

ALVORD AND ALVORD
ATTORNEYS AT LAW
918 SIXTEENTH STREET, N.W.
SUITE 200
WASHINGTON, D.C.

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

20006-2973

(202) 393-2266

FAX (202) 393-2156

OF COUNSEL
URBAN A. LESTER

April 16, 1996

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a), are two (2) copies of an Equipment Lease Agreement, dated as of April 16, 1996, a primary document as defined in the Commission's Rules for the Recordation of Documents.

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

Lessor: Fleet National Bank
777 Main Street
Hartford, Connecticut 06115

Lessee: Dakota, Minnesota & Eastern Railroad
Corporation
337 22nd Avenue South
Brookings, South Dakota 57006

A description of the railroad equipment covered by the enclosed document is:

three hundred twenty-five (325) covered hopper railcars DME 29000 through DME 29324, inclusive.

20018

APR 16 9 05 AM '96

Auth.
Authentic Part

Mr. Vernon A. Williams

April 16, 1996

Page 2

Also enclosed is a check in the amount of \$21.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Alvord", with a long horizontal flourish extending to the right.

Robert W. Alvord

RWA/bg
Enclosures

SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423-0001

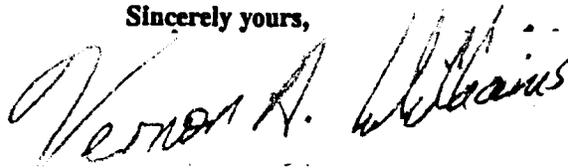
4/16/96

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 4/16/96 at 9:10AM, and assigned recordation number(s). 20018.

Sincerely yours,



Vernon A. Williams
Secretary

Enclosure(s)

\$ 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



20018

EXECUTION COPY

AM

EQUIPMENT LEASE

Between

FLEET NATIONAL BANK

as Owner Trustee

LESSOR

AND

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

LESSEE

Dated as of April 16, 1996

Filed with the Surface Transportation Board pursuant to Section 11301 of the ICC Termination Act of 1995 on April 16, 1996 At _____ .M. Recordation Number, and Deposited in the Office of the Registrar General of Canada pursuant to Section 90 of the Railway Act of Canada on April __, 1996 At _____ .M.

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ATTACHMENTS TO EQUIPMENT LEASE:

Schedule 1	--	Description of Items of Equipment
Schedule 2	--	Restricted Commodities
Exhibit A	--	Lease Supplement
Exhibit B	--	Insurance Letter
Annex I	--	Definitions

EQUIPMENT LEASE

EQUIPMENT LEASE dated as of April 16, 1996 among FLEET NATIONAL BANK, a national banking association, not in its individual capacity but solely as Owner Trustee (the "Lessor"), and DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, a Delaware corporation (the "Lessee").

RECITALS:

A. The Lessee wishes to lease the Items of Equipment from the Lessor on the terms and subject to the conditions set forth in this Lease.

B. The capitalized terms used in this Lease and not otherwise defined herein shall have the respective meanings indicated in Annex I hereto unless otherwise defined herein. Where any provision in this Lease refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

ARTICLE I

LEASE AND DELIVERY OF EQUIPMENT

SECTION 1.1. Intent to Lease and Hire. Upon purchase of the Equipment by the Lessor, the Lessee shall lease and let from the Lessor and the Lessor shall hire to the Lessee each Category of Equipment for the rental, and on and subject to the terms and conditions set forth herein and in a Lease Supplement to be then executed and delivered by the Lessor and the Lessee with respect to each Category of Equipment.

SECTION 1.2. Lease Supplement. The Lessee's execution and delivery of a Lease Supplement with respect to a Category of Equipment shall conclusively establish that, as between the Lessor and the Lessee, but without limiting or otherwise affecting the Lessee's or the Lessor's rights, if any, against any manufacturer of any Item of Equipment in such Category, such Item of Equipment is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and that such Item of Equipment (i) is in good order and condition and conforms to the specifications applicable thereto and to all applicable United States Department of Transportation and Surface Transportation Board requirements and specifications, if any, (ii) is in compliance with all manufacturing specifications and warranties and (iii) conforms to all standards recommended by the Association of American Railroads applicable to railroad equipment of the character of such Item of Equipment as of the date of this Lease. By execution and delivery of any Lease Supplement, the Lessee represents and warrants to the Lessor and the Owner Participant it has inspected the Equipment to which such Lease Supplement relates and that it has no knowledge of any defect in any Item of Equipment covered thereby.

SECTION 1.3. Delivery of Equipment. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of each of the Items of Equipment under the Purchase Agreement. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Item of Equipment is found to be acceptable, to accept delivery of such Item of Equipment on behalf of the Lessor under the Purchase Agreement and on behalf of itself hereunder and execute and deliver to the Lessor a certificate of acceptance (the "Certificate of Acceptance") stating that such Item of Equipment has been inspected and accepted by the Lessee on behalf of itself and the Lessor on the date of such Certificate of Acceptance and that such Item of Equipment has been marked in accordance with Section 4.2 of this Lease.

ARTICLE II

RENTALS AND PAYMENT DATES

SECTION 2.1. Rent for Equipment. The Lessee agrees to pay the Lessor rent for each Item of Equipment as follows:

(a) Fixed Rent. With respect to each Category of Equipment, Fixed Rent shall be payable for the Base Term quarterly in advance on each Rent Payment Date in the amounts set forth in the Lease Supplement with respect to such Category of Equipment. Each such payment of Fixed Rent shall be allocable to use of such Category of Equipment during the quarterly period that begins on such Rent Payment Date.

(b) Additional Rent. In addition to the foregoing rental, the Lessee agrees to pay to the Lessor, or to whosoever shall be entitled thereto, any and all Additional Rent, promptly as the same shall become due and owing, and in the event of any failure on the part of the Lessee to pay any Additional Rent, the Lessor shall have all rights, powers and remedies provided for herein or by law or equity or otherwise in the case of nonpayment of Fixed Rent.

SECTION 2.2. Business Days. If any Rent Payment Date is not a Business Day, the rent payment otherwise payable on such date shall be payable on the next following Business Day.

SECTION 2.3. Adjustment of Rentals. The Lessee and the Lessor agree that the Fixed Rent and the Casualty Value percentages as set forth in the Lease Supplements have been calculated on the assumptions that:

(a) Items of Equipment in Category A having a Total Equipment Cost of \$4,972,500 shall be purchased by the Lessor and leased to the Lessee hereunder on the Closing Date, the Items of Equipment in Category B having Total Equipment Cost of \$4,972,500 shall be purchased by the Lessor and leased to the Lessee hereunder on the Second Delivery Date, and the Items of Equipment in Category C having Total Equipment Cost of \$6,215,625 shall be purchased by the Lessor and leased to the Lessee hereunder on the Third Delivery Date.

(b) the Base Term Commencement Date is April 16, 1996 for the Items of Equipment in Category A, the Base Term Commencement Date is May 10, 1996 for the Items of Equipment in Category B, and the Base Term Commencement Date is June 7, 1996 for the Items of Equipment in Category C,

(c) the Second Delivery Date is May 10, 1996, and the Third Delivery Date is June 7, 1996,

(d) the Funding Index Rate is 5.50%,

(e) transaction expenses payable by the Owner Participant under Section 2.1 of the Agreement to Lease equal \$48,000 (distributed pro rata among each Category) and

(f) no Tax Change shall occur on or prior to the any Delivery Date.

If any of such assumptions shall prove to be incorrect, then the Lessee and the Lessor agree that the amounts (and payments if necessary) for Fixed Rent, the EBO Amount and percentages for Casualty Values will be adjusted, upward or downward, as appropriate, as soon as practicable. Any such adjustment shall be made in such manner as to (1) maintain the Owner Participant's net after-tax cash flows and net after-tax yield under the multiple investment sinking fund method of analysis that would have been realized by the Owner Participant over the entire term of this Lease had such assumptions proved correct, while (2) minimizing the net present value (utilizing a discount rate of 7% per annum) of the Fixed Rent to the Lessee to the extent possible consistent with the foregoing clause (1); provided, however, that the maximum adjustment to be made solely in respect of the assumption set forth in clause (e) above (if and to the extent a Tax Change shall occur on or prior to the Second Delivery Date) shall be the amount per Item of Equipment equal to the Tax Change Maximum Amount. The Lessor shall furnish the Lessee with revised Lease Supplements setting forth any adjustments required by this Section 2.3 as soon as practicable after receipt of invoices for the transaction expenses. All such adjustments shall be in compliance with the provisions of Revenue Procedure 75-21 and Revenue Procedure 75-28 and shall not cause the Lease to be treated as a "disqualified leaseback or long-term agreement" within the meaning of Section 467 of the Code and shall be made in a manner otherwise designed to comply with Section 467 of the Code and any regulation thereunder.

SECTION 2.4. Place and Manner of Rent Payment. All payments to be made by the Lessee to the Lessor under this Lease shall be paid to the Lessor by wire transfer or such means available so as to insure prompt payment to the account of the Lessor provided for payments in Section 20.1 hereof. The Lessee agrees that it will make all such payments by such means as referenced above, as soon as practicable following the opening of business of the office of the transferring bank on the due date of such payment or the first Business Day thereafter if the due date is not a Business Day in federal or otherwise immediately available funds to the party to whom such payment is to be made.

SECTION 2.5. Net Lease. This Lease is a net lease and the Lessee's obligation to pay all Fixed Rent and Additional Rent and other amounts payable hereunder shall be absolute and unconditional under any and all circumstances and, without limiting the generality of the

foregoing, the Lessee shall not be entitled to any abatement of Rent or reduction thereof or setoff against Rent, including, but not limited to, abatements, reductions or setoffs due to any present or future claims of the Lessee against the Lessor, the Owner Participant or any other Person under this Lease or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss or destruction of or requisitioning of the Equipment by condemnation or otherwise, the prohibition of Lessee's use of the Equipment other than by the Lessor's breach of the Lessee's right of quiet enjoyment, the interference with such use by any private Person, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease or any other Operative Agreement, or lack of right, power or authority of the Lessor to enter into this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Rent and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 11, 13 or 15 hereof. 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 the lease of any Item of Equipment except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

ARTICLE III

TERM OF THE LEASE

SECTION 3. Term of the Lease. The base term of this Lease for each Category of Equipment (the "Base Term") shall begin on April 16, 1996 for the Items of Equipment in Category A, May 10, 1996 for the Items of Equipment in Category B, and June 7, 1996 for the Items of Equipment in Category C (respectively, the "Base Term Commencement Date") and shall terminate with respect to each such Category of Equipment as set forth below, subject to earlier termination pursuant to Sections 11 and 14:

<u>Category</u>	<u>Termination Date</u>
A	April 15, 2018
B	May 9, 2018
C	June 6, 2018

Subject and pursuant to the terms of Section 18 hereof, the Lessee may elect one Renewal Term at the end of the Base Term with respect to all Items of Equipment then subject to this Lease.

ARTICLE IV

OWNERSHIP AND MARKING OF EQUIPMENT

SECTION 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 delivery thereof to and possession and use thereof by the Lessee.

SECTION 4.2. Duty to Number and Mark Equipment. The Lessee will cause each Item of Equipment to be kept numbered with one of its unit numbers as set forth in Schedule I hereto, and will, from and after the Closing Date, keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting colors upon each side of each Item of Equipment in letters not less than one inch in height as follows:

"SUBJECT TO A LEASE FILED WITH
THE SURFACE TRANSPORTATION BOARD"

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 Item of Equipment and its rights under this Lease. The Lessee will replace promptly any such unit numbers or words which may be removed, defaced, obliterated or destroyed. The Lessee will not change the road number of any Item of Equipment except in accordance with a statement of new unit numbers to be substituted therefor, which statement previously shall have been delivered to the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

SECTION 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 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 or its affiliates on railroad equipment used by it or its affiliates of the same or a similar type for convenience of identification of the right of the Lessee or its affiliates to use the Equipment under this Lease.

ARTICLE V

DISCLAIMER OF WARRANTIES

SECTION 5. Disclaimer of Warranties; Warranty Assignments; Quiet Enjoyment. (a) THE LESSEE ACKNOWLEDGES AND AGREES THAT (I) THE EQUIPMENT AND EACH ITEM 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 ITEM THEREOF IS SUITABLE FOR ITS PURPOSES, (III) NEITHER THE LESSOR NOR THE OWNER

PARTICIPANT IS A MANUFACTURER OR A DEALER IN PROPERTY OF SUCH KIND, (IV) THE EQUIPMENT AND EACH ITEM 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 LEASE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND BY THE LESSOR, AND (V) AS BETWEEN THE LESSOR AND THE LESSEE, THE LESSOR LEASES THE EQUIPMENT AND EACH ITEM THEREOF, ON AN "AS-IS, WHERE-IS" BASIS WITHOUT WARRANTY OR REPRESENTATION EITHER EXPRESS OR IMPLIED, AS TO THE TITLE, CONDITION, FITNESS FOR A PARTICULAR PURPOSE, DESIGN, DESCRIPTION, OPERATION OR MERCHANTABILITY THEREOF, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. The provisions of this Section 5 have been negotiated by the Lessor and the Lessee and are intended to be a complete exclusion and negation of any representations or warranties of the Lessor or the Owner Participant, express or implied, with respect to the Equipment or any Item thereof that may arise pursuant to any law now or hereafter in effect, or otherwise.

(b) Subject to the next following sentence, the Lessee hereby assigns to the Lessor all its rights, if any, with respect to the Equipment against the manufacturers of the Equipment, including all claims under any indemnities or warranties, whether for condition of goods, patent or otherwise, and any other rights arising under any purchase orders or agreements pertaining to the Equipment. The Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease prior to any Event of Default to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their 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 such manufacturers; provided, however, that if at any time a Default or 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. Lessor shall, at the Lessee's request and at Lessee's expense, cooperate in the enforcement of any indemnities or warranties or the prosecution of any claims by the Lessee against such manufacturers under this paragraph (b).

(c) The Lessor 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 Item 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 Item of Equipment or any risks relating thereto; (iii) any interruption of service, use, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Item of Equipment. The Lessee's delivery of a Lease Supplement shall be conclusive evidence as between the Lessee and the Lessor that all Items of Equipment described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

(d) So long as no Event of Default shall have occurred and be continuing, the Lessor agrees that following the execution and delivery of each Lease Supplement the Lessee shall be entitled to quiet use and enjoyment of the Equipment relating thereto in accordance with this Lease and such Lease Supplement.

ARTICLE VI

LESSEE INDEMNITIES

SECTION 6.1. General Indemnity. (a) The Lessee hereby agrees to assume liability for, and does hereby agree to indemnify, protect, save and keep harmless on an after-tax basis each Indemnified Party from and against any and all loss or damage to the Equipment, usual wear and tear excepted (taking into account the provisions of Sections 7, 8 and 11), and any and all liabilities, obligations, losses, damages, penalties, claims (including claims by any employee of the Lessee or any of its contractors), actions, suits and related costs, expenses and disbursements, including legal fees and expenses and costs of investigation, of whatsoever kind and nature (for purposes of this Section collectively called "Expenses"), imposed on, asserted against or incurred by any Indemnified Party, in any way based on, relating to or arising out of (i) this Lease (including any Lease Supplement) or any other Operative Agreement, or any waivers, modifications, supplemental., or amendments thereto, (ii) the Equipment or any Item or part thereof, or the construction, manufacture, financing, acceptance, installation, ownership, purchase, delivery, lease, sub-leasing, transportation, possession, use, operation, condition substitution, sale, return or disposition of the Equipment or any Item or part thereof (including, without limitation, latent and other defects, whether or not discoverable by the Indemnified Party or the Lessee, and any claim for patent, trademark or copyright infringement and any claim arising under any strict liability doctrine in tort), (iii) the sale or other disposition of the Equipment or any Item thereof pursuant to Section 11, 14 or 18, or (iv) Environmental Claims, including any Environmental Claims in connection with, or alleged to be in connection with, the operation, use, possession, storage, abandonment or return of any Item of equipment, or with any location whatsoever (including any landfill) owned, operated or used for the treatment, storage, transportation or disposal of any material defined as a hazardous substance under any applicable Environmental Law, and Environmental Claims incurred in connection with the treatment, storage, transportation or disposal by the Lessor of any hazardous substance left in any Item of Equipment upon return or abandonment of any such Item of Equipment or upon assignment of any leasehold interest in any such Item of Equipment; except only that the Lessee shall not be required to indemnify any Indemnified Party pursuant to this Section 6.1 for: (A) any Taxes (other than amounts in respect of Taxes to the extent necessary to hold such Indemnified Party harmless on an after-tax basis), it being agreed that the indemnity for Taxes is intended to be provided by Section 6.2, (B) Expenses only to the extent resulting from the willful misconduct or gross negligence of such Indemnified Party (other than gross negligence or willful misconduct imputed as a matter of law to such Indemnified Party solely by reason of its interest in the Equipment), and (C) transaction costs to be paid by the Owner Participant pursuant to Section 2 of the Agreement to Lease. If any Indemnified Party shall have knowledge of any claim or liability hereby indemnified against, it shall give prompt written notice thereof to the Lessee;

provided, however, that the failure of such Indemnified Party to give such notice shall relieve the Lessee of its obligations hereunder only if such failure precludes a contest by the Lessee hereunder. The Lessee may, at its expense, in good faith and by appropriate legal proceedings, contest or defend an asserted claim or liability for which it is indemnifying under this Section 6.1 (and has acknowledged liability in writing to the relevant Indemnified Parties) so long as, in the reasonable opinion of the Indemnified Party, such defense is being diligently conducted by Persons reasonably satisfactory to the affected Indemnified Parties; provided, however, that Lessee shall have no such right (a) during the continuation of any Default or any Event of Default, (b) if any such contest would create any danger of the sale, forfeiture or loss of, or the creation of any Lien (other than a Permitted Lien) (except if the Lessee shall have adequately bonded such Lien or otherwise made provision to protect the interests of such Indemnified Parties in a manner reasonably satisfactory to them) upon, the Equipment or the Trust Estate which would not otherwise occur or (c) if such contest could, in the good faith opinion of the affected Indemnified Party, entail a risk to such Indemnified Party or an Affiliate thereof of (i) material civil liability or (ii) any criminal liability. Settlement of any dispute or claim or action in the name of an Indemnified Party shall not be settled or otherwise finalized without such Indemnified Party's prior written consent, which consent shall not be unreasonably withheld.

(b) All amounts payable by the Lessee pursuant to this Section shall be payable directly to the parties entitled to indemnification. All the indemnities contained in this Section 6.1 shall continue in full force and effect notwithstanding the expiration or other termination of this Lease and are expressly made for the benefit of, and shall be enforceable by, each Indemnified Party.

SECTION 6.2. General Tax Indemnity. (a) All payments to be made by the Lessee hereunder will be free of all withholdings of any nature whatsoever (including withholding taxes and monetary transfer fees). The Lessee agrees to pay, and indemnify and hold each Indemnified Party harmless from, all license and registration fees and all taxes, assessments, rates, excises, permit fees, inspection fees, levies, imposts, duties, charges or withholdings of any nature whatsoever, including, sales, gross receipts, transfer, property, stamp, use, general and other taxes, together with any penalties, fines or interest thereon imposed against any Indemnified Party, the Lessee, the Equipment or any Item or part thereof or interest therein by any federal, state or local government or taxing authority in the United States or by any foreign country or subdivision thereof, or by any international organization, upon or with respect to the Equipment or any Item or part thereof, or the construction, manufacture, financing, acceptance, installation, ownership, purchase, delivery, lease, sub-leasing, rental, transportation, possession, use, operation, condition substitution, sale, return or disposition of the Equipment or any Item or part thereof or interest therein or upon the rentals, or upon or with respect to the Lease or upon the Rent or other sums payable by the Lessee hereunder or with respect to the other Operative Agreements, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to any item of Equipment or otherwise on or with respect to the transactions contemplated by the Operative Agreements (all such fees, taxes, assessments, rates, excises, levies, imposts, duties, charges and withholdings, and all penalties, additions to tax and interest imposed in connection therewith being hereinafter called "Taxes"); provided, however, that the foregoing indemnity shall not apply to (i) taxes measured by net

income (including any minimum or alternative minimum income taxes and any income taxes on or measured by items of tax preference), capital or net worth, other than taxes in the nature of or in lieu of sales, property, license, use or rental taxes (hereinafter referred to as "Income Taxes") imposed by (A) the United States Federal government, or (B) any state or local taxing jurisdiction in the United States; (ii) Taxes imposed on an Indemnified Party resulting from a voluntary sale, assignment, transfer or other disposition by such Indemnified Party of any Item of Equipment or interest therein or any interest in any trust holding such Equipment except if a Default shall have occurred and be continuing or the performance of an act required by any Operative Agreement, (iii) Taxes imposed on an Indemnified Party resulting from an involuntary sale, assignment, transfer or other disposition by such Indemnified Party of any Item of Equipment or interest therein or any interest in any trust holding such Equipment if such involuntary sale, assignment, transfer or other disposition shall occur as a result of the bankruptcy or dissolution of such Indemnified Party (unless such bankruptcy or dissolution is attributable to a Default) except if a Default shall have occurred and be continuing or the performance of an act required by any Operative Agreement, (iv) Taxes in respect of any period after the expiration or early termination of this Lease so long as the Lessee shall have discharged all its obligations under this Lease; and (v) Taxes that have been included in the cost of the Equipment and paid to the appropriate taxing authority.

(b) In the event any reports with regard to Taxes (other than Income Taxes) are required to be made with respect to the Equipment or any Item thereof, the Lessee will, where permitted to do so under applicable rules or regulations, make and timely file such reports in such a manner as to show the interest of the Lessor and any other Indemnified Party therein as shall be reasonably satisfactory to each thereof or, where not so permitted, will, as soon as the Lessee has knowledge thereof, notify the Lessor and any other Indemnified Party of such requirement and will assist in preparation of such reports by the Lessor or any other Indemnified Party in such manner as shall be reasonably satisfactory to each thereof. Unless otherwise required by law the Lessee shall be responsible for reporting this Equipment for ad valorem property tax purposes in the applicable states or localities and, unless otherwise required by law, no Indemnified Party shall include the Equipment in any ad valorem or other similar tax returns filed by it in such states or localities.

(c) The Lessee further agrees that, with respect to any payment or indemnity to an Indemnified Party under this Article VI, and notwithstanding the proviso in Section 6.2(a), Lessee's indemnity obligations shall include any amount necessary to hold such Indemnified Party harmless on an after-tax basis from all Taxes required to be paid by such Indemnified Party with respect to such payment or indemnity (including any payments under this Section 6.2(c)). Payment shall be made by the Lessee no later than the date on which the Indemnified Party must pay such Taxes.

(d) All amounts payable by the Lessee pursuant to this Section 6.2 shall be payable directly to the Indemnified Party except to the extent paid to a governmental agency or taxing authority. All the indemnities contained in this Section 6.2 and the obligation, if any, of the Lessee to make payments to each Indemnified Party pursuant to this Section 6.2, shall continue in full force and effect notwithstanding the expiration or other termination of the Lease

in whole or in part, until all such obligations of the Lessee and each Indemnified Party have been met and such liabilities have been paid in full and are expressly made for the benefit of, and shall be enforceable by, each Indemnified Party. The Lessee's obligations under this Section 6.2 shall be that of primary obligor irrespective of whether the Indemnified Party shall also be indemnified with respect to the same matter under some other agreement by another Person.

(e) If any claim is made against any Indemnified Party, by commencement of proceedings against the Indemnified Party or otherwise, for any Taxes as to which the Lessee has an indemnity obligation pursuant to this Section 6.2, such Indemnified Party shall promptly notify the Lessee of such claim in writing; provided, however, that failure to give such notice shall relieve the Lessee of its obligations hereunder only if such failure precludes a contest by the Lessee hereunder. The Lessee may, at its sole cost and expense, in good faith and by appropriate legal proceedings, contest or defend an asserted claim or liability for which it is indemnifying under this Section 6.2 (and has acknowledged liability in writing to the relevant Indemnified Parties) so long as in the reasonable opinion of the Indemnified Party, such defense is being diligently conducted by Persons reasonably satisfactory to the affected Indemnified Parties; provided, however, if there has been a material adverse change in the business, assets, operations, prospects or condition (financial or otherwise) of Lessee, the Lessee may only conduct such contest upon providing a letter of credit, bond or other security satisfactory in all respects to the Lessor to cover the potential Taxes involved in such contest; and provided further, however, that the Lessee may not conduct any contest or defense (i) involving Taxes not indemnified by the Lessee hereunder or (ii) if such Indemnified Party or the Owner Participant shall have reasonably determined that the conduct of such contest or defense will result in any material danger of sale, forfeiture or loss of, or the creation of any Lien (except if the Lessee shall have adequately bonded such Lien or otherwise made provision to protect the interests of such Indemnified Party and Owner Participant in a manner reasonably satisfactory to them) on the Equipment or any Item of Equipment or may otherwise interfere with timely payments of Rent. Notwithstanding anything in this Section 6.2 to the contrary, an Indemnified Party need not permit a contest if the amount of Taxes that are the subject of the contest is not in excess of \$10,000.

6.3. Indemnified Parties; Survival. Notwithstanding anything to the contrary in this Lease, the actions or omissions of any Indemnified Party not constituting gross negligence or willful misconduct shall not, in any way, impair the right of any other Indemnified Party to indemnification under this Article, or otherwise under this Lease or any other Operative Agreement (including the Tax Indemnity Agreement). The indemnities contained in this Section 6 shall survive the expiration or termination of this Agreement.

ARTICLE VII

RULES, LAWS AND REGULATIONS

SECTION 7. Rules, Laws and Regulations. The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including the rules of the United States Department of Transportation (including the rules and regulations of the Federal Railroad

Administration), the Surface Transportation Board and the current Interchange Rules or supplements thereto of the Mechanical Division, Association of American Railroads as the same may be in effect from time to time) (the "Interchange Rules") with respect to the use and maintenance of each Item of Equipment subject to this Lease. Subject to the provisions of Sections 8(b) and (c) below, in case any equipment or appliance is required to be altered, added, replaced or modified on any Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, additions, replacements and/or modifications at its own expense and title thereto shall be immediately vested in the Lessor.

ARTICLE VIII

USE AND MAINTENANCE OF EQUIPMENT

SECTION 8. Use and Maintenance of Equipment. (a) The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Equipment shall not be used in any manner which is in violation of the insurance maintained under Section 11.1. The Lessee shall at no time assign, or permit any sublessee to assign, any Item of Equipment for the transport or storage of hazardous (as determined by CFR Title 49 "Hazardous Materials Regulation") substances or materials except to the extent the same are commonly transported in similar equipment by rail common carriers; provided, however, that notwithstanding the foregoing or anything else to the contrary contained in this Lease or any other Operative Agreement, none of the commodities listed on Schedule 2 hereto (as from time to time amended as set forth in the following sentence) may be loaded, carried, transported or stored in any Item of Equipment. The Lessee acknowledges and agrees (i) that the commodities listed on Schedule 2 hereto are substances which are restricted pursuant to the corporate policies of the Owner Participant in effect on or about the date of this Lease, (ii) that such corporate policies may be amended at any time and from time to time, and (iii) that the Owner Participant may at any time and from time to time unilaterally amend Schedule 2 without the consent or participation of the Lessor or the Lessee and any such amendments so made shall in each case be effective immediately upon notice by the Owner Participant or the Lessor to the Lessee to such effect; provided, however, that (x) any such amendments shall have prospective effect only from the dates of the respective notices to the Lessee and (y) in the case of commodities that are not classified as hazardous substances, wastes or materials under any applicable environmental laws then in force and that are not already included on Schedule 2 in some related form, such commodities may not be unilaterally added to Schedule 2 without the written consent of the Lessee (such consent not to be unreasonably withheld or delayed). The Lessee shall promptly, and in all events within two Business Days after the occurrence of such event, notify the Lessor and the Owner Participant of any breach by the Lessee or any sublessee of the covenants or restrictions set forth in the second or third sentences of this paragraph. The Lessee agrees that it will not discriminate against any Item of Equipment (as compared to other similar equipment owned or leased by Lessee) with respect to its use, operation or maintenance in contemplation of the expiration or termination of this Lease.

(b) The Lessee shall, at its own cost and expense, (i) maintain and keep the Equipment, each Item thereof, and the component parts thereof in good order and repair, and (ii) limit perforation from corrosion, erosion or other damage, in each case to a standard at least equal to and no less thorough and complete than required by the standard and frequency of maintenance performed on other similar equipment owned or leased by the Lessee. In any event the Lessee agrees, at its own cost and expense, to maintain and keep the Equipment in the condition received by the Lessee from the Lessor, ordinary wear and tear excepted, and suitable for the commercial use as originally designed and intended in interchange service in accordance with applicable Interchange Rules (whether requirements are nominally imposed on the Lessor or the Lessee) and prudent industry practice and manufacturing warranties. The Lessee shall also maintain all records, logs and other materials required by the Association of American Railroads, the Department of Transportation or any other governmental authority having jurisdiction over the Equipment or the Lessee to be maintained in respect of the Equipment.

(c) Any parts installed or replacements made by the Lessee upon any Item of Equipment pursuant to Section 7 hereof or pursuant to the Lessee's obligation to maintain and keep the Equipment in good order, condition and repair under this Section 8 shall in either case be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor without cost or expense to the Lessor. The Lessee shall make no other additions or improvements to any Item of Equipment unless the same are readily removable without causing unrepaired damage to such Item of Equipment, which damage Lessee shall promptly repair at its expense, and provided that such additions, modifications and improvements do not diminish the condition, fair market value, utility, remaining useful life or expected residual value of such Item of Equipment or cause such Item of Equipment to become "limited use property" within the meaning of Revenue Procedure 76-30, 1976-2 C.B. 647 (or such other successor tax provision). Title to any such readily removable additions or improvements shall remain with the Lessee. If the Lessee shall at its cost cause such readily removable additions or improvements to be made to any Item of Equipment the Lessee may, or at the request of the Lessor, the Lessee shall, prior to the return of such Item of Equipment to the Lessor hereunder, remove the same at its own expense without causing any damage to such Item of Equipment; provided, however, that the Lessor may, by delivery of written notice to the Lessee prior to any such removal, elect to purchase any such readily removable additions for a price equal to the Fair Market Value thereof determined in the manner provided in Section 18.1. Title to any readily removable addition or improvement which has not been so removed by the Lessee from an Item of Equipment when such Item is returned to the Lessor pursuant to this Lease shall thereupon be vested in the Lessor, provided, however that Lessee shall remove any such additions, modifications or improvements which have caused unrepaired damage to such Item of Equipment or which diminish the condition, fair market value, utility, remaining useful life or expected residual value of such Item of Equipment or cause such Item of Equipment to become "limited use property" within the meaning of Revenue Procedure 76-30, 1976-2 C.B. 647 (or such other successor tax provision).

ARTICLE IX

LIENS ON THE EQUIPMENT

SECTION 9. Liens on the Equipment. The Lessee will not directly or indirectly create, incur, assume or suffer to exist any Lien on or with respect to any Item of the Equipment, title thereto or any interest therein except (i) Liens which result from the Lessor's or the Owner Participant's own acts arising out of events or conditions not related to any transaction contemplated by any Operative Agreement and not to be paid or indemnified against by the Lessee hereunder ("Lessor Liens") and (ii) Permitted Encumbrances. The Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge any such Lien (and any claim which if unpaid might constitute or become such a Lien) not excepted above if the same shall arise at any time with respect to any Item of the Equipment.

ARTICLE X

FILING

SECTION 10. Filing. On or prior to the Closing Date, the Lessee will cause this Lease to be duly filed, registered or recorded with the Surface Transportation Board in accordance with 49 U.S.C. § 11301, and will cause this Lease to be deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette) pursuant to Section 90 of the Railway Act of Canada. 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, reregister or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Owner Participant, for the purpose of protecting the Lessor's title to any Item of Equipment to the satisfaction of the Lessor's or the Owner Participant's counsel or for the purpose of carrying out the intention of this Lease (including any such filings and recordings as shall be necessary to evidence any change in name of the Lessee or any merger or consolidation thereof). The Lessee will pay all costs, charges and expenses incident to any such filing, refiling, recording and re-recording or depositing and redepositing of any such instruments or incident to the taking of such action.

ARTICLE XI

INSURANCE; PAYMENT FOR CASUALTY OCCURRENCE

SECTION 11.1. Insurance. (a) The Lessee will at all times after delivery and acceptance of the Equipment, at its own expense, carry and maintain or cause to be carried and maintained all-risk property insurance in an amount not less than the Casualty Value of each Item and public liability insurance, including but not limited to third-party personal injury, death and property damage (including contractual liability insurance), sudden and accidental pollution and evacuation expense and Federal Employers' Liability Act (FELA) coverage with respect to the Equipment in amounts not less than \$25 million, with deductibles not exceeding \$100,000, in

each case against such risks and in such amounts as is customarily maintained by Lessee in respect of other equipment owned or leased by Lessee similar to the Equipment, and from financially sound and reputable insurance companies of recognized national standing.

(b) Such insurance policies shall: (i) name and insure the Lessor and the Owner Participant as additional insureds under the comprehensive public liability insurance and under the property insurance, insure the Lessor as additional insured and loss payee, with the understanding that any obligation imposed on the Lessee, including the liability to pay premiums, shall be the sole obligation of the Lessee and not that of the Lessor, (ii) provide insurer's waiver of its right of subrogation, set-off or counterclaim or any other deduction, whether by attachment or otherwise against the Lessor and the Owner Participant, (iii) provide that all such insurance is primary without right of contribution from any other insurance which might otherwise be maintained by the Lessor or the Owner Participant, (iv) provide therein or by endorsement that thirty (30) days prior written notice of cancellation or modification in a manner materially adverse to the Lessor or the Owner Participant shall be given to the Lessor and the Owner Participant, as the case may be, and ten (10) days prior written notice of cancellation for non-payment shall be given to the Lessor and the Owner Participant, (v) provide that there is no recourse against Lessor or the Owner Participant for payment of premium, commissions, direct calls, assessments or advances, and (vi) provide that the interests of Lessor and the Owner Participant shall not be invalidated by any action or inaction of Lessee or any other Person. At closing and annually thereafter at each policy anniversary date, the Lessee shall furnish the Lessor and the Owner Participant with certificates or other satisfactory evidence of maintenance of the insurance so required and shall furnish binders, certificates or other formal confirmations reasonably acceptable to the Lessor evidencing renewals thereof as soon as practicable but in no event later than five (5) Business Days prior to such renewal. The Lessee's insurance broker will deliver to the Lessee, with a copy to the Lessor and the Owner Participant, concurrently with the certificates referenced above, a letter in the form attached hereto as Exhibit B.

(c) All proceeds from insurance required to be carried under this Section 11.1 that are received by or payable to the Lessor or the Lessee on account of any damage to or destruction of any Item of Equipment or any part thereof or any impairment of the operation of any Item of Equipment shall be applied or dealt with as follows: (i) all proceeds received on account of any repairable damage to any Item of Equipment shall be paid over immediately to the Lessor and such proceeds shall be used to pay the cost of repair (against submission by the Lessee of receipts showing payment by the Lessee of the costs of such repair), but only upon a written application of the Lessee accompanied by a certificate of the Lessee showing in reasonable detail the nature of such repair, the estimated cost to make such repair and stating that no Default has occurred and is continuing (upon the completion of such repair, the balance, if any, of such insurance proceeds shall be retained by and assigned over to the Lessee) or (ii) all proceeds received on account of any damage that is not repairable (in the opinion of the Owner Participant) or on account of the destruction or loss of or to any Item of Equipment shall be paid over immediately to the Lessor and shall be allocated as between the Lessor and the Lessee as their interests may appear; provided, however, that if the Casualty Value of such Item is greater than the amount of such insurance proceeds retained by the Lessor, the Lessee promptly and

immediately shall pay to the Lessor the amount by which the Casualty Value of such item so exceeds the amount of such insurance proceeds retained by the Lessor.

(d) Nothing in this Section 11 shall prohibit the Lessor or the Owner Participant from obtaining insurance for its own account and any proceeds payable thereunder shall be as provided in the insurance policy relating thereto; provided, that no such insurance may be obtained that would limit or otherwise adversely affect the coverage of any insurance to be obtained or maintained by Lessee pursuant to this Section 11.

(e) If an Event of Default has occurred and is continuing, any amounts which otherwise would be payable to Lessee hereunder shall be retained by Lessor for application in satisfaction of Lessee's obligations hereunder upon the exercise of remedies pursuant to Section 14.2, unless prior thereto the Event of Default is cured or waived.

SECTION 11.2. Duty of Lessee to Notify the Lessor. In the event that during the Term of this Lease, or thereafter while any Item of Equipment is in the possession of the Lessee pursuant to Section 13 or 15 hereof (i) any Item of Equipment shall be or become lost or stolen for more than thirty (30) days, (ii) any Item of Equipment shall be or become destroyed, (iii) any Item of Equipment shall be or become damaged or worn beyond economic repair, (iv) title to any Item of Equipment shall be requisitioned or taken by any governmental authority under the power of eminent domain or otherwise or (v) the use of any Item of Equipment shall be requisitioned or taken for a stated period in excess of three years, or for an unstated period in excess of three years (any such occurrence being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully and in any event within thirty (30) days after it has knowledge of such Casualty Occurrence notify the Lessor and the Owner Participant in regard thereto and on or before the next Loss Payment Date occurring not less than 90 days following such notice shall either pay the Casualty Value of such Item in accordance with the terms of Section 11.3 hereof or, at its option, so long as no Event of Default shall have occurred and be continuing, substitute other Equipment for such Item in accordance with Section 11.7 hereof.

SECTION 11.3. Sum Payable for Casualty Loss. The Lessee, on the Loss Payment Date or the last day of any storage period pursuant to Section 13 hereof, as the case may be, following its notice to the Lessor that a Casualty Occurrence has taken place with respect to any Item of Equipment, shall pay to the Lessor (i) all Rent (including Fixed Rent due on or before such Loss Payment Date, except for Fixed Rent expressed to be payable in advance on such date) and other sums due on or prior to such date then remaining unpaid, and (ii) a sum equal to the Casualty Value of such Item of Equipment as of the date of such payment.

SECTION 11.4. Rent Termination. Upon (and not until) payment of all sums required to be paid pursuant to Section 11.3 hereof in respect of any Item or Items of Equipment, the obligation to pay Rent for such Item or Items of Equipment accruing subsequent to the Casualty Value payment date shall terminate, but the Lessee shall continue to pay Rent for all other Items of Equipment.

SECTION 11.5. Disposition of Equipment. Upon payment of the Casualty Value as provided herein, title to the Item or Items of Equipment suffering a Casualty Occurrence shall

vest in the Lessee, as evidenced by a bill of sale from the Lessor transferring such Item or Items to the Lessee on an "as is, where is" basis without representation or warranty, express or implied, except as to the absence of Lessor Liens. Any proceeds up to the Casualty Value payable in respect of a Casualty Occurrence shall be applied to the Lessee's obligation to pay such Casualty Value or, if the Lessee has previously paid such Casualty Value, to reimburse the Lessee for such payment. Any proceeds in excess of the Casualty Value payable in respect of a Casualty Occurrence shall be allocated between the Lessee and the Lessor as follows: (i) if such excess results from compensation paid through the interchange system; such excess shall belong to the Lessor, and (ii) if such excess results from a condemnation or requisition award or any other cause, such excess shall be allocated to the Lessee and the Lessor as their interests may appear.

SECTION 11.6. Casualty Value. The Casualty Value of each Item of Equipment shall be an amount determined as of the date the Casualty Value is to be paid as provided in this Section 11 (and not the date of the Casualty Occurrence). Casualty Value for each Item shall be equal to that percentage of the Equipment Cost thereof set forth in Schedule 2 to the applicable Lease Supplement (as such Schedule may be modified pursuant to Section 2.3 hereof).

SECTION 11.7. Risk of Loss. The Lessee shall bear the risk of loss and, except as hereinabove in this Section 11 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Item of Equipment from and after the date hereof and continuing until payment of the Casualty Value and all Rent and other sums due on and prior to the date of payment of such Casualty Value in respect of such Item of Equipment has been made.

SECTION 11.8. Eminent Domain. In the event that during the Term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period which has not yet become a Casualty Occurrence or for a stated period which does not constitute a Casualty Occurrence, the Lessee's obligation to pay all installments of Rent and other sums shall continue for the duration of such requisitioning or taking unless and until the same shall become a Casualty Occurrence. So long as no Default or 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 requisition or taking of possession.

ARTICLE XII

EQUIPMENT REPORTS

SECTION 12.1 Duty of Lessee to Furnish. On or before May 1, 1997, and on each May 1 thereafter, the Lessee will furnish to the Lessor and the Owner Participant an accurate statement, as of the preceding December 31 (a) showing the amount, description and unit numbers of the Items of Equipment then leased hereunder, the amount, description and unit numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the twelve (12) months ending on such December 31 (or since the date of this Lease, in the case of

the first such statement), describing the insurance which is in force with respect to the Equipment and such other information regarding the condition or repair of the Equipment as the Lessor or the Owner Participant may reasonably request, (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 have been preserved or replaced and (c) stating that no changes to the unit numbers of the Items of Equipment then leased hereunder have been made since the date of this Lease (except as specified in an annex to such statement, to the extent applicable).

SECTION 12.2. Lessor's Inspection Rights. The Lessor and the Owner Participant each shall have the right, but not the obligation, during normal business hours, at their respective sole cost, expense and risk except as provided below, by their respective authorized representatives to inspect the Equipment and the Lessee's records with respect thereto, with such frequency as shall be reasonably necessary to confirm the existence and proper maintenance of the Equipment during the continuance of this Lease; 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 Owner Participant, the Lessor or any prospective purchaser or lessee therefrom, the rights of inspection granted under this Section 12.2; and provided further, however, that during the continuance of a Default, such inspection shall be at the Lessee's cost and expense.

ARTICLE XIII

RETURN OF THE EQUIPMENT UPON EXPIRATION OF TERM

SECTION 13. Return of the Equipment. (a) Upon the expiration of the Term of this Lease with respect to any Items of Equipment, the Lessee will, at its own risk and expense, marshal and deliver possession of such Items of Equipment to the Lessor at such place of interchange on the line of the Lessee as the Lessor may reasonably designate. All movement of each such Item is to be at the risk and expense of the Lessee. The Lessee shall provide 90 days storage of the Items of Equipment at the Lessee's risk and expense including insurance and, at the Lessor's request, will provide an additional 120 days of storage of such Items at the Lessor's expense.

(b) Upon the return of such Equipment, the Lessee shall at its own cost and expense have **taken** all necessary action to assure that each Item of Equipment shall: (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, (ii) meet the standards (including all safety and environmental standards) then in effect for railroad equipment of the same type and age as the Equipment, and shall be eligible for interchange by the Lessor or its assigns, under the Interchange Rules and all applicable laws, (iii) have been maintained in the condition required by Section 7 and 8 hereof (without regard to the scheduling of maintenance), (iv) have attached or affixed thereto all parts to which the Lessor has title hereunder and have removed therefrom all parts and property to which Lessee has title thereto (unless the Lessor has exercised its option to purchase the same pursuant to the terms hereof), (v) be free and clear of all liens, security interests, charges and

encumbrances and rights of others (other than Lessor's Liens), (vi) be fit for loading and interchange service and capable of performing the functions for which it was designed, (vii) be emptied, free from Hazardous Substances, and free from deposits and accumulations from commodities transported in or on such Item, (viii) be in compliance with all applicable laws and (ix) be free of any marks, special paint or insignia, other than those required for identification by the STB and other than those required by Section 4.2 hereof. The Lessor and the Lessee each agree, if requested by the other, that a representative thereof will perform jointly with the other an inspection of the Equipment, or an appropriate representative sampling thereof, to insure compliance with the provisions of this Section 13 at such time and location and following such inspection standards as shall be mutually agreeable to the Lessor and the Lessee. If pursuant to such inspected any Item of Equipment is deemed not in the condition required by this Section 13, the Lessee, at its expense and risk, shall within thirty (30) days thereafter make such repairs and perform such work as shall be necessary to place such Item of Equipment in the condition required by this Section 13; provided, however, that if the Lessee reasonably determines that it cannot repair an Item of Equipment pursuant to this Section 13 within the period permitted herein, the Lessee may elect to purchase such Item of Equipment for the greater of Fair Market Value (determined on the assumption that such Item of Equipment was in the required condition) and Casualty Value determined as of the last day of the applicable Lease Term. Lessee will provide Lessor with notice when such Item of Equipment has been repaired so as to be in the condition required by this Section 13. Upon such redelivery of an Item of Equipment, the Lessee agrees to provide to the Lessor originals or true, correct, complete and legible copies of all manuals, drawings, diagrams, records, logs and other materials and inspection, modification, overhaul and maintenance records applicable thereto.

(c) The assembling, delivery in the required condition, storage, insurance and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction thereover, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver in the required condition, store, insure and transport the Equipment.

(d) Upon the request of Lessor, and at Lessor's sole expense, Lessee shall cooperate with Lessor in obtaining the valid and effective issuance, or, as the case may be, transfer or amendment of all governmental action necessary or, in the reasonable opinion of Lessor, desirable for the ownership of any Item of Equipment by Lessor or any transferee, sublessee or assignee thereof.

(e) Any Item of Equipment not delivered on the date of expiration of the Lease Term in accordance with this Section 13 shall continue to be subject to all of the obligations of Lessee set forth in this Lease. If Lessee shall, for any reason whatsoever, fail to return any Item of Equipment at the time specified herein, the Lessee shall pay rent therefor for each day from and after the expiration of the Lease to but excluding the day each such Item of Equipment is returned in accordance with this Section 13 in an amount equal to the greater of (a) 125% of the average *per diem* Fixed Rent and (b) the then *per diem* Fair Market Rental; provided, however, that this Section 13(e) shall not be construed as permitting Lessee to fail to

meet its obligations to return any Item of Equipment in accordance with the requirements of this Lease or constitute a waiver of any Event of Default.

ARTICLE XIV

DEFAULT

SECTION 14.1. Events of Default. Any of the following events shall constitute an Event of Default hereunder:

(a) payment of any part of the Fixed Rent, the EBO Amount or Casualty Value provided in Section 2, 11 or 18.3(a) hereof shall not be made within 5 Business Days after the date due;

(b) default shall be made in the payment of Additional Rent and such default shall continue for thirty (30) days;

(c) the Lessee shall default in the maintenance of the insurance coverage required by Section 11.1 hereof;

(d) the Lessee shall make or permit any sublease, assignment or transfer of this Lease, or of possession of any Item of the Equipment, not permitted by this Lease;

(e) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in any Operative Agreement (other than as described in paragraphs (a), (b), (c) or (d) above), and such default shall continue for thirty (30) days after the date on which notice thereof shall be given by the Lessor to the Lessee or the Lessee shall otherwise become aware of such default; provided, however, that the continuation of such failure beyond thirty (30) days shall not constitute an Event of Default if (i) such default is curable but cannot, with reasonable diligence, be cured within such thirty (30) days, (ii) the Lessee is diligently pursuing the cure of such default, (iii) providing additional time to the Lessee to cure such default shall not, in the reasonable opinion of the Lessor, have any material adverse effect on the interests of the Lessor hereunder or in any Item of Equipment and (iv) such default is cured to the satisfaction of the Lessor within ninety (90) days;

(f) any representation or warranty made by the Lessee herein or in any Operative Agreement (other than in the Tax Indemnity Agreement), or in any statement or certificate furnished to the Lessor or the Owner Participant in connection herewith or therewith, shall be untrue or incorrect in any material respect as of the date of issuance or making thereof or as of the Closing Date or as of any Delivery Date;

(g) any obligation of the Lessee for the payment or guarantee of payment of borrowed money or the deferred purchase price of property or for the payment or guarantee of payment of rent under any lease for land, railroad equipment (including

locomotives and rolling stock) or other property, in each case with respect to an obligation in an amount in excess of \$1,000,000 shall not be paid when due;

(h) the Lessee shall be in default, other than for the payment of rent, with respect to or under any obligation or covenant contained in any lease for land, railroad equipment (including locomotives and rolling stock) or other property (even if such non-payment default shall be waived, canceled or otherwise modified by the lessor thereof), in each case with respect to an obligation in an amount in excess of \$1,000,000;

(i) any Lien (other than a Permitted Encumbrance) shall be filed, levied or otherwise attach against any Item of Equipment or a substantial part of the other property of the Lessee, and such Lien shall not be removed, bonded or satisfied within ten (10) days;

(j) the Lessee shall load, carry, transport or store in any Item of Equipment in any of the substances or materials prohibited in the third sentence (including the proviso thereto) of Section 8(a) or shall cause, allow or suffer the same to be loaded, carried, transported or stored in any Item of Equipment;

(k) any judgment by a court of competent jurisdiction for the payment of money in excess of \$1,000,000 (or its equivalent) shall be rendered against the Lessee (unless and only for so long as the same shall be and remain stayed pending appeal, with such appeal being diligently pursued by the Lessee);

(l) the Lessee shall voluntarily, or by order of a competent court or governmental authority, suspend all or substantially all of its commercial operations for thirty (30) days or more;

(m) 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 any substantial part of its property, (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, (iii) shall make a general assignment for the benefit of creditors, (iv) shall fail generally to pay its debts as they become due or (v) shall take any corporate action to authorize any of the foregoing; or

(n) 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 any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of ninety (90) days.

SECTION 14.2. Remedies. Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, the Lessor may, at its option, declare this Lease to be in default, and at any time thereafter 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 Lease or to recover damages for the breach thereof;

(b) by notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee where any of the Equipment may be located and take possession of all or any of the Items of Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use such Items for any purpose whatever;

(c) sell any Item of Equipment 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 Fixed Rent with respect to such Item hereunder due for any periods subsequent to the date of such sale shall terminate (except to the extent that Fixed Rent is 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 or lease to others any Item of Equipment or any part thereof, 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 action or inaction or for any proceeds with respect thereto, except that the Lessee's obligation to pay Fixed Rent with respect to such Item due for any periods subsequent to the date upon which the Lessee shall have been deprived of use of such Item pursuant to this Section 14 shall be reduced (but not below zero for any Fixed Rent installment) by the net proceeds, if any, received by the Lessor from leasing such Item 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) or (d) above with respect to any Item of Equipment, the Lessor, by written notice to the Lessee specifying a payment date which shall be not earlier than ten (10) 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 payment date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Fixed Rent for such Item of Equipment due after the payment date specified in such notice), any unpaid Rent for such Item of Equipment due for periods

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 difference between the present value of all future Fixed Rent for such Item and the present value of the Fair Rental Value (determined as hereafter in this Section 14 provided) of such Item or, if the Lessor has leased such Items to others pursuant to paragraph (d) above, for the period of such lease the rental payable thereunder, in each case for the remainder of the Base Term or the Renewal Term, 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 7% per annum rate of discount from the respective dates upon which such Rent would be paid, or (ii) if the Lessor has not leased such Items to others pursuant to paragraph (d) above, an amount equal to the excess, if any, of the Casualty Value for such Item as of the Loss Payment Date next preceding the payment date specified in such notice or if such payment date occurs on a Rent Payment Date, then computed as of such Rent Payment Date, over the Fair Market Value of such Item (determined as hereafter in this Section 14 provided) as of the payment date specified in such notice;

(f) if the Lessor shall have sold any Item of Equipment pursuant to paragraph (c) above, the Lessor, in lieu of exercising its rights under paragraph (e) above with respect to such Item may, if it shall so elect, demand that the Lessee pay to the Lessor, and the Lessee shall pay to the Lessor, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Fixed Rent for such Item due on Rent Payment Dates subsequent to the Rent Payment Date next preceding such sale), any unpaid Rent for such Item due for periods up to and including the Loss Payment Date next preceding the date of such sale and if that date is a Rent Payment Date, the Rent due on that date (except for Fixed Rent payable in advance on such Rent Payment Date), plus the amount, if any, by which the Casualty Value of such Item computed as of the Loss 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

(g) whether or not the Lessor shall have exercised any of its rights under paragraph (a), (b) or (d) above, the Lessor may in lieu of exercising its rights under paragraph (e) above: (i) retain all Rent and additional sums theretofore paid by the Lessee or received by the Lessor in respect of such Item including any such then in possession which, had this Lease not been declared in default; would otherwise be payable to the Lessee hereunder, (ii) may recover from the Lessee all Rent and additional sums accrued and unpaid under any of the terms hereof as of the date of the declaration of default, and (iii) may transfer title to such Item to the Lessee by quitclaim bill of sale and recover from the Lessee as liquidated damages for loss of a bargain, but not as a penalty (in lieu of the Fixed Rent for such Item on Rent Payment Dates subsequent to the date of the declaration of default) an aggregate sum equal to the present value of (A) all Fixed Rent for such Item which would otherwise have accrued hereunder from the date of the declaration of default to the end of the Base Term or then Renewal Term, as the case may be, plus (B) the last Casualty Value payable during the term of this Lease, such present value to be computed on the basis of a 7% per annum rate of discount, from the

respective dates upon which such Fixed Rent would have been payable hereunder had this Lease not been terminated; and

(h) in the event of the occurrence of an Event of Default described in Section 14.1(j) the Lessor may at its option deliver a notice to the Lessee electing to assign and convey to the Lessee the Item or Items of Equipment that were loaded with or that carried, transported or stored the substances or materials described in such Section, and the Lessee shall then within two Business Days after delivery of such notice by the Lessor pay to the Lessor for (i) the purchase of such Item or Items of Equipment and (ii) the termination of this Lease with respect to such Item or Items of Equipment, an amount equal to unpaid Rent (if any) through the date title to such Equipment is transferred to the Lessee as set forth below plus the higher of (a) the Casualty Value of such Item or Items of Equipment or (b) the Fair Market Value of such Item or Items of Equipment (determined as if no default described in Section 14.1(j) had occurred). Following the delivery by the Lessor of the notice described in the previous sentence, the Lessor may apply at its option all amounts received from or on behalf of the Lessee to the obligation to pay the amounts specified in the previous sentence until such amounts have been paid in full prior to applying any such payments received from or on behalf of the Lessee to any other obligation of the Lessee hereunder (including payment of Fixed Rent or Additional Rent). Upon receipt by the Lessor in full of the amounts specified in the second preceding sentence, the Lessor shall transfer title to the Item or Items of Equipment to be assigned and conveyed to the Lessee in accordance with the notice delivered to the Lessee set forth above. Such transfer of the title shall be made by quitclaim bill of sale, without representations, warranties or covenants from, and without recourse to, the Lessor, the Owner Participant or any of their respective affiliates. The Lessee agrees to bear (and promptly reimburse the Lessor upon demand for) all costs and expenses of initiating and completing the assignment and conveyance of any Items of Equipment pursuant to this paragraph.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid Rent due hereunder before or during the exercise of any of the foregoing remedies and for all reasonable legal fees and other costs and expenses incurred by reason of the occurrence of any Default or Event of Default or the exercise of the Lessor's remedies with respect thereto, including the repayment in full of any costs and expenses of investigation and of repairing or modifying any Item of Equipment in order to cause it to be in compliance with all maintenance and regulatory standards imposed by this Lease.

For purposes of this Section 14.2, the Fair Rental Value and Fair Market Value for any Item of Equipment shall be determined on the basis of an appraisal of an independent appraiser chosen by the Lessor, based upon the criteria for establishing Fair Market Value and Fair Rental Value set forth in Section 18.1 provided, however, that (1) the determination of Fair Market Value and Fair Market Rent for the purpose of this Section 14.2 shall be based on the actual condition of such Items of Equipment at the time of such determination and shall take into account all Liens (other than Lessor's Liens) on such Items of Equipment, (2) the Fair Market Value and Fair Market Rent of any Item of Equipment, the possession of which is not recovered

by Lessor after reasonable efforts to do so, will be deemed to be zero, and (3) if the Lessor has sold an Item of Equipment in a commercially reasonable manner prior to the giving of its notice, the Fair Market Value of such Item of Equipment sold will be deemed to be equal to the net proceeds of such sale after deducting the costs and expenses incurred by the Lessor in connection therewith. The cost of any such appraisal shall be borne by the Lessee.

SECTION 14.3. Cumulative Remedies. The remedies in this 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. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law; provided however, in no event shall Lessor be entitled to recover damages in duplication of damages previously recovered by Lessor. 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 the lease of the Equipment.

SECTION 14.4. Lessor Failure to Exercise Rights. The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

SECTION 14.5. Notice of Event of Default. The Lessee also agrees to furnish to the Lessor and the Owner Participant, promptly upon becoming aware of any condition which constituted or constitutes a Default or an Event of Default under this Lease written notice specifying such condition and the nature and status thereof.

ARTICLE XV

RETURN OF EQUIPMENT UPON DEFAULT

SECTION 15.1. Lessee's Duty to Return. If the Lessor shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

(a) forthwith deliver such Item to such point or points of interchange on the Lessee's line as the Lessor shall reasonably designate; or

(b) permit the Lessor to store such Items of Equipment for one year on the lines or premises of the Lessee without charge for insurance, rent or storage, and during such period of storage the Lessee shall continue to maintain all insurance required by Section 11.1 hereof and maintain the Items of Equipment as provided hereby and thereafter deliver such Items as provided in clause (a).

SECTION 15.2. Specific Performance. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Equipment.

SECTION 15.3. Lessor Appointed Lessee's Agent. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney-in-fact of the Lessee, with full power and authority (which power is coupled with an interest), at any time during the continuance of an Event of Default while the Lessee is obligated to deliver possession of any Items of Equipment to the Lessor and is not doing so in a commercially reasonable manner, to demand and take possession of such Item in the name and on behalf of the Lessee from whosoever shall be at the time in possession of such Item.

ARTICLE XVI

SALE OF EQUIPMENT; LESSOR ASSIGNMENT OF LEASE

SECTION 16. Sale of Equipment. Subject to Section 6.11 of the Agreement to Lease, the Lessor may transfer and sell all or part of its right, title and interest in the Equipment to any Person so long as the Lessor shall arrange for an assumption by such transferee of all of the obligations of the Lessor hereunder, and this Lease and all Rent and all other sums due or to become due hereunder may be assigned by the Lessor to such transferee, without the consent of the Lessee.

ARTICLE XVII

ASSIGNMENTS BY LESSEE; USE AND POSSESSION

SECTION 17.1. Lessee's Rights to the Equipment & Sublease. So long as no Default or Event of Default shall have occurred and be continuing, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of the Lease but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in respect of any Item of Equipment. THE LESSEE ALSO SHALL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF THE LESSOR (SUCH CONSENT NOT TO BE UNREASONABLY WITHHELD OR DELAYED) ENTER INTO ANY SUBLEASE WITH RESPECT TO, PART WITH THE POSSESSION OR CONTROL OF, OR SUFFER OR ALLOW TO PASS OUT OF ITS POSSESSION OR CONTROL, ANY ITEM OF EQUIPMENT, except as provided in Section 17.2 or pursuant to a sublease (a "Permitted Sublease") to a domestic rail common carrier or to another Person with a net worth comprised of assets located in the United States in excess of \$20,000,000 (a "Permitted Sublessee"), which sublease (a) shall be for a term of not more than three years and not extending beyond the Term hereof, (b) shall include maintenance and insurance provisions substantially

identical to Sections 7, 8 and 11 hereof (including with respect to the prohibitions relating to commodities listed on Schedule 2 hereto (as amended from time to time)), (c) shall provide for lease payments monthly in advance in an amount equal to or greater than the monthly in advance equivalent of the Fixed Rent payable with respect to such Equipment hereunder, (d) shall prohibit sub-subleasing, or the loss of possession or control of the Equipment in any way, other than interchange service, by the sublessee and (e) shall expressly provide that the rights of any sublessee who receives possession by reason of a Permitted Sublease shall be subject and subordinate to each and every term, condition and provision of this Lease, including the Lessor's right of repossession pursuant to Section 14 of this Lease and to terminate such sublease upon such repossession. No sublease, whether or not a Permitted 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 Lease to the same extent as if such sublease had not occurred. Promptly upon entering into any sublease with a term exceeding one year, including any Permitted Sublease, the Lessee shall assign such sublease to the Lessor as security for the Lessee's obligations hereunder and deliver to the Lessor a copy thereof.

SECTION 17.2. Use and Possession in Railroad Operations. So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Equipment and to the use thereof upon the lines of railroad owned or operated by it, or upon lines of railroad over which the Lessee has trackage or other operating rights or over which equipment of the Lessee is regularly operated pursuant to contract or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through or pooling agreements, but only upon and subject to all the terms and conditions of this Lease. NOTWITHSTANDING THE FOREGOING, THE LESSEE SHALL AT NO TIME THROUGHOUT THE TERM OF THIS LEASE ASSIGN OR PERMIT THE ASSIGNMENT OF OR PERMIT ANY SUBLESSEE, WHETHER OR NOT A PERMITTED SUBLESSEE, TO ASSIGN OR PERMIT THE ASSIGNMENT OF, ANY ITEM OF EQUIPMENT FOR USE IN SERVICE (INCLUDING THE REGULAR OPERATION OR MAINTENANCE THEREOF) OUTSIDE THE CONTINENTAL UNITED STATES AND CANADA; provided, however, that no breach of the restriction contained in this sentence shall be deemed to have occurred if Items of Equipment constituting less than 15% in number of the Items of Equipment from time to time subject to this Lease shall in the normal course of usual interchange of traffic, beyond the control of the Lessee (and any sublessee, if applicable), at any time be located temporarily in Mexico.

SECTION 17.3. Merger, Consolidation or Acquisition of the Lessee. The Lessee shall not (whether in a transaction or a series of transactions) without the Lessor's prior written consent, sell, transfer, dispose of, pledge or otherwise encumber, all or substantially all of its assets or property, or merge or consolidate with any other Person, or become the subject of, or engage in a leveraged buy-out or any other form of corporate reorganization, consolidation or combination. If the Lessor does not consent to any such merger, consolidation, leveraged buy-out or other form of corporate reorganization, consolidation or combination, the Lessee may purchase all, but not less than all, of the Equipment for a price equal to the greater of the Fair Market Value thereof and the Casualty Value thereof (plus, in each case, all other amounts due

hereunder and under the other Operative Agreements) calculated as though a Casualty Loss had occurred on the effective date of such merger or other event specified in this sentence.

ARTICLE XVIII

OPTIONS TO RENEW AND PURCHASE

SECTION 18.1. Determination of Fair Market Value and Fair Rental Value. The Lessor and the Lessee shall promptly, upon the Lessee's notice of the exercise of the options set forth in Section 18.3 or 18.4, as the case may be, consult for the purpose of determining Fair Market Value and Fair Rental Value and any values agreed upon in writing shall constitute such Fair Market Value and Fair Rental Value. If the Lessor and the Lessee fail to agree upon such values within thirty (30) days after the need to determine the same, then they shall be promptly determined by the Appraisal Procedure. Such Fair Market Value and Fair Rental Value shall be determined on the basis of the value which would be obtained in an arms' length transaction between an informed and willing buyer-user or lessee and an informed and willing seller or lessor under no compulsion to sell, buy or lease. Any such determination shall be made (i) on the assumption that the Equipment is in the condition and state of repair required by this Lease, including the return conditions specified in Section 13, (ii) as respects Fair Rental Value, on the basis of a lease, having terms and conditions (other than the amount of Rent and without any purchase or renewal options) similar to the terms and conditions of this Lease (assuming a Term equal to the contemplated renewal term), and (iii) giving effect to the removal of any parts which remain the property of the Lessee under the provisions of Section 8 hereof. All costs and expenses of any Appraisal Procedure pursuant to this Section 18 shall be borne by the Lessee.

SECTION 18.2. Election to Retain or Return Equipment. Not less than 360 days nor more than 720 days prior to the end of the Base Term with respect to each Category of Equipment, the Lessee will give the Lessor irrevocable notice of its decision to return or retain all but not less than all of the Items of Equipment in all Categories of Equipment then subject to this Lease at the end of such Base Term. If the Lessee elects to retain such Items of Equipment, Lessee shall comply with Section 18.3 and/or 18.4 hereof, as it may elect in accordance with the provisions thereof including the notice requirements stated therein.

Section 18.3. Options to Purchase. So long as no Event of Default has occurred and is continuing, the Lessee shall have the right upon 90 days irrevocable prior written notice to the Lessor, to purchase all, but not less than all, of the Items of Equipment in all Categories of Equipment then subject to this Lease:

(a) on July 16, 2010 with respect to Category A Equipment, and, with respect to Category B Equipment and Category C Equipment, on the respective EBO Date set forth in the applicable Lease Supplement (each an "EBO Date"), at a purchase price for each Item of Equipment being purchased equal to the sum of (i) the EBO Amount for such Item of Equipment as set forth in the applicable Lease Supplement, plus (ii) all Rent then due with respect to such Item of Equipment, and

(b) on the date of the expiration of the Base Term specified in Section 3 or on the date of expiration of the Renewal Term, if any, at a price equal to the Fair Market Value thereof determined in accordance with this Section 18 as of such expiration date.

SECTION 18.4. Option to Renew. So long as no Event of Default shall have occurred and be continuing, the Lessee may, upon 90 days irrevocable prior written notice, renew this Lease as to all, but not less than all of the Items of Equipment in all Categories of Equipment then subject to this Lease for a renewal term of not less than two years nor more than five years, as the Lessee shall elect in such notice, and each quarterly, advance installment of Fixed Rent payable during such renewal term shall be in an amount equal to 70% of the quarterly Base Term Fixed Rent for all such Items of Equipment; provided, however, the aggregate renewal term permitted hereunder shall, when added to the Basic Term and any prior renewal term: (1) not exceed 80% of the estimated economic useful life of the Equipment, measured from the applicable delivery Date of such Equipment, and (2) be such that, upon the expiration of such renewal term, the estimated residual value of the Equipment as of the end of such renewal term would be at least equal to 20% of the Equipment Cost therefore, without taking into account inflation or deflation subsequent to the Closing Date, in each case determined pursuant to the appraisal procedure set forth in Section 18.1 above. Such renewal term shall commence immediately upon the expiration of the applicable Base Term. The Casualty Value payable during the renewal term in respect of any Item of Equipment suffering a Casualty Loss shall be equal to the Fair Market Value of such Item on the first day of the renewal term and thereafter during the period of such renewal term be reduced on a straight-line basis from such initial Fair Market Value to the projected Fair Market Value thereof as of the end of such renewal term.

SECTION 18.5. Delivery of Equipment. Unless the Lessee has elected to exercise its option to purchase the Items of Equipment then leased hereunder or to renew this Lease in respect of such Items of Equipment as provided in this Section 18, all of such Items of Equipment shall be returned to the Lessor at the end of the Base Term, or the Renewal Term, as the case may be, in accordance with Section 13 hereof.

ARTICLE XIX

INTEREST ON OVERDUE RENTALS AND AMOUNTS ADVANCED

SECTION 19. Interest. Anything to the contrary herein contained notwithstanding, any nonpayment of Rent or other sums due hereunder shall result in the additional obligation on the part of the Lessee to pay an amount equal to interest at the Late Rate on such overdue amounts for the period of time during which they were overdue and not paid.

ARTICLE XX

MISCELLANEOUS

SECTION 20.1. Notices; Payments to the Lessor. Any notice provided for in this Lease shall be in writing or by a telecommunications device capable of creating a written record, and shall be effective (a) upon personal delivery thereof, including, without limitation, by overnight mail and courier service or the United States mail, certified or registered, postage prepaid, return receipt requested, or, (b) in the case of notice by such a facsimile device, when properly transmitted and confirmed, in each case addressed to each party at the following addresses:

If to the Owner Participant:

General Electric Capital Corporation
1600 Summer Street, 6th Floor
Stamford, Connecticut 06927
Attention: Manager- Rail Operations
Fax No.: (203) 357-4329
Confirmation No.: (203) 357-4530

If to the Lessor:

Fleet National Bank,
777 Main Street
Hartford, CT 06115
Attention: Corporate Trust Administration, CTMO 0238
Fax No.: (860) 986-7920
Confirmation No.: (860) 986-7835

If to the Lessee:

Dakota, Minnesota & Eastern Railroad Corporation
337 22nd Avenue South
Brookings, SD 57006
Attention: Chief Financial Officer

Fax No.: (605) 697-2499
Confirmation No.: (605) 697-2400

with a copy to:

Graham & James
1 Maritime Plaza
San Francisco, CA 94111
Attention: David Biesemeyer, Esq.

Fax No.: (415) 391-2493
Confirmation No: (415) 954-0327

or as to any of the foregoing parties at such other address as such party may designate by notice duly given in accordance with this Section to the other parties.

All payments to be made to the Lessor under the Operative Agreements by wire transfer of immediately available funds shall be made to:

Bankers Trust Co.
New York, NY
ABA # 0210-0103-3
GECC/T & I Depository Account
Account # 50-205-776

For credit to the account of:
GECC - Dakota, Minnesota & Eastern Railroad

SECTION 20.2. Right of the Lessor to Perform. If the Lessee shall fail to comply with any of its covenants herein contained, the Lessor may, but shall not be obligated to, make advances to perform the same and to take all such action as may be necessary to obtain such performance. Any payment so made by the Lessor and all costs and expenses (including, reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by the Lessee to the Lessor upon demand as Additional Rent hereunder, with interest thereon at the Late Rate. No such action shall be deemed a repossession of any of the Equipment, and no such advance, performance or other act shall be deemed to relieve the Lessee from any default hereunder.

SECTION 20.3. 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 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. All waivers under this Lease must be in writing and shall specifically state therein that it constitutes a written waiver under this Section (making specific reference to this Section), but any breach or default, once waived in writing, shall not be deemed to be continuing for any purpose of the Operative Agreements. All remedies either under this Lease or by law afforded to the Lessor shall be cumulative and not alternative.

SECTION 20.4. Execution in Counterparts. This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

SECTION 20.5. Law Governing. THIS LEASE SHALL BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK AND OF THE UNITED STATES OF AMERICA (WITHOUT REGARD TO CONFLICT OF LAWS DOCTRINES).

SECTION 20.6. Currency. All amounts and moneys referred to in this Lease shall be construed to mean money which at the time is lawful money of the United States of America.

SECTION 20.7. Headings and Table of Contents. All Section headings and the Table of Contents are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

SECTION 20.8. Submission to Jurisdiction: Service of Process. The parties agree that a non-exclusive place of jurisdiction for any action, suit or proceeding relating to this Agreement shall be in the courts of the United States of America sitting in the Borough of Manhattan in the City of New York or in the courts of the State of New York sitting therein, and each such party hereby irrevocably and unconditionally agrees to submit to the jurisdiction of such courts for purposes of any such action, suit or proceeding. Such an action, suit or proceeding also may be brought in the federal or state courts located in the states of the principal place of business of any party hereto. Each party irrevocably waives any objection it may have to the venue of any action, suit or proceeding brought in such courts or to the convenience of the forum. Final judgment in any such action, suit or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment, a certified or true copy of which shall be conclusive evidence of the fact and the amount of any indebtedness or liability of any party therein described. The Lessee irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the Lessee at its address set forth in Section 20.1, such service to become effective 10 days after such mailing. Notwithstanding the foregoing, nothing in this Section shall adversely affect the right of the Lessor to serve legal process in any other manner permitted by law.

SECTION 20.9. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be as to such jurisdiction ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

SECTION 20.10. True Lease. Notwithstanding any provision herein to the contrary, it is the intent of the parties to this 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 the

Equipment which is the subject of this Lease for the purposes of all federal, state, city and local income taxes or for franchise taxes measured by net income, and that this Lease conveys to the Lessee no right, title or interest in the Equipment except as Lessee. Without limiting the generality of the foregoing, Lessor and Lessee acknowledge that this Lease is a "lease" of rolling stock equipment and accessories within the meaning of Section 1168 of the Bankruptcy Code. 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.

SECTION 20.11. Limitations of Liability. It is understood and agreed that Fleet National Bank, is entering into this Lease solely in its capacity as Owner Trustee under the Trust Agreement and that it shall not be liable or accountable in its individual capacity in any circumstances whatsoever except for a misrepresentation or breach of warranty in Section 3.3 of the Agreement to Lease or as otherwise expressly provided in the Trust Agreement. It is further agreed that all Persons having any claims against the Lessor as a result of transactions contemplated by any Operative Agreement shall look solely to the Trust Estate for satisfaction thereof, except as provided in the first sentence of this Section. It is also understood and agreed that, absent written instructions from the Owner Participant pursuant to the Trust Agreement, the Lessor shall not be under any obligation to exercise any of the permissive rights or powers granted to it under this Lease.

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

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION,

By: _____

Name:

Title:

FLEET NATIONAL BANK,
not in its individual capacity but solely as Owner
Trustee under the Trust Agreement.

By: _____

Name:

Title:

STATE OF)
) SS:
COUNTY OF)

On this ___ day of April, 1996, before me personally appeared _____, to me personally known, who being duly sworn, says that (s)he is _____ of Fleet National Bank, that said instrument was signed and sealed on behalf of said corporation by authority of its By-laws, and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(NOTARIAL SEAL]

Notary

STATE OF)
) SS:
COUNTY OF)

On this ___ day of April, 1996, before me personally appeared _____, to me personally known, who being by me duly sworn, says that (s)he is _____ of DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(NOTARIAL SEAL]

Notary

Schedule 1
(to Equipment Lease)

<u>CATEGORY</u>	<u>NUMBER OF ITEMS</u>	<u>DESCRIPTION OF EQUIPMENT</u>	<u>MANUFACTURER</u>	<u>UNIT NUMBERS (DME 29000-29324, both inclusive)</u>	<u>EQUIPMENT COST (PER ITEM)</u>
A	100	115-Ton Twin covered hopper cars, 2,980 cubic foot capacity	1996-Trinity Industries, Inc.		\$49,725
B	100	115-Ton Twin covered hopper cards, 2,980 cubic foot capacity	1996-Trinity Industries, Inc.		\$49,725
C	125	115-Ton Twin covered hopper cards, 2,980 cubic foot capacity	1996-Trinity Industries, Inc.		\$49,725

RESTRICTED COMMODITIES

(9.15.95)

PRESSURIZED PRODUCTS

Cas Number	Commodity
74862	Acetylene
106978	Butane
106990	Butadiene
25167673	Butene
630080	Carbon Monoxide
7782505	Chlorine
287230	Cyclo Butane
75194	Cyclo Propane
75683	Difluoro-1-Chloroethane
124403	Dimethylamine-Anhydrous
463821	Dimethyl Propane
74840	Ethane
75003	Ethyl Chloride
74851	Ethylene
74908	Hydrocyanic Acid
7783064	Hydrogen Sulfide
75285	Isobutane
74828	Methane
563462	Methyl Butene
74872	Methyl Chloride
115106	Methyl Ether
593533	Methyl Fluoride
74931	Methyl Mercaptan
115117	Methyl Propane
7803512	Phosphine
75445	Phosgene
74986	Propane
115071	Propylene
74997	Propyne
116143	Tetrafluoroethylene
75503	Trimethylamine
-	Vinyl Acetylene
75014	Vinyl Chloride Monomer

GENERAL PURPOSE COMMODITIES

Cas Number	Commodity
-	Alkyl Lead Compound
107119	Allylamine
107051	Allychloride
7726956	Bromine
75649	Tert-Butylamine
1097728	n-Butyl Lithium
598301	sec-Butyl Lithium
76062	Chloropicrin
7790945	Chlorosulfonic Acid
2524041	Diethylthiophosphorylchloride
75047	Ethylamine
75218	Ethylene Oxide
109955	Ethyl Nitrite
110009	Furan
74895	Methylamine
79221	Methyl Chloroformate
624839	Methyl Isocyanate
-	Nitro Carbo Nitrate
504609	1, 3-Pentadiene
10025873	Phosphorus Oxychloride
7719122	Phosphorous Trichloride
106967	Propargyl Bromide
107108	Mono-N-Propylamine
7446095	Sulphur Dioxide
75741	Tetramethyl Lead
7550450	Titanium Tetrachloride
75354	Vinylidene Chloride

**Exhibit A To
Equipment Lease**

FORM OF LEASE SUPPLEMENT FOR CATEGORY ___

NOTE: Not to be filed with the STB

LEASE SUPPLEMENT dated as of _____, 1996, between FLEET NATIONAL BANK, a national banking association, not in its individual capacity but solely as Owner Trustee (the "Lessor"), and DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, a Delaware corporation (the "Lessee"):

WITNESSETH:

The Lessor and the Lessee have heretofore entered into an Equipment Lease dated as of April 16, 1996 (the "Lease"). The terms used herein have the meanings specified in the Lease.

The Lease provides for the execution and delivery of a Lease Supplement substantially in the form hereof for the purpose of evidencing the Fixed Rent and Casualty Values payable for those Items of Equipment which are included in Category ___, a description of which is annexed to this Lease Supplement as Schedule 1.

NOW THEREFORE, in consideration of the premises and other good and sufficient consideration, the Lessor and the Lessee hereby agree as follows:

1. The Fixed Rent payable on the date hereof and on each quarterly date hereafter set forth on Schedule I hereto (in accordance with the terms and provisions set forth in the Equipment Lease) with respect to each Item of Equipment in Category ___ is set forth on Schedule I hereto.

2. The Casualty Value for each Item of Equipment in Category ___ as of each Rent Payment Date is set forth in Schedule 2 hereto.

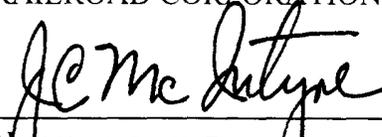
3. For each Item of Equipment in Category ___, the EBO Date is [_____, 2010], and the EBO Amount for each Item of Equipment is \$ ___ [% of the Equipment Cost for such Item of Equipment].

4. For each Item of Equipment in Category ___, the Base Term Commencement Date is [_____, 1996], and the Base Term shall terminate on [_____, ___].

IN WITNESS WHEREOF, the Lessor and the Lessee have caused this Lease Supplement to be duly executed as of the day and year written below.

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION,

By: _____


Name: J.C. McIntyre
Title: President and CEO

FLEET NATIONAL BANK,
not in its individual capacity but solely as Owner
Trustee under the Trust Agreement.

By: _____

Name:

Title:

STATE OF)
) SS:
COUNTY OF)

On this ___ day of April, 1996, before me personally appeared _____, to me personally known, who being duly sworn, says that (s)he is _____ of Fleet National Bank, that said instrument was signed and scaled on behalf of said corporation by authority of its By-laws, and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(NOTARIAL SEAL]

Notary

STATE OF SOUTH DAKOTA)
) SS:
COUNTY OF BROOKINGS)

On this 12th day of April, 1996, before me personally appeared J.C. McIntyre, to me personally known, who being by me duly sworn, says that ~~(s)~~he is President and CEO of DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and ~~(s)~~he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(NOTARIAL SEAL]



Notary , Joyce E. Hock
in and for the State of South Dakota
My Commission Expires:
May 5, 2002

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

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION,

By: _____
Name:
Title:

FLEET NATIONAL BANK,
not in its individual capacity but solely as Owner
Trustee under the Trust Agreement.

By:  _____
Name: **Kathy A. Larimore**
Title: **Assistant Vice President**

STATE OF Connecticut)
) SS:
COUNTY OF Hartford)

On this ___ day of April, 1996, before me personally appeared Kathy A. Larimore to me personally known, who being duly sworn, says that (s)he is Assistant Vice President of Fleet National Bank, that said instrument was signed and sealed on behalf of said corporation by authority of its By-laws, and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(NOTARIAL SEAL)

Susan P. McNally
Notary

SUSAN P. McNALLY
NOTARY PUBLIC
MY COMM. EXPIRES MARCH 31, 2000

STATE OF _____)
) SS:
COUNTY OF _____)

On this ___ day of April, 1996, before me personally appeared _____, to me personally known, who being by me duly sworn, says that (s)he is _____ of DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(NOTARIAL SEAL)

Notary

**Schedule 1
(to Lease Supplement
for Category)**

DESCRIPTION OF EQUIPMENT

AND

FIXED RENT PER ITEM OF EQUIPMENT

CATEGORY

<u>Description of Equipment</u>	<u>Manufacturer</u>	<u>Unit Numbers</u>	<u>Fixed Rent Per Item of Equipment</u>	<u>Number of Items</u>
115-Ton Twin covered hopper cars, 2,980 cubic foot capacity	1996-Trinity Industries, Inc.	[]	_____ ¹	_____

¹Plus \$ _____ due on _____, 1995 in respect of the period from _____, 1995 through _____, 1995.

Schedule 2
(to Lease Supplement
for Category)

CASUALTY VALUE

(Stated as a Percentage of Equipment Cost)

<u>Date</u>	<u>Casualty Value Percentage</u>
-------------	----------------------------------

**EXHIBIT B
(to Equipment Lease)**

FORM OF INSURANCE LETTER

LESSEE'S BROKER'S LETTERHEAD

Date

General Electric Capital Corporation
1600 Summer Street
Stamford, CT 06927-1569

RE: Equipment Lease dated as of April 16, 1996 between Dakota, Minnesota & Eastern Railroad Corporation (Lessee) and Fleet National Bank, not in its individual capacity but solely as Owner Trustee under the Trust Agreement (Owner Trustee)

Gentlemen:

As requested, this is an opinion letter concerning coverages provided to Dakota, Minnesota & Eastern Railroad Corporation.

The following coverages - all risk property insurance and public liability insurance - In Our Opinion conform with the Insurance Section 11.1 of the above-referenced Equipment Lease copy of which was provided to our office by Dakota, Minnesota & Eastern Railroad Corporation.

The insurance companies used are markets generally used in our normal business transactions for railroads of this size.

BROKER'S SIGNATURE

cc: Owner Trustee

Annex I to Lease

DEFINITIONS AND USAGE

GENERAL PROVISIONS

The terms defined below have the meanings set forth below for all purposes of the Operative Agreements referred to below unless otherwise defined in an Operative Agreement or the context otherwise requires. "Include", "includes" and "including" shall be deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import. "Writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form. Unless otherwise expressly provided, any instrument or law defined or referred to below or in any instrument in this Annex I means such instrument or law as from time to time amended, modified or supplemented, including (in the case of instruments) by waiver or consent and (in the case of laws) by succession of comparable successor laws and includes (in the case of instruments) references to all attachments thereto and instruments incorporated therein. References to a Person are, unless the context otherwise requires, also to such Person's successors and assigns. Any term defined below by reference to any instrument or law has such meaning whether or not such instrument or law is in effect. "Hereof", "herein", "hereunder" and comparable terms refer to the entire instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto. References to any gender include, unless the context otherwise requires, references to all genders, and references to the singular include, unless the context otherwise requires, references to the plural and vice versa. "Shall" and "will" have equal force and effect. References in an instrument to "Article", "Section", "Clause" or another subdivision or to an attachment are, unless the context otherwise requires, to an article, section, clause or subdivision of or an attachment to such instrument. Tables of Contents and Article, Section, Clause and other headings are inserted for reference only and shall be ignored in construing the meaning and intent of the relevant instruments.

DEFINED TERMS

"Additional Rent" shall mean all amounts, liabilities and obligations (other than Fixed Rent) which the Lessee is obligated to pay under the Lease, the Tax Indemnity Agreement or the Agreement to Lease, including Casualty Value payments and the fees and expenses of the Owner Participant and Fleet National Bank, in its individual capacity and as Owner Trustee (other than the initial fees and expenses payable by the Owner Participant under Section 2 of the Agreement to Lease).

"Agreement to Lease" shall mean the Agreement to Lease dated as of April 16, 1996, among Fleet National Bank, in its individual capacity and as Owner Trustee, the Owner Participant and the Lessee.

"Appraisal Procedure" shall mean the following procedure for determining the Fair Market Value or the Fair Rental Value, as the case may be, of any property. If either party to the Lease shall have given written notice to the other party requesting determination of such value by the Appraisal Procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within fifteen (15) days after such notice is given, each party shall appoint a qualified independent appraiser within twenty (20) days after such notice is given. If one party appoints an appraiser pursuant to the preceding sentence, the appraisal shall be made by such appraiser if the other party fails to appoint a second appraiser within the applicable time limit. If both parties appoint appraisers, the two appraiser so appointed shall within thirty (30) days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within thirty (30) days after such notice is given, either party may apply to the American Arbitration Association to make such appointment, and both parties shall be bound by any such appointment. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Value and/or the Fair Rental Value of such property within twenty (20) days after its or their appointment. If the parties shall have appointed a single appraiser, its determination of values shall be final. If three appraisers shall be appointed, the values determined by the three appraisers shall be averaged, the determination which differs most from such average shall be excluded, the remaining two determinations shall be averaged and such average shall be final.

"Bankruptcy Code" shall mean the Bankruptcy Code of 1978, as amended from time to time.

"Base Term" shall have the meaning specified in Section 3 of the Lease.

"Base Term Commencement Date" shall have the meaning specified in Section 3 of the Lease.

"Business Day" shall mean any day other than a Saturday, Sunday or day on which banks in the State of New York or in the state in which the principle corporate office of the Owner Trustee is located are authorized or permitted to be closed.

"Casualty Occurrence" shall have the meaning specified in Section 11.2 of the Lease.

"Casualty Value" shall mean during the Base Term the amount determined in accordance with Schedule 2 to the applicable Lease Supplement, and during the Renewal Term, the amount determined in accordance with Section 18 of the Lease.

"Category of Equipment" or "Category" shall mean all or such portion of the Items of Equipment in Schedule 1 to the Lease designated as Category A, Category B or Category C.

"Closing Date" shall be the date of payment of the purchase price for the Equipment in Category A by the Lessor pursuant to Section 1.2 of the Agreement to the Lease.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Default" shall mean any event which would constitute an Event of Default under the Lease if any requirement in connection therewith for the giving of notice or the lapse of time, or both, had been satisfied.

"Delivery Date" shall mean any of the Second Delivery Date or the Third Delivery Date.

"EBO Amount" with respect to a particular Category of Equipment, shall have the meaning specified in the applicable Lease Supplement.

"EBO Date" shall have the meaning specified in Section 18.3(a) of the Lease.

"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 other Person for personal injury (including sickness, disease or death), tangible or intangible property damage, damage to environmental 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.

"Environmental Law" means 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 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 (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.

"Equipment" shall mean collectively those items of railroad rolling stock described in Schedule 1 to the Lease, together with any and all accessions, additions,

improvements and replacements from time to time incorporated or installed on any item thereof which are the property of the Lessor pursuant to the terms of the Lease, and "Item" or "Item of Equipment" shall mean individually the various items thereof.

"Equipment Cost" shall mean, for each Item of Equipment, the cost to the Lessor set forth in Schedule 1 to the Lease.

"Event of Default" is defined in Section 14 of the Lease.

"Expenses" is defined in Section 6.1 of the Lease.

"Fair Market Value" shall mean with respect to the Equipment or any Item thereof, the fair market sales value of the Equipment or such Item, determined in accordance with Section 14 or Section 18 of the Lease, as the case may be.

"Fair Rental Value," shall mean with respect to the Equipment or any Item thereof, the fair market rental value of the Equipment or such Item, determined in accordance with Section 14 or Section 18 of the Lease, as the case may be.

"Fixed Rent" shall mean all rent payable pursuant to Section 2. 1 (a) of the Lease for the Base Term and all Rent payable pursuant to Section 18 of the Lease for the Renewal Term, if any.

"Funding Index Rate" shall mean the rate of interest per annum equal to the average yield of the most actively traded United States Treasury Note (as reported by Cantor Fitzgerald Securities Corp. on page 5 of Telerate Systems, Inc., or if such report is not available then as reported by another financial news service selected by the Owner Participant) corresponding in maturity to the date which is 10 years from the date two Business Days preceding the Closing Date or the each Delivery Date, as applicable (or if there is no corresponding maturity, an interpolation of 10 year maturities) in each case based on the bid price as of 10:00 a.m., New York time, on such second Business Day preceding the Closing Date or the each Delivery Date, as applicable.

"Indemnified Parties" shall mean Fleet National Bank, in its individual capacity and as Owner Trustee, the Owner Participant and their respective affiliates, successors, assigns, agents, counsel, servants, directors, officers and employees.

"Interchange Rules" shall have the meaning specified in Section 7 of the Lease.

"Item of Equipment" or "Item" shall mean each item of the Equipment.

"Late Rate" shall mean interest at the annual rate equal to the lesser of (a) the highest rate permitted by applicable law and (b) 12%.

"Lease" or "Equipment Lease" shall mean the Equipment Lease dated as of April 16, 1996 between the Lessor, as lessor, and the Lessee, as lessee, as amended or supplemented from time to time and all Exhibits and Schedules thereto.

"Lease Supplement" shall mean each Lease Supplement, substantially in the form attached as Exhibit A to the Lease, entered into between the Lessor and the Lessee in respect of a Category of Equipment.

"Lessee" shall mean Dakota, Minnesota & Eastern Railroad Corporation, a Delaware corporation.

"Tax Change" means any change in or amendment to the Code or the Treasury Regulations promulgated thereunder, in each case as in effect on April 1, 1996, that is proposed, promulgated or enacted after such date and on or before (i) the Closing Date, in the case of any Item of Equipment in Category A, (ii) the Second Delivery Date, in the case of any Item of Equipment in Category B, or (iii) the Third Delivery Date, in the case of any Item of Equipment in Category C, that affects any assumption contained in Section 2 of the Tax Indemnity Agreement (or, in the case of any change in or amendment to the Code that is not enacted on or prior to the Closing Date or the applicable Delivery Date, as the case may be, or change in or amendment to the Treasury Regulations that is not promulgated in final form on or prior to the Closing Date or the applicable Delivery Date, as the case may be, when enacted and promulgated in final form affects any assumption contained in Section 2 of the Tax Indemnity Agreement); provided, however, that any such change in or amendment to the Code or the Treasury Regulations that is enacted or promulgated in final form after the Closing date or the applicable Delivery Date, as the case may be, shall not be included within the definition of a "Tax Change" unless it shall have been proposed on or prior to such date and made retroactive to a date prior to the Closing Date or the applicable Delivery Date as the case may be.

"Lessor" shall mean Fleet National Bank, a national banking association, not in its individual capacity but solely as Owner Trustee under the Trust Agreement.

"Lien" shall mean any mortgage, pledge, security interest, lien, encumbrance, lease or other charge of any kind on property.

"Loss Payment Date" shall mean, for the Base Term, the dates provided for payment of Casualty Value in any Lease Supplement, and for any Renewal Term, each monthly date during the Renewal Term throughout, and including, the final day of such Renewal Term.

"Material Adverse Effect" with respect to any Person shall mean a material adverse effect on the business, assets, operations, prospects or condition (financial or otherwise) of such Person.

"Operative Agreements" shall mean and include the Agreement to Lease, the Lease, the Lease Supplements, the Trust Agreement and the Tax Indemnity Agreement.

"Owner Participant" shall mean General Electric Capital Corporation, a New York corporation.

"Owner Trustee" shall mean Fleet National Bank, a national banking association, as trustee under the Trust Agreement.

"Permitted Encumbrances" with respect to the Equipment and each Item thereof, shall mean (i) the interest of the Lessee under the Lease; (ii) any Liens thereon for taxes, assessments, levies, fees and other governmental and similar charges not due and payable or the amount or validity of which is being contested in good faith by appropriate legal proceedings in any reasonable manner which does not adversely affect the property rights or interests of the Lessor in the Equipment or under any Operative Agreement; and (iii) any Liens of mechanics, suppliers, materialmen and laborers for work or services performed or materials furnished in connection with the Equipment or any Item thereof which are not due and payable or the amount or validity of which is being contested in good faith by appropriate legal proceedings in any reasonable manner which does not adversely affect the property rights or interests of the Lessor in the Equipment or under any Operative Agreement.

"Permitted Sublease" or "Permitted Sublessee" shall have the meanings specified in Section 17.1 of the Lease.

"Person" shall mean an individual, partnership, corporation, trust or unincorporated organization, and a government or agency or political subdivision thereof.

"Purchase Contract" shall mean the letter agreement dated as of November 13, 1995, between Trinity Industries, Inc. and the Lessee, together with documentary references therein and attachments thereto.

"Regulations" shall mean the income tax regulations issued, published or promulgated under the Code.

"Renewal Term" shall mean any term in respect of which the Lessee shall have exercised its option to renew the Lease with respect to any Item of Equipment pursuant to Section 18 thereof.

"Rent" shall mean all Fixed Rent and Additional Rent.

"Rent Payment Dates" shall mean, for the Base Term, the dates provided for payment of Fixed Rent in any Lease Supplement, and for any Renewal Term, each quarterly anniversary thereof throughout, and including, the final day of such Renewal Term.

"Second Delivery Date" shall be the date of payment of the purchase price for the Equipment in Category B by the Lessor pursuant to Section 1.2 of the Agreement to Lease.

"STB" shall mean the Surface Transportation Board and any successor agency.

"Subsidiary" shall mean any corporation, trust or association of which more than 50% (by number of votes) of the voting stock at the time outstanding shall at the time be owned, directly or indirectly, by the Lessee or by any other Person which is itself a Subsidiary within the meaning of this definition, or collectively by the Lessee and any one or more such Subsidiaries.

"Tax Change Maximum Amount" shall mean an amount, expressed on a per Item of Equipment basis, equal to (i) the Fixed Rent per Item of Equipment set forth in the Lease Supplements, multiplied by (ii) the Tax Change Percent.

"Tax Change Percent" shall mean 5%, or such other amount greater than 5% as the Lessee and the Owner Participant may agree to in writing on or prior to the Second Delivery Date.

"Tax Indemnity Agreement" shall mean the Tax Indemnity Agreement dated as of April 16, 1996 between the Lessee and the Owner Participant.

"Third Delivery Date" shall be the date of payment of the purchase price for the Equipment in Category C by the Lessor pursuant to Section 1.2 of the Agreement to Lease.

"Total Equipment Cost" shall mean the aggregate Equipment Cost for each Item of Equipment.

"Term" shall mean the full term of the Lease, including the Base Term and any Renewal Term, subject to the provisions of Sections 11 and 14 of the Lease.

"Trust Agreement" shall mean the Amended and Restated Trust Agreement dated as of April 16, 1996 between the Owner Trustee and the Owner Participant.

"Trust Estate" shall have the meaning specified in the Trust Agreement.

"UP Agreement" shall mean the letter agreement dated as of December 21, 1995 between the Lessee and Union Pacific, together with all amendments, modifications and supplements relating thereto.

"Union Pacific" shall mean Union Pacific Railroad Company, a Utah corporation.