of Equipment during the remaining Initial Term or successive term in effect as of the Event of Default, discounted from the date otherwise payable until the date in fact paid hereunder at the rate of 6%, which amount shall become immediately due and payable on the occurrence of the Event of Default,

or (ii) as to any Item of Equipment not so returned to NorRail, the Stipulated Loss Value for such Item of Equipment determined as if the Item of Equipment was destroyed as of the date of the Event of Default, plus interest at the rate of 10% per annum on that said Stipulated Loss Value from the date of the Event of Default until it is in fact paid, and such amount shall become immediately due and payable on the occurrence of the Event of Default;

- (5) Sell, dispose of, hold, use or lease any Equipment as NorRail in its sole discretion may determine (and NorRail shall not be obligated to sell, lease or otherwise dispose of the Equipment in preference to a sale, lease or other disposition of other equipment owned or leased by NorRail).

The acceptance of payments hereunder by NorRail after an Event of Default shall not be deemed a waiver of any prior or existing breach by Lessee regardless of NorRail's knowledge of such prior or existing breach at the time of acceptance of such payments. (Without limitation of the foregoing, NorRail may accept holdover rent under Section 4(d) without waiving the Event of Default caused by holdover, and without prejudicing its right to pursue any other right or remedy available as to that or any other Event of Default.)

NorRail's pursuit of any one or more rights or remedies stated above, or any other rights or remedies available at law, in equity and/or under any other provision of this Lease, and its obtaining any of the relief or remedies sought, shall not preclude NorRail from pursuing any other rights or remedies, and shall be without prejudice to NorRail's pursuit of any claim for indemnification or pursuit of any other rights or remedies available as to any other breach of or default under this Lease.

If Lessee pays liquidated damages as to any Item of Equipment returned to NorRail which meets the Return Standards, and if NorRail subsequently sells, leases or otherwise disposes of the Item of Equipment before the end of the term with respect to which the liquidated damages were calculated and paid, NorRail shall remit to Lessee an amount determined in accordance with the following steps:

First, NorRail shall determine the amount of the proceeds of the sale, reletting or other disposition of the Item of Equipment which is attributable to any month or other period for which the Lessee paid liquidated damages. To the extent any part of the proceeds are to be received in the future, they will be discounted to present value at the greater of the rate of 6%, or at the implicit rate in the new lease or the terms of other disposition of the Item of Equipment.

Second, NorRail shall reduce the discounted actual or expected proceeds by all costs and expenses of recovering the Item of Equipment from the Lessee, preparing the Item of Equipment for sale, lease or other

disposition, of actually selling, leasing or otherwise disposing of the Item of Equipment, of making all of the calculations under this provision, and by any other amount due to NorRail from Lessee. NorRail shall also be entitled to reduce the discounted proceeds by a reasonable administrative charge for making future payments to Lessee under this provision.

Third, NorRail shall determine which is the lesser - the amount determined after the application of the First and Second steps stated above, or that amount of the liquidated damages actually received by NorRail from the Lessee for any period or periods after the date of the sale, reletting or other disposition of the Item of Equipment.

NorRail shall pay Lessee the lesser amount, *provided, however*, to the extent NorRail is to receive any proceeds of the sale, reletting or other disposition in the future (such as in the form of monthly or other periodic rental amounts), NorRail shall pay the amount due Lessee under this provision in installments (without interest or other increase) over the remainder of the period for which Lessee paid liquidated damages, in installments corresponding to the new payments to NorRail.

#### **15. ENVIRONMENTAL AND GENERAL INDEMNIFICATION**

- (a) ***Definitions.*** For purposes of this section, "Environmental Claim" means any accusation, allegation, notice of violation, claim, demand, abatement order, direction, investigation, litigation or any other proceeding by any governmental authority or any person (including any corporation, partnership, association or any other organization or entity) for personal injury (including sickness, disease or death), tangible or intangible property damage, damage to the environment or natural resources, reimbursement of environmental cleanup costs, nuisance, pollution, contamination, fines, penalties, restrictions, attorneys fees, health effects monitoring or any other adverse effects on the environment arising under any Environmental Law. An "Environmental Law" is any applicable foreign, federal, state or local statute, law (including common law), ordinance, rule, regulation, order (whether voluntary or not) relating to the environment, natural resources, or human health and safety including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §9601 et seq.), the Hazardous Material Transportation Act (49 U.S.C. §1801 et seq.), the Resource Conservation and Recovery Act (also known as the Solid Waste Disposal Act (42 U.S.C. §6901 et seq.)), the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Toxic Substances Control Act (15 U.S.C. §2601 et seq.), the Occupational Safety and Health Act (29 U.S.C. §651 et seq.), and any analogous state or local law, as such laws have been or will be amended or supplemented now or in the future, and expressly including any additional law (including common law), ordinance, rule, or regulation relating to the

environment, natural resources, or human health and safety which may be enacted, pronounced or promulgated in the future.

**(b) Indemnification.**

(i) Lessee agrees to indemnify, defend, protect and hold harmless NorRail and its assignees from and against any and all claims, liabilities, damages, injuries and expenses, including reasonable attorneys fees, for any of the claims identified in subparagraph (ii) below, if and to the extent any such claims are in connection with, or alleged to be in connection with, the operation, use, possession, storage, abandonment or return of any of the Equipment, or with any location whatsoever (including without limitation any landfill) owned, operated or used for the treatment, storage, transportation or disposal of any waste.

(ii) The claims covered by the preceding indemnification include any Environmental Claims, any mileage or other fees with respect to any of the Equipment (including among "other fees", without limitation, switching, transportation, freight (such as freight charges to and from a repair facility), demurrage, track storage, detention charge and other charges assessed by any railroad or other entity), any charges for movement of any Item of Equipment (whether after it is damaged or derailed or otherwise), any Taxes to be reported and/or paid by Lessee under this Lease, any corrosion or other commodity-related damage or deterioration, any repairs, replacements and cleaning necessary to ensure that any Equipment meets the Return Standards specified in Section 10 of this Lease, any loss with respect to any Equipment which is to be insured by Lessee, or as to which this Lease imposes risk of loss upon Lessee, and any other claim for the payment or performance of any obligation whatsoever, whether or not one of those just specifically enumerated, and whether or not of a type such as those just specifically enumerated, as to which any provision of this Lease imposes responsibility on the Lessee. Without limiting the foregoing, Lessee also agrees to indemnify NorRail for any and all costs, claims, liabilities, damages, injuries and expenses (including without limitation attorneys fees and expenses) incurred in connection with the treatment, storage, transportation or disposal by NorRail of any waste left in the Items of Equipment upon return or abandonment of the Items of Equipment or upon assignment of any leasehold interest in the Items of Equipment. Also without limiting the foregoing, Lessee also agrees to indemnify NorRail for any and all liability, losses, damages, injuries, claims and demands and expenses, including reasonable attorneys fees, arising out of, or as a result of, the loading and/or shipping in the Items of Equipment of commodities which contain active or passive chemical or physical properties which may result in corrosion, deterioration or damage to the Items of Equipment, their lining, paint, coatings, sealants, or other items.

## **16. ASSIGNMENT**

Lessee agrees that NorRail may transfer or assign all or any part of NorRail's right, title and interest in, under or to the Equipment and this Lease or any Equipment Schedule, and any or all sums due or to become due pursuant to any of the above, to any third party ("Assignee") for any reason. Lessee acknowledges that there may be more than one Assignee, that all separate Items of Equipment on each Equipment Schedule are severable and may be the subject of separate assignments, and that each Equipment Schedule is a separate lease subject to separate assignment. Lessee agrees that upon receipt of written notice from NorRail of such assignment, Lessee shall perform all of its obligations under this Lease for the benefit of Assignee and, if so directed, shall pay all sums due or to become due hereunder directly to Assignee or to any other party designated by Assignee. Lessee hereby covenants, represents and warrants as follows and agrees that Assignee shall be entitled to rely on and shall be considered a third party beneficiary of the following covenants, representations and warranties: (i) Lessee's obligations to Assignee hereunder are absolute and unconditional and are not subject to any abatement, reduction, offset, defense, counterclaim, interruption, deferment or recoupment available to Lessee for any reason whatsoever including, but not limited to, operation of law, defect in the Equipment, failure of NorRail to perform any of its obligations hereunder or for any other cause or reason whatsoever, whether similar or dissimilar to the foregoing; (ii) Lessee shall not look to Assignee to perform any of NorRail's obligations hereunder; (iii) Lessee will not amend or modify this Lease without the prior written consent of Assignee; and (iv) Lessee will send a copy to Assignee of each notice which Lessee sends to NorRail. Upon receipt of notice of such transfer or assignment, Lessee agrees to promptly execute and deliver to NorRail such documentation as Assignee may require to secure and/or complete such transfer or assignment, including, but not limited to, the following: (1) an acknowledgement of, or consent to, the assignment which may require Lessee to make certain representations or reaffirmations as to some of the basic terms and covenants contained in this Lease; (2) a certified copy of resolution of Lessee; (3) an opinion of counsel for Lessee with respect to the representations and warranties set forth in Section 12(b) above; and (4) a Certificate of Delivery and Acceptance. Nothing contained in such documentation required by Assignee shall be in derogation of any of the rights granted to Lessee hereunder. Notwithstanding such assignment, NorRail shall not be relieved of any of its obligations hereunder, and the rights of Lessee hereunder shall not be impaired.

## **17. MISCELLANEOUS**

- (a) **Jurisdiction and Laws.** Neither this Lease, any Equipment Schedule nor any consent or approval provided for herein shall be binding upon NorRail unless signed on its behalf by duly authorized officers at its home office. This Lease shall be deemed to have been made in the State of Minnesota and shall be governed in all respects by the laws of such State. Lessee hereby consents: (i)

to the jurisdiction of the Minnesota District Court, Fourth Judicial District and/or the United States District Court, District of Minnesota, exclusively, with respect to all actions commenced by it with respect to any and all matters arising out of or in connection with this Lease or any other instrument or document executed or delivered in connection therewith, and that venue for the purpose of all such suits shall be Hennepin County, State of Minnesota only; and (ii) that any action commenced against Lessee by NorRail under this Lease or any other instrument or document executed or delivered in connection therewith may, at the option of NorRail, be commenced in the Minnesota District Court, Fourth Judicial District and/or the United States District Court, District of Minnesota. Nothing contained herein is intended to preclude NorRail from commencing any action hereunder in any court having jurisdiction thereof. Service of process in any such action shall be sufficient if served by certified mail, return receipt requested, to the address of the parties set forth herein. To the extent permitted by law, Lessee waives trial by jury in any action by or against NorRail hereunder.

- (b) **Entire Agreement.** This Lease and each Equipment Schedule constitute the entire agreement and understanding of the parties with respect to the lease of the Equipment listed on each Equipment Schedule (notwithstanding any contrary provision contained in any instrument submitted by Lessee), supersede any or all prior agreements and understandings related to the subject matter hereof, and may not be changed orally but only by an agreement in writing signed by both parties. Lessee's purchase order, if any, shall be used for accounting purposes only.
- (c) **Notices.** All notices hereunder shall be in writing and shall be delivered in person or by courier service or sent by registered or certified mail, postage prepaid, to the address of the other party as set forth herein or to such other address as such party shall have designated by proper notice.
- (d) **Binding Nature.** This Lease shall be binding upon and inure to the benefit of NorRail and Lessee and their respective successors and assigns (including any subsequent assignee of an Assignee).
- (e) **Representations; Severability.** No representation or statement made by any representatives of either party not contained herein shall be binding upon such party. No provisions of this Lease or any Equipment Schedule which may be deemed unenforceable shall in any way invalidate any other provision or provisions hereof, all of which shall remain in full force and effect.
- (f) **Waiver.** No waiver of any of the terms and conditions hereof shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. Neither any failure nor any delay on the part of either party in exercising any of its rights hereunder shall

operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right hereunder.

- (g) **Fillings.** NorRail is hereby authorized by Lessee to cause this Lease or other instruments including Uniform Commercial Code financing statements and any documentation required by the Interstate Commerce Commission (ICC) or any other regulatory body or agency having jurisdiction, to be filed or recorded for the purposes of evidencing and putting third parties on notice of NorRail's or Assignee's interest in the Equipment and Lessee agrees that it will, at NorRail's or Assignee's request, execute such instruments or that NorRail or Assignee, at either's sole option, may execute such instruments for and on behalf of Lessee. In the event for any reason whatsoever Lessee is determined to have an interest in the Equipment other than a purely leasehold interest for the term of this Lease, Lessee agrees to and does hereby expressly subordinate such interest to the interests of NorRail as the owner of the Equipment and to the security interest in the Equipment for any Assignee whether such security interest is presently in existence or hereafter acquired, and further grants a security interest in the Equipment to NorRail. Lessee shall execute all documents requested by NorRail as the owner of the Equipment or any Assignee to evidence such Subordination.
- (h) **Financial Statements.** During the term of this Lease, Lessee agrees to deliver to NorRail a copy of Lessee's annual audited financial statements and any interim financial statements, within a reasonable time after said statements are available. Lessee agrees to provide NorRail, at NorRail's request, all pertinent financial and other information deemed necessary by NorRail to extend credit approval to Lessee. This will include at a minimum, Lessee's audited year-end financial statements for the preceding two years along with the most recent interim statements together with Lessee's banking references. In the event NorRail is unable to extend credit approval to Lessee within thirty (30) days after receipt of financial information, this Agreement shall become null and void and all monies paid by Lessee to NorRail shall be refunded in full.
- (i) **Survival.** Lessee's covenants, representations and warranties shall survive the expiration or other termination of this Lease.
- (j) **Attachments.** If Equipment delivered pursuant to any Equipment Schedule contains any attachments not specified therein, NorRail reserves the right to remove any such attachments at any reasonable time thereafter.
- (k) **Counterparts.** This Lease and any Equipment Schedules may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

(1) **Headings.** The subject headings and paragraphs of this Lease are included for the purpose of convenience only and shall not affect the construction and interpretation of any of its provisions.

NORRAIL:

NorRail, Inc.

By: *Russell S. Adams*

Print Name: *Russell S. Adams*

Title: *Vice President Sales*

LESSEE:

Indiana & Ohio Rail Corp.

By: *D.M. White*

Print Name: *D.M. White*

Title: *Sales Manager*

*I, Mary Ann Oster, certify that this is a true copy of the original document.*

*Mary A Oster  
Mary Ann Oster*

*The above swore before me on Sept 27<sup>th</sup>, 1994.  
Frederick, Maryland.  
My Commission Expires May 23, 1998*

*Janine E. Vito  
Janine E. Vito*

**NorRail's Acknowledgement**

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF WRIGHT )

On this 20 day of May, 1994 before me, personally appeared Russell S. Adams (name of signor), to me personally known, who being by me duly sworn, says that (s)he is the V.P. - Sales (title of office) of NorRail, Inc., a Minnesota corporation, that the seal affixed to the foregoing Master Lease Agreement is the corporate seal of said corporation (or if no seal is affixed, that the corporation has no seal), that said Master Lease Agreement was signed and sealed on behalf of said corporation by authority of its Board of Directors, and that (s)he acknowledged that the execution of the foregoing Master Lease Agreement was the free act and deed of said corporation.



[Notary Public's seal]

Joann M. Pelinka  
Notary Public

My Commission Expires: 1/31/00

**Lessee's Acknowledgement**

STATE OF OHIO )  
 ) ss.  
COUNTY OF HAMILTON )

On this 6<sup>th</sup> day of JUNE, 1994, before me, personally appeared DAVID M. WHITE (name of signor), to me personally known, who being by me duly sworn, says that (s)he is the SALES MANAGER (title of office) of INDIANA & OHIO RAIL CORP. (name of corporation), a OHIO corporation, that the seal affixed to the foregoing Master Lease Agreement is the corporate seal of said corporation (or if no seal is affixed, that the corporation has no seal), that said Master Lease Agreement was signed and sealed on behalf of said corporation by authority of its Board of Directors, and that (s)he acknowledged that the execution of the foregoing Master Lease Agreement was the free act and deed of said corporation.

[Notary Public's seal]

Robert A. Nines  
Notary Public

ROBERT A. NINES  
Notary Public, State of Ohio

My Commission Expires: My Commission Expires Apr. 12, 1995



*NorRail, Inc.*  
*Buying, Selling, Leasing*  
*Railcars / Locomotives*

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308 12th Avenue South, Buffalo, Minnesota 55313 • Phone: (612) 557-0215 • Fax: (612) 682-2452

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September 6, 1994

Mr. David M. White  
The Indiana & Ohio Rail Corp.  
2856 Cypress Way  
P.O. Box 12576  
Cincinnati, OH 45212

Re: Legal Name and Date Amendment

Dear Mr. White:

NorRail, Inc. is in receipt of the executed documents listed below:

- Master Lease Agreement (Lease No. 1575) between NorRail, Inc. as Lessor, Indiana & Ohio Rail Corp. as Lessee dated May 20, 1994.
- Equipment Schedule No. 1 to Master Lease Agreement No. 1575 dated May 6, 1994 between NorRail, Inc. as Lessor and Indiana & Ohio Rail Corp. as Lessee.
- Equipment Schedule No. 2 to Master Lease Agreement No. 1575 dated May 6, 1994 between NorRail, Inc. as Lessor and Indiana & Ohio Rail Corp. as Lessee.
- Certificate of Delivery and Acceptance dated August 3, 1994 pursuant to Equipment Schedule No. 1 to that certain Master Lease Agreement No. 1575 dated May 20, 1994 between NorRail, Inc. as Lessor and Indiana & Ohio Rail Corp. as Lessee.
- Certificate of Delivery and Acceptance dated August 19, 1994 pursuant to Equipment Schedule No. 1 to that certain Master Lease Agreement No. 1575 dated May 20, 1994 between NorRail, Inc. as Lessor and Indiana & Ohio Rail Corp. as Lessee.

- Certificate of Delivery and Acceptance dated September 9, 1994 pursuant to Equipment Schedule No. 2 to that certain Master Lease Agreement No. 1575 dated May 20, 1994 between NorRail, Inc. as Lessor and Indiana & Ohio Rail Corp. as Lessee.

Please acknowledge and date below the above documentation should reflect the following:

- The Lessee's legal name on all documentation referred to above should be The Indiana & Ohio Rail Corp. pursuant to the Corporate Resolution dated May 20, 1994.
- Equipment Schedule No. 1 and No. 2 referencing the Master Lease Agreement No. 1575 dated May 6, 1994 are hereby corrected and amended to reference Master Lease Agreement No. 1575 dated May 20, 1994.

All other terms and conditions of the documentation remain unchanged.

Sincerely,

NorRail, Inc.



By: Russell S. Adams  
Vice President - Sales

Acknowledged by Lessee this 8<sup>th</sup> day of September, 1994.

THE INDIANA & OHIO RAIL CORP.

By:   
\_\_\_\_\_  
DAVID M. WHITE, SALES MANAGER

**NorRail, Inc.,**  
308 12th Avenue South  
Buffalo, Minnesota 55313

**EQUIPMENT SCHEDULE NO. 1 TO  
MASTER LEASE AGREEMENT NO. 1575 DATED May 6, 1994 ("LEASE")  
BETWEEN NorRail, Inc. ("NorRail")  
AND Indiana & Ohio Rail Corp. ("LESSEE")**

**1. EQUIPMENT:**

<u>Mfr.</u>	<u>Qty.</u>	<u>Type/Model</u>	<u>Ident. No.</u>	<u>Description</u>	<u>Monthly Rental Per Item of Equip.</u>
UTC	17	Pressure Differential	TBD	3000 Cu. Ft.	\$400.00/Car

Total Monthly Rental \$ 6,800.00

NOTE: Lessee agrees that the above described equipment may be amended by NorRail to the extent that NorRail may insert the serial numbers and/or other identifying data of the Equipment.

**2. EQUIPMENT LOCATION:**

**3. PROJECTED DELIVERY DATE: June/July, 1994.**

**4. DELIVERY DATE: EARLY JULY, 1994** If this space is not completed, the Delivery Date of each Item of Equipment shall be:

- a. in the case of an Item of Equipment which is the subject of a sale and leaseback between NorRail and Lessee, the date upon which NorRail purchases such Item of Equipment from Lessee; or

- b. in the case of an Item of Equipment which is currently delivered to the Equipment Location, but where NorRail is obtaining title directly from the manufacturer or supplier, the date upon which NorRail purchases such Item of Equipment from the manufacturer or supplier; or
  - c. in the case of an Item of Equipment requiring delivery, the date of inspection and acceptance by Lessee of such Item of Equipment at the Equipment Location. Such acceptance, which is not to be unreasonably withheld, is to be in the form of a certificate of Delivery and Acceptance signed by Lessee.
5. **COMMENCEMENT DATE:** As set forth in section 2(b) of the Lease; provided, however, if Lessee fails to timely and properly deliver, within fourteen days of Lessee's execution of this Equipment Schedule, any documents requested by NorRail pursuant to the Lease, NorRail, in its discretion and notwithstanding anything to the contrary contained in Section 2(b) of the Lease, may postpone the commencement of the Initial Term. NorRail shall *give* Lessee prompt written notice of any such postponement.
  6. **INITIAL TERM:** 36 months.
  7. **ADVANCED RENTALS:** 1 monthly rental of \$ 6,800.00 each totaling \$ 6,800.00 shall be delivered to NorRail at time of signing of this Lease. Such advanced rentals shall be applied to the 1st month of the Initial Term.
  8. **MONTHLY RENTAL: \$6,800.00.** The Monthly Rental for all Items of Equipment set forth in Section 1 hereof.
  9. **LEASE AGREEMENT:** All of the terms, covenants and conditions set forth in the Lease are incorporated herein by reference as if the same had been set forth herein in full. By their execution and delivery of this Equipment Schedule, the parties hereby reaffirm all of the terms and conditions of the Lease (including, without limitation, the representations and warranties of Lessee set forth in Section 12 thereof) except as modified hereby.

**NORRAIL:**

NorRail, Inc.

By: Russell S. Adams

Print Name: RUSSELL S. ADAMS

Title: VICE PRESIDENT SALES

Date: MAY 20, 1994

**LESSEE:**

Indiana & Ohio Rail Corp

By: D.M. White

Print Name: D.M. WHITE

Title: SALES MANAGER

Date: JUNE 6, 1994

**NorRail's Acknowledgement**

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF WRIGHT )

On this 20 day of May, 1994 before me, personally appeared Russell S. Adams (name of signor), to me personally known, who being by me duly sworn, says that (s)he is the V.P. - Sales (title of office) of NorRail, Inc., a Minnesota corporation, that the seal affixed to the foregoing Equipment Schedule is the corporate seal of said corporation (or if no seal is affixed, that the corporation has no seal), that said Equipment Schedule was signed and sealed on behalf of said corporation by authority of its Board of Directors, and that (s)he acknowledged that the execution of the foregoing Equipment Schedule was the free act and deed of said corporation.



Joann M. Pelinka  
Notary Public

My Commission Expires: 1/31/00

[Notary Public's seal]

**Lessee's Acknowledgement**

STATE OF OHIO )  
 ) ss.  
COUNTY OF HAMILTON )

On this 6<sup>th</sup> day of JUNE, 1994, before me, personally appeared DAVID M. WHITE (name of signor), to me personally known, who being by me duly sworn, says that (s)he is the SALES MANAGER (title of office) of INDIANA & OHIO RAIL CORP (name of corporation), a OHIO corporation, that the seal affixed to the foregoing Equipment Schedule is the corporate seal of said corporation (or if no seal is affixed, that the corporation has no seal), that said Equipment Schedule was signed and sealed on behalf of said corporation by authority of its Board of Directors, and that (s)he acknowledged that the execution of the foregoing Equipment Schedule was the free act and deed of said corporation.

Robert A. Hines  
Notary Public

ROBERT A. HINES  
Notary Public, State of Ohio

My Commission Expires: My Commission Expires Apr. 12, 1995

[Notary Public's seal]

8-11-94

**Indiana & Ohio Rail System**

OT-5-1 Circular Application

1. INOX 5000
2. INOX 5001
3. INOX 5002
4. INOX 5003
5. INOX 5004
6. INOX 5005
7. INOH 3300
8. INOH 3301
9. INOH 3302
10. INOH 3303
11. INOH 3304
12. INOH 3305
13. INOH 3306
14. INOH 3307
15. INOH 3308
16. INOH 3309
17. INOH 3310

**NorRail, Inc.,**  
308 12th Avenue South  
Buffalo, Minnesota 55313

**EQUIPMENT SCHEDULE NO. 2 TO  
MASTER LEASE AGREEMENT NO. 1575 DATED May 6, 1994 ("LEASE")  
BETWEEN NorRail, Inc. ("NorRail")  
AND Indiana & Ohio Rail Corp. ("LESSEE")**

**1. EQUIPMENT:**

<u>Mfr.</u>	<u>Qty.</u>	<u>Type/Model</u>	<u>Ident. No.</u>	<u>Description</u>	<u>Monthly Rental Per Item of Equip.</u>
U.T.C.	4	Pressure Differential	80378 80380 80379 80389	3800 Cu. Ft.	\$435.00/Car

Total Monthly Rental \$ 1,740.00

**NOTE:** Lessee agrees that the above described equipment may be amended by NorRail to the extent that NorRail may insert the serial numbers and/or other identifying data of the Equipment.

**2. EQUIPMENT LOCATION:**

**3. PROJECTED DELIVERY DATE: August, 1994.**

**4. DELIVERY DATE: \_\_\_\_\_, 19\_\_.** If this space is not completed, the Delivery Date of each Item of Equipment shall be:

- a. in the case of an Item of Equipment which is the subject of a sale and leaseback between NorRail and Lessee, the date upon which NorRail purchases such Item of Equipment from Lessee; or

- b. in the case of an Item of Equipment which is currently delivered to the Equipment Location, but where NorRail is obtaining title directly from the manufacturer or supplier, the date upon which NorRail purchases such Item of Equipment from the manufacturer or supplier; or
  - c. in the case of an Item of Equipment requiring delivery, the date of inspection and acceptance by Lessee of such Item of Equipment at the Equipment Location. Such acceptance, which is not to be unreasonably withheld, is to be in the form of a certificate of Delivery and Acceptance signed by Lessee.
5. **COMMENCEMENT DATE:** As set forth in section 2(b) of the Lease; provided, however, if Lessee fails to timely and properly deliver, within fourteen days of Lessee's execution of this Equipment Schedule, any documents requested by NorRail pursuant to the Lease, NorRail, in its discretion and notwithstanding anything to the contrary contained in Section 2(b) of the Lease, may postpone the commencement of the Initial Term. NorRail shall *give* Lessee prompt written notice of any such postponement.
  6. **INITIAL TERM:** 18 months.
  7. **ADVANCED RENTALS:** 1 monthly rental of \$ 1740.00 each totaling \$ 1,740.00 shall be delivered to NorRail at time of signing of this Lease. Such advanced rentals shall be applied to the first month of the Initial Term.
  8. **MONTHLY RENTAL: \$1,740.00.** The Monthly Rental for all Items of Equipment set forth in Section 1 hereof.
  9. **LEASE AGREEMENT:** All of the terms, covenants and conditions set forth in the Lease are incorporated herein by reference as if the same had been set forth herein in full. By their execution and delivery of this Equipment Schedule, the parties hereby reaffirm all of the terms and conditions of the Lease (including, without limitation, the representations and warranties of Lessee set forth in Section 12 thereof) except as modified hereby.

**NORRAIL:**

NorRail, Inc.

By: Russell S. Adams

Print Name: RUSSELL S. ADAMS

Title: VICE PRESIDENT SALES

Date: 8.29.94

**LESSEE:**

Indiana & Ohio Rail Corp

By: D.M. White

Print Name: D.M. WHITE

Title: SALES MANAGER

Date: 7.27.94

**NorRail's Acknowledgement**

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF WRIGHT )

On this 30<sup>th</sup> day of August, 1994, before me, personally appeared Russell S. Adams (name of signor), to me personally known, who being by me duly sworn, says that (s)he is the V.P. Sales (title of office) of NorRail, Inc., a Minnesota corporation, that the seal affixed to the foregoing Equipment Schedule is the corporate seal of said corporation (or if no seal is affixed, that the corporation has no seal), that said Equipment Schedule was signed and sealed on behalf of said corporation by authority of its Board of Directors, and that (s)he acknowledged that the execution of the foregoing Equipment Schedule was the free act and deed of said corporation.



Joann M. Pelinka  
Notary Public

My Commission Expires: 1/31/00

[Notary Public's seal]

**Lessee's Acknowledgement**

STATE OF OHIO )  
 ) ss.  
COUNTY OF HAMILTON )

On this 27<sup>th</sup> day of July, 1994, before me, personally appeared DAVID M. WHITE (name of signor), to me personally known, who being by me duly sworn, says that (s)he is the SALES MANAGER (title of office) of INDIANA & OHIO RAIL COOP (name of corporation), a OHIO corporation, that the seal affixed to the foregoing Equipment Schedule is the corporate seal of said corporation (or if no seal is affixed, that the corporation has no seal), that said Equipment Schedule was signed and sealed on behalf of said corporation by authority of its Board of Directors, and that (s)he acknowledged that the execution of the foregoing Equipment Schedule was the free act and deed of said corporation.

Robert A. Hines  
Notary Public

My Commission Expires: ROBERT A. HINES  
Notary Public, State of Ohio  
My Commission Expires Apr. 12, 1995

[Notary Public's seal]

ATTACHMENT TO LETTER TO ICC

CAR NUMBERS

<u>Previous Car Number</u>	<u>New Car Number</u>
1. UTLX80220	1. INOX5005
2. UTLX80229	2. INOX5000
3. UTLX80205	3. INOX5001
4. UTLX80296	4. INOX5002
5. UTLX80230	5. INOX5003
6. UTLX80231	6. INOX5004
7. UTLX80213	7. INOH3303
8. UTLX80203	8. INOH3301
9. UTLX80236	9. INOH3302
10. UTLX80227	10. INOH3305
11. UTLX80219	11. INOH3304
12. UTLX80225	12. INOH3307
13. UTLX80285	13. INOH3308
14. UTLX80167	14. INOH3300
15. UTLX80239	15. INOH3310
16. UTLX80269	16. INOH3309
17. UTLX80298	17. INOH3306
18. UTLX80378	18. INOX5006
19. UTLX80389	19. INOX5007
20. UTLX80379	20. INOX5008
21. UTLX80380	21. INOX5009