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June 18, 1992

17816
RECORDED & INDEXED

50 South Main Street
Salt Lake City, Utah 84144
(801) 533-0066

JUN 18 1992 11 11 PM

INTERNATIONAL MAIL SERVICE

Interstate Commerce Commission
Washington, D.C.

Re: The Denver and Rio Grande Western Railroad Company

Gentlemen:

Enclosed for recordation under the provisions of 49 USC 11303(a) are the original and five counterparts of an Equipment Lease dated as of June 1, 1992. Said Equipment Lease is a primary document.

A general description of the railroad equipment covered by the enclosed document is set forth in Schedule 1 attached to this letter and made a part thereof.

The names and addresses of the parties are:

Lessor: U.S. Trust Company of California, N.A.,
as Owner Trustee under D&RGW Trust No. 92-1
555 South Flower Street
Los Angeles, California 91007
Attention: Corporate Trust Administration

Lessee: The Denver and Rio Grande Western Railroad Company
Southern Pacific Company
One Market Plaza
San Francisco, California 94105
Attention: Vice President - Finance

The undersigned has acted as special counsel in connection with the preparation of the enclosed document and has knowledge of the matters set forth therein.

Please return the original and four copies of the enclosed document to Ross D. Taylor, Esq., Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Also enclosed is a check in the amount of \$16.00 covering the required recording fee.

JUN 18 1992

Law Offices of
CHAPMAN AND CUTLER

A short summary of the enclosed primary document to appear in the Index follows:

Equipment Lease between U.S. Trust Company of California, N.A. as Owner under D&RGW Trust No. 92-1, as Lessor, 555 South Flower Street, Los Angeles, California 91007, and The Denver and Rio Grande Western Railroad Company, Southern Pacific Building, One Market Plaza, San Francisco, California 91045 covering 918 hopper cars, 72 gondola cars and 61 locomotives.

Very truly yours,

CHAPMAN AND CUTLER

By



Ross D. Taylor

CAT.	UNITS	DESCRIPTION OF UNITS	MANUFACTURER	YEAR MANF.	D&RGW UNIT NUMBERS	ITEM COST	CATEGORY COST
F	24	100-ton Gondola cars, solid bottom, 3300 cu. ft. capacity	Greenville Steel	1977	31000-31020 31022-31024	19,000	456,000
G	17	3500 HP (SD-50) general purpose diesel electric locomotives	General Motors	1984	5501-5517	600,000	10,200,000
H	16	3000 HP (SD40-2) general purpose diesel electric locomotives	General Motors	1975	5356-5359 5361-5371 5373	200,000	3,200,000
I	10	3000 HP (SD40-2) general purpose diesel electric locomotives	General Motors	1977	5374-5377 5379-5381 5383-5385	250,000	2,500,000
J	152	100-ton open top hopper cars	Bethlehem	1975	16000-16006 16008 16011-16027 16029-16047 16049-16078 16080-16089 16091-16126 16128-16159	15,000	2,280,000
K	10	3000 HP (SD40-2) general purpose diesel electric locomotives	General Motors	1974	5341 5345-5346 5348-5350 5352-5355	140,000	1,400,000
L	8	3000 HP (GP40-2) general purpose diesel electric locomotives	General Motors	1974	3116 3120-3124 3126 3128	110,000	<u>880,000</u>
TOTAL							<u>\$36,496,000</u>

CAT.	UNITS	DESCRIPTION OF UNITS	MANUFACTURER	YEAR MANI.	D&RGW UNIT NUMBERS	ITEM COST	CATEGORY COST							
A	197	100-ton open top hopper cars, 3483 cu. ft. capacity	Bethlehem	1976	19195-19223	\$ 16,000	\$3,152,000							
					19225-19234									
					19236-19258									
					19260-19394									
B	46	100-ton covered hopper cars, 2980 cu. ft. capacity	ACF Industries	1977	10070-10074	15,500	713,000							
					10076-10097									
					10099-10108									
					10110									
					10112-10119									
C	342	100-ton open top quadruple hopper cars, 3483 cu. ft. capacity	Bethlehem	1982	12500-12512	24,000	8,208,000							
					12514-12543									
					12545-12586									
					12588-12686									
					12688-12693									
					12695-12747									
					12749-12814									
					12816-12828									
					12830-12849									
					D			181	100-ton open top quadruple hopper cars, 3483 cu. ft. capacity	Bethlehem	1975	19000-19042	15,000	2,715,000
												19044-19045		
19047-19048														
19050-19071														
19073-19083														
19085-19103														
19105-19117														
19120														
19122-19140														
19142-19147														
19149-19166														
19169-19189														
19191-19194														
E	48	100-ton Gondola cars, solid bottom, 2294 cu. ft. capacity	Thrall	1977	56375-56383	16,500	792,000							
					56385-56412									
					56414-56424									

**Schedule 1
(to Equipment Lease)**

Interstate Commerce Commission
Washington, D.C. 20423

6/18/92

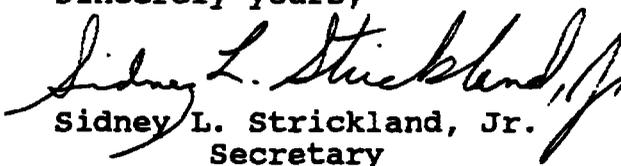
OFFICE OF THE SECRETARY

Ross D. Taylor, Esq.
Chapman And Cutler
111 West Monroe Street
Chicago, Illinois 60603

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 6/18/92 at 12:05pm, and assigned recordation number(s). 17316

Sincerely yours,


Sidney L. Strickland, Jr.
Secretary

17816

RECORDED IN _____ FILED IN _____

JUN 18 1992 - 12 03 PM

INTERSTATE COMMERCE COMMISSION

EQUIPMENT LEASE

Dated as of June 1, 1992 .

Between

U.S. TRUST COMPANY OF CALIFORNIA, N.A.,
as Owner Trustee

LESSOR

And

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

LESSEE

(D&RGW Trust No. 92-1)

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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

THIS EQUIPMENT LEASE dated as of June 1, 1992 is between U.S. TRUST COMPANY OF CALIFORNIA, N.A., a national banking association, not in its individual capacity but solely as Owner Trustee (the "*Lessor*"), and THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, a Delaware corporation (the "*Lessee*").

RECITALS

A. The Lessee owns the Items of Equipment, but has determined that it prefers to lease rather than own the Equipment. Accordingly, the Lessee will sell the Equipment to the Lessor pursuant to the Agreement to Lease and has agreed, upon such sale, to lease the Equipment from the Lessor pursuant to this Lease.

B. The capitalized terms used in this Lease shall have the respective meanings indicated in Annex I hereto unless elsewhere 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.

SECTION 1. 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 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 is in good order and condition and appears to conform to the specifications applicable thereto and to all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and 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 such Lease Supplement, the Lessee represents that it has no knowledge of any such defect.

SECTION 2. RENTALS AND PAYMENT DATES.

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

(a) *Fixed Rent.* Fixed Rent shall be payable for the Base Term quarterly in arrears on each Rent Payment Date in the amounts set forth in the Lease Supplement with respect to such Category of Equipment.

(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 having a Total Equipment Cost of \$36,496,000 shall be purchased by the Lessor and leased to the Lessee hereunder on the Closing Date, and (b) transaction expenses payable by the Owner Participant under Section 2.1 of the Agreement to Lease equal 2.5% of Total Equipment Cost. If any of such assumptions shall prove to be incorrect, then the Lessee and the Lessor agree that the percentages for Fixed Rent and Casualty Values will be adjusted as soon as practicable after receipt of invoices for the transaction expenses. 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 10% per annum) of the Fixed Rent to the Lessee to the extent possible consistent with the foregoing clause (1). 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, accompanied by a letter from the Lessor setting forth in reasonable detail the reasons for the recomputation of Fixed Rent and Casualty Value and stating that such recomputation was made in accordance with this Section 2.3. 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. If Lessee requests, at Lessee's expense (except as otherwise provided below), the methodologies and assumptions utilized in calculating such revised Lease Supplements shall be verified by a nationally recognized independent accounting firm

selected by the Lessor, and the Lessor shall provide such materials to such accounting firm as it shall reasonably request to enable it to verify such revised Lease Supplements. All such materials shall be and remain confidential as to the Lessee and all other third parties. If such review reveals a miscalculation, then the Lessor shall readjust the Fixed Rent and Casualty Value percentages pursuant to the results of such review. If such review reveals a miscalculation which results in an increase in the net present value of the Fixed Rent calculated as of the Closing Date by more than ten (10) basis points, the Lessor shall pay the costs of such review.

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 of the Items 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.

SECTION 3. TERM OF THE LEASE.

The base term of this Lease for each Category of Equipment (the "*Base Term*") shall begin on June 18, 1992 (the "*Base Term Commencement Date*") and shall terminate with respect to each Category of Equipment as set forth below, subject to earlier termination pursuant to Sections 11 and 14:

CATEGORY	TERMINATION DATE
A	June 18, 2002
B	June 18, 2003
C	June 18, 2007
D	June 18, 2001
E	June 18, 2003
F	June 18, 2003
G	June 18, 2007
H	June 18, 2001
I	June 18, 2003
J	June 18, 1999
K	June 18, 2000
L	June 18, 2000

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 within any Category of Equipment.

SECTION 4. 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 1 hereto, and will, from and after June 1, 1993, 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 INTERSTATE COMMERCE COMMISSION"

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment and its rights under this Lease. The Lessee will replace promptly any such names and word 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.

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, AS-IS 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, without limitation, 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 the Lessee shall be entitled to quiet use and enjoyment of the Equipment in accordance with this Lease.

SECTION 6. 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 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 Section 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 reasonable legal fees and expenses, of whatsoever kind and nature (for purposes of this Section 6 collectively called "*Expenses*"), imposed on, asserted against or incurred by any Indemnified Party, in any way relating to or arising out of (i) this Lease and the other Operative Agreements, and any waivers, modifications, supplements or amendments thereto, (ii) the construction, installation, ownership, delivery, lease, possession, use, operation or condition 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 the strict liability doctrine in tort), or (iii) the sale or other disposition of the Equipment or any Item thereof pursuant to Section 11, 14 or 18, except only that the Lessee shall not be required to indemnify any Indemnified Party pursuant to this Section 6 for: (A) any Taxes, it being agreed that the indemnity for Taxes is intended to be provided by Section 6.2, (B) Expenses to the extent resulting from the willful misconduct, gross negligence or material default in the performance by such

Indemnified Party under any Operative Agreement, and (C) transaction costs to be paid by the Owner Participant pursuant to Section 2 of the Agreement to Lease. Except to the extent fairly attributable to the failure of the Lessee fully to discharge its obligations under this Lease, the indemnities contained in this Section 6.1 with respect to the matters described in clauses (i) and (ii) above shall apply only to acts (or failures to act) or events or conditions or Expenses which exist or existed on or prior to, or are fairly attributable to the period prior to, the termination of this Lease, or which arise in connection with the Lessee's assembling, delivering, storing or transporting of the Equipment as provided in Section 13 or 15, as the case may be. 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 to the extent 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 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. 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.

(c) The indemnities and assumptions of liabilities set forth in this Section do not guarantee a residual value of the Equipment or any Item thereof.

(d) Upon the payment in full of any indemnities as contained in this Section 6.1 by the Lessee, and provided that no Default or Event of Default shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Party (except where the Lessee is also indemnifying a Person against whom the Indemnified Party has rights in respect of the matter against which indemnity has been given). Any payments received by such Indemnified Party from any Person (except the Lessee) as a result of any matter with respect to which such Indemnified Party has been paid in full pursuant to the indemnity provided for by the Lessee pursuant to this Section 6.1 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made to and retained by such Indemnified Party; *provided* that (i) such sum shall not be payable before such time as the Lessee shall have made all payments (including indemnity payments pursuant to this Section 6.1) then due pursuant to any of the Operative Agreements and (ii) no Default shall have occurred and be continuing.

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 (including withholding taxes, monetary transfer fees or similar taxes and charges but not including any such taxes or

charges excluded from indemnification hereunder). As appropriate, the Lessor and the Owner Participant shall furnish to the Lessee, and the Owner Participant shall furnish to the Lessor, at the time of closing and annually as required by California law a withholding exemption certificate (California Form 590) indicating that the Lessor and the Owner Participant, respectively either (i) has a permanent place of business in California or (ii) is qualified to do business in California. The Lessee agrees to pay, and indemnify and hold each Indemnified Party harmless from, all license and registration fees and all taxes, assessments, rates and charges, excises, permit fees, inspection fees, levies, imposts, duties, charges or withholding of any nature whatsoever, including, without limitation, sales, gross receipts, transfer, property, stamp, use or similar taxes, together with any penalties, fines or interest thereon imposed against any Indemnified Party, the Lessee, the Equipment or any Item or part thereof 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 upon the purchase, ownership, substitution, sale, delivery, leasing, possession, use, operation, 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 the Equipment or otherwise on or with respect to the transactions contemplated by the Operative Agreements (all such fees, taxes, assessments, rates and charges, 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 any income, franchise and capital 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 (including, without limitation, any such taxes collected by withholding), other than taxes in the nature of or in lieu of sales, use or a similar type of taxes (hereinafter referred to as "*Income Taxes*") imposed by (A) the United States Federal government, or (B) any state or local taxing jurisdiction in which the affected Indemnified Party maintains its principal office or principal place of business or in which the Indemnified Party is subject to taxes by reason of activities wholly unrelated to the transaction contemplated by the Operative Agreements; *provided further* that the foregoing indemnity also shall not apply to the following: (i) taxes imposed on an Indemnified Party resulting from (A) 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 an Event of Default shall have occurred and be continuing, (B) 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 an act of commission or omission by such Indemnified Party not contemplated in the Operative Agreements or (C) a disposition in connection with a bankruptcy or similar proceeding involving the Lessor; (ii) taxes imposed on an Indemnified Party by any jurisdiction that would not have been imposed on such Indemnified Party but for activities of such Indemnified Party in the jurisdiction unrelated to the transactions contemplated herein; (iii) taxes related to the Equipment in respect of any period after the expiration or early termination of the lease so long as the Lessee shall have discharged all its obligations under

the Lease; (iv) taxes on an Indemnified Party which arise out of or are caused by the gross negligence or willful misconduct of such Indemnified Party; (v) taxes which have been included in the cost of the Equipment; (vi) taxes imposed on the trust established by the Trust Agreement to the extent that such taxes would not have been imposed if the Owner Participant had owned the Equipment directly, or with respect to any fee received by the Owner Trustee; and (vii) taxes imposed against a transferee of an Indemnified Party to the extent of the excess of such taxes over the amount of taxes which would have been imposed had there not been such a transfer unless an Event of Default shall have occurred and be continuing.

(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 Items 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. Each Indemnified Party shall respond promptly to any reasonable request by the Lessee for information within such Person's control with respect to the preparation or filing of any report. 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. The Lessor shall timely file all sales and use tax returns, reporting the rental payments hereunder, in Wyoming and Texas and, upon the request of the Lessee, in any other applicable jurisdiction. The Lessee shall prepare for verification, execution and filing by the Lessor of any such returns. The Lessor shall furnish to the Lessee any information received from Texas, Wyoming or any other applicable jurisdiction with respect to any such returns promptly upon receipt thereof; *provided* that failure to furnish any such information shall not reduce the Lessee's obligations hereunder except to the extent that such failure materially prejudices the Lessee.

(c) Notwithstanding anything to the contrary in Section 6.2(a), the actions or omissions of any Indemnified Party shall not, in any way, impair the right of any other Indemnified Party to indemnification for Taxes which, but for such actions or omissions, would be indemnifiable hereunder or under the Tax Indemnity Agreement.

(d) Lessee further agrees that, with respect to any payment or indemnity to an Indemnified Party under this Section 6.2, 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(d)). Payment shall be made by the Lessee no later than the date on which the Indemnified Party must pay such Taxes.

(e) 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 Indemnified Party to make payments to the Lessee 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, the Lessee and 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. Any payment by the Lessee to a governmental agency in satisfaction of a tax for which it is obligated to indemnify an Indemnified Party shall be given full credit against Lessee's obligation to indemnify such Indemnified Party to the extent that such payment discharges such Indemnified Party's legal obligation to pay such tax.

(f) 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 would have an indemnity obligation pursuant to this Section 6.2, such Indemnified Party shall promptly notify the Lessee of such claim in writing; *provided* that failure to furnish any such information shall not reduce the Lessee's obligations hereunder except to the extent that such failure materially prejudices the Lessee's ability to pursue its contest rights 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 6.2 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*, 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; *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 any interference 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 \$50,000.

SECTION 7. RULES, LAWS AND REGULATIONS.

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including, without limitation, the rules of the United States Department of Transportation (including the rules and regulations of the Federal Railroad Administration), the Interstate Commerce Commission and the current Interchange Rules or supplements

thereto of the Mechanical Division, Association of American Railroads as the same may be in effect from time to time) (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; *provided, however*, that Lessee may, in good faith and by appropriate legal proceedings, contest the validity or application of any such law, regulation, requirement or rule 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.

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. 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* that none of the commodities listed on Schedule 2 hereto may be transported in its product form in any Item of Equipment. 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. 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 its 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 material damage to such Item of Equipment. 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 material damage to such Item of Equipment; *provided* 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.

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 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 or from claims against the Lessor or the Owner Participant not to be paid or indemnified against by the Lessee hereunder ("*Lessor Liens*") and 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, but the Lessee shall not be required to pay or discharge any such Lien so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof 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.

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 Interstate Commerce Commission in accordance with 49 U.S.C. § 11303, and promptly following the Closing Date, 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, re-register or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor, for the purpose of protecting the Lessor's title to any Item of Equipment to the satisfaction of the Lessor's counsel or for the purpose of carrying out the intention of this Lease, including, without limitation, 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 re-depositing of any such instruments or incident to the taking of such action.

SECTION 11. INSURANCE; PAYMENT FOR CASUALTY OCCURRENCE.

Section 11.1. Insurance. (a) 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 and public liability insurance, including but not limited to sudden and accidental pollution and evacuation expense to the extent available on the same terms as to other Class I railroads, with respect to the Equipment, in amounts, with deductibles and against risks customary for insurance obtained by Class I railroads on similar equipment, and in any event in amounts, with deductibles and against risks comparable to those provided for in insurance maintained by the Lessee on similar equipment leased by it.

(b) Such insurance policies shall: (i) name and insure the Lessor and the Owner Participant as additional insureds and loss payees under the comprehensive public liability insurance and under the property insurance, shall insure the Lessor as its interests may appear, with the understanding that any obligation imposed on the Lessee, including, without limitation, 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, in respect of any liability against 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 expiration, cancellation or modification in a manner materially adverse to the Lessor or the Owner Participant shall be given to the Lessor or the Owner Participant, as the case may be, and ten (10) days prior written notice of cancellation for non-payment, (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 Lessee shall furnish the Lessor with certificates or other satisfactory evidence of maintenance of the insurance so required and shall furnish binders or other formal confirmation 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 and certificates of insurance within thirty (30) days after such renewal is effected or the expiration date of the original policy or policies, as the case may be. The Lessee's insurance broker will deliver to the Lessee, with a copy to the Lessor, concurrently with the certificates referenced above, a letter in the form attached hereto as Exhibit B.

(c) The proceeds of any property insurance received by the Lessor will be paid to the Lessee either (i) upon a written application signed by the Lessee to reimburse the Lessee for payment of the costs of repairing, restoring, or replacing the Item of Equipment which has been lost, damaged or destroyed (which application shall be accompanied by satisfactory evidence of such cost and the completion of such repair, restoration or replacement) or

(ii) if this Lease is terminated with respect to such Item of Equipment because of the total destruction thereof, promptly upon payment by the Lessee of the Casualty Value of such Item; *provided* that, if the Lessee is at the time of the application in default in the payment of any other liability of the Lessee to the Lessor hereunder, such proceeds may be applied against such liability.

(d) On the Lessee's request, provided no Default or Event of Default shall have occurred and be continuing, the Lessor shall assign in mutually satisfactory form and substance to the Lessee the right to recover property insurance proceeds directly from the Lessee's insurers, in lieu of the Lessor, if the Lessee: (i) shall have paid, and the Lessor shall be entitled to retain, the Casualty Value in respect of the subject casualty (in the case of casualty) or (ii) shall have evidenced repair of an Item (and full payment therefor) to the Lessor's satisfaction (in the case of damage to any Item of Equipment).

Section 11.2. Duty of Lessee to Notify 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, in the reasonable opinion of the Lessee, 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 in regard thereto and on or before the next Rent 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, 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 Rent 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) any Rent (except for Fixed Rent expressed to be payable in advance on such date) or other sum 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 Lessor transferring such Item or Items to 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 insurance paid for by the Lessee, such excess shall belong to the Lessee, (ii) if such excess results from compensation paid through the interchange system, such excess shall belong to the Lessor, (iii) 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. Substitution of Equipment. With respect to any Item suffering a Casualty Occurrence, the Lessee may substitute other railroad equipment of the same type and having at least the same value, utility and useful life as such Item to be substituted hereunder; *provided* that there are no adverse tax or regulatory consequences to the Owner Participant for which the Lessee has not agreed to indemnify the Owner Participant. Upon such substitution, (a) the Lessee will deliver to the Lessor a bill of sale for such substituted equipment transferring to the Lessor title to such equipment and warranting that title to such substituted equipment was free of Liens, (b) the Lessee and the Lessor will enter into a lease supplement subjecting such substituted equipment to this Lease, and (c) the Lessee will cause such lease supplement to be filed in all public offices wherein this Lease was originally filed.

Section 11.8. 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 11.9. 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.

SECTION 12. EQUIPMENT REPORTS.

Section 12.1. Duty of Lessee to Furnish. On or before May 1, 1993, and on each May 1 thereafter, the Lessee will furnish to the Lessor 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, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced.

Section 12.2. Lessor's Inspection Rights. The Lessor and the Owner Participant each shall have the right, but not the obligation, on reasonable prior notice to the Lessee, and during normal business hours, at their respective sole cost, expense and risk except as provided below, by their respective authorized representatives, accompanied by an employee of the Lessee, 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* that during the continuance of an Event of Default, such inspection shall be at the Lessee's cost and expense.

SECTION 13. RETURN OF THE EQUIPMENT UPON EXPIRATION OF TERM.

(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 Lessee's lines 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 expense including insurance and, at the Lessor's request, will provide an additional 30 days of storage of such Items at the Lessor's expense.

(b) Upon the return of such Equipment, Lessee shall at its own cost and expense have taken all necessary action to assure that each Item of Equipment shall be in the condition required by Section 7 and 8 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. Upon such redelivery of an Item of Equipment, the Lessee agrees to provide to the Lessor originals or legible facsimile copies of all manuals, drawings, diagrams, records, logs and other materials and inspection, modification, overhaul and maintenance records applicable thereto; *provided* that Lessee agrees to maintain all such materials in the same manner as it maintains the same for similar owned equipment.

(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 in the premises 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. All amounts earned in respect of the Equipment after the date of expiration of this Lease shall belong to the Lessee so long as the Lessee shall have returned the Equipment as required hereby.

SECTION 14. DEFAULT.

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

(a) Default shall be made in the payment of any part of the Fixed Rent or Casualty Value provided in Section 2 or 11 hereof and such default shall continue for three (3) Business Days; *provided* that if such default shall continue beyond three (3) Business Days, such default shall not be an Event of Default until such default shall have continued for five (5) days; *provided further*, that such additional period shall apply only to the first two (2) defaults which continue beyond three (3) Business Days;

(b) Default shall be made in the payment of Additional Rent and such default shall continue for five (5) days;

(c) The Lessee shall default in the maintenance of the insurance coverage required by Section 11.1(a) 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), and (c) above), and such default shall continue for thirty (30) days after written notice from the Lessor to the Lessee, specifying the default and demanding the same to be remedied;

(f) Any representation or warranty made by the Lessee herein or in any Operative Agreement, or in any statement or certificate furnished to the Lessor or the Owner Participant shall be untrue or incorrect in any material respect as of the date of issuance or making thereof;

(g) 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, or (ii) shall consent to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it, or (iii) shall make a general assignment for the benefit of creditors, or (iv) shall fail generally to pay its debts as they become due, or (v) shall take any corporate action to authorize any of the foregoing; or

(h) 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 sixty (60) 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, so long as the Lessee shall not have remedied all outstanding Events of Default, 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 to be included in computations under paragraph (e) or (f) below if the Lessor elects to exercise its rights under either of said paragraphs);

(d) Hold, keep idle or lease to others any Item of Equipment or any part thereof, as the Lessor in its sole discretion may determine, free and clear of any rights of the Lessee and without any duty to account to the Lessee with respect to such action or inaction or for any proceeds with respect thereto, 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 10.5% 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 Rent 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 Rent 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 Rent Payment Date next preceding the date of such sale or if such sale occurs on a Rent Payment Date, then computed as of such Rent Payment Date, exceeds the net proceeds of such sale; and

(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 quit-claim 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 10.5% 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.

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 without limitation the repayment in full of any costs and expenses necessary to be expended in repairing or modifying any Item 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 (but including the value which may be obtained from a used equipment dealer), and 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. 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, promptly upon any responsible officer 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. For the purposes of this Section 14.5 a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

SECTION 15. 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 to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

(a) Forthwith deliver such Items to such point or points on the lines of the Lessee as the Lessor shall reasonably designate;

(b) Permit the Lessor to store such Items for two years 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 of the Lessee, with full power and authority (which power is coupled with an interest), at any time while the Lessee is obligated to deliver possession of any Items of Equipment to the Lessor, 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.

SECTION 16. SALE OF EQUIPMENT; LESSOR ASSIGNMENT OF LEASE.

The Lessor may transfer and sell all or part of its right, title and interest in the Equipment to any Person other than an Employee Benefit Plan subject to ERISA 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, but the Lessee shall be under no obligation to any such transferee except upon written notice of such transfer or assignment and any such transferee shall confirm in writing to the Lessee that so long as no Default or Event of Default shall have occurred and be continuing hereunder, such transferee will not interfere with Lessee's right of quiet enjoyment to the Equipment hereunder.

SECTION 17. 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 the Equipment. THE LESSEE SHALL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF THE LESSOR, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD, ENTER INTO ANY SUBLEASE WITH RESPECT TO, 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 (a "*Permitted Sublessee*") which (a) shall be for a term not extending beyond the Term hereof, (b) shall include maintenance provisions identical to Sections 7 and 8 hereof, and (c) 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, without limitation, 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 90 days, 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, WITHOUT LIMITATION, THE REGULAR OPERATION OR MAINTENANCE THEREOF) OUTSIDE THE CONTINENTAL UNITED STATES AND CANADA; PROVIDED THAT ITEMS OF EQUIPMENT REPRESENTING NOT MORE THAN 15% OF THE AGGREGATE APPRAISED VALUE OF ALL EQUIPMENT THEN SUBJECT TO THIS LEASE MAY BE LOCATED IN MEXICO.

Section 17.3. Merger, Consolidation or Acquisition of Lessee. Nothing in this Section 17 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation into or with which the Lessee shall have become merged or consolidated or which shall have acquired all or substantially all of the property of the Lessee, and the Lessee may merge or consolidate with any other corporation or transfer all or substantially all of its property to any corporation, provided that (a) such corporation shall be, effective upon such transfer, a corporation incorporated in any state of the United States or the District of Columbia and which shall have duly assumed in writing the obligations of the Lessee hereunder and under each other Operative Agreement, (b) immediately prior to and after giving effect to such transaction, no Default or Event of Default will have occurred and be continuing hereunder, and (c) immediately after such merger, consolidation or acquisition, such corporation will have a net worth at least equal to that of the Lessee prior to such merger, consolidation or acquisition. In the event that any significant changes in financial accounting treatment or reporting practices are made subsequent to the effective date of this Agreement which would affect net worth, and such changes are in accordance with generally accepted accounting principles, for purposes of this section, the net worth of the applicable corporation immediately prior to and after such merger, consolidation or acquisition for this test shall be measured using the financial accounting treatment and reporting practices of such corporations in effect as of the date of this Agreement.

SECTION 18. 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 (other than a used equipment dealer) 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 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 and the Lessor equally.

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 constituting such Category at the end of the Base Term with respect thereto. 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. Option 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 constituting one or more Categories of Equipment then subject to this Lease (a) on the date of the expiration of the Base Term specified in Section 3 with respect to the Items of Equipment constituting such Category, at a price equal to the lesser of (i) the Fair Market Value thereof determined in accordance with this Section 18 as of such expiration date, or (ii) 60% of the Equipment Cost thereof, and (b) on the date of expiration of the Renewal Term, if any, 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 one or more Categories then leased hereunder for a renewal term of not less than one year nor more than five years, as the Lessee shall elect in such notice, and each quarterly installment of Fixed Rent payable during such renewal term shall be in an amount equal to the Fair Rental Value for all such Items of Equipment in such Category. Such renewal term shall commence immediately upon the expiration of the Base Term with respect to the Items of Equipment in such Category. 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.

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.

SECTION 19. INTEREST ON OVERDUE RENTALS AND AMOUNTS ADVANCED.

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.

SECTION 20. MISCELLANEOUS.

Section 20.1. Notices. 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 telecommunications device, when properly transmitted, 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) 357-6680
Confirmation No.: (203) 357-6563

If to the Lessor:

U.S. Trust Company of California, National Association
555 South Flower Street
Los Angeles, California 90071
Attention: Corporate Trust Administration
Fax No.: (213) 489-3371
Confirmation No.: (213) 488-4000

with a copy to:

United States Trust Company
of New York
114 West 47th Street
New York, New York 10021

Attention: Louis P. Young
Corporate Trust and Agency Division
Fax No.: (212) 852-1625
Confirmation No.: (212) 852-1000

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

United States Trust Company
of New York
ABA No. 021-001-318

For credit to the account of:
GECC - Denver and Rio Grande
dated 6/1/92
Account No. 04441000

If to the Lessee:

The Denver and Rio Grande Western Railroad Company
Southern Pacific Building
One Market Plaza
San Francisco, California 94105
Attention: Vice President - Finance
Fax No.: (415) 541-2932
Confirmation No.: (415) 541-2589

with copy to Vice President
and General Counsel
Fax No.: (415) 495-5436
Confirmation No.: (415) 541-1781

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.

Section 20.2. Right of 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,
without limitation, 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, 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 AND DECISIONS (AS OPPOSED TO CONFLICTS OF LAW PROVISIONS) OF THE STATE OF ILLINOIS; PROVIDED, HOWEVER, THAT THE PARTIES SHALL BE ENTITLED TO ALL RIGHTS CONFERRED BY ANY APPLICABLE FEDERAL STATUTE, RULE OR REGULATION.

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. 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 20.9. True Lease. 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.

Section 20.10. Limitations of Liability. It is understood and agreed that U.S. Trust Company of California, N.A. 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 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 21. 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 by their respective officers thereunder duly authorized as of the day and year first above written.

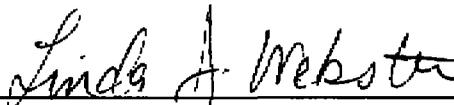
U.S. TRUST COMPANY OF CALIFORNIA, N.A.,
not in its individual capacity but solely as
Owner Trustee under the Trust Agreement

By 
Its Authorized Signatory

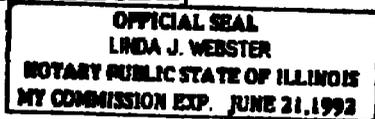
Executed this 18 day of June, 1992
in Oak Park, Illinois.

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

On this 18th day of June, 1992, before me personally appeared Louis P. Young, to me personally known, who being duly sworn, says that he is an Authorized Signatory of U.S. Trust Company of California, N.A., that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


Notary Public

[NOTARIAL SEAL]



My Commission Expires

THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY

By *R.C. Schulte*
Its Vice President

Executed this 4 day of June, 1992
in Oak Park, Illinois.

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

On this 4th day of June, 1992, before me personally appeared R.C. Schulte, to me personally known, who being by me duly sworn, says that he is a Vice President of THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Cathleen A. Finnegan
Notary Public



[NOTARIAL SEAL]

My Commission Expires
November 16, 1994

CAT.	UNITS	DESCRIPTION OF UNITS	MANUFACTURER	YEAR MANI.	D&RGW UNIT NUMBERS	ITEM COST	CATEGORY COST
A	197	100-ton open top hopper cars, 3483 cu. ft. capacity	Bethlehem	1976	19195-19223 19225-19234 19236-19258 19260-19394	\$ 16,000	\$3,152,000
B	46	100-ton covered hopper cars, 2980 cu. ft. capacity	ACF Industries	1977	10070-10074 10076-10097 10099-10108 10110 10112-10119	15,500	713,000
C	342	100-ton open top quadruple hopper cars, 3483 cu. ft. capacity	Bethlehem	1982	12500-12512 12514-12543 12545-12586 12588-12686 12688-12693 12695-12747 12749-12814 12816-12828 12830-12849	24,000	8,208,000
D	181	100-ton open top quadruple hopper cars, 3483 cu. ft. capacity	Bethlehem	1975	19000-19042 19044-19045 19047-19048 19050-19071 19073-19083 19085-19103 19105-19117 19120 19122-19140 19142-19147 19149-19166 19169-19189 19191-19194	15,000	2,715,000
E	48	100-ton Gondola cars, solid bottom, 2294 cu. ft. capacity	Thrall	1977	56375-56383 56385-56412 56414-56424	16,500	792,000

**Schedule 1
(to Equipment Lease)**

CAT.	UNITS	DESCRIPTION OF UNITS	MANUFACTURER	YEAR MADE	D&RGW UNIT NUMBERS	ITEM COST	CATEGORY COST
F	24	100-ton Gondola cars, solid bottom, 3300 cu. ft. capacity	Greenville Steel	1977	31000-31020 31022-31024	19,000	456,000
G	17	3500 HP (SD-50) general purpose diesel electric locomotives	General Motors	1984	5501-5517	600,000	10,200,000
H	16	3000 HP (SD40-2) general purpose diesel electric locomotives	General Motors	1975	5356-5359 5361-5371 5373	200,000	3,200,000
I	10	3000 HP (SD40-2) general purpose diesel electric locomotives	General Motors	1977	5374-5377 5379-5381 5383-5385	250,000	2,500,000
J	152	100-ton open top hopper cars	Bethlehem	1975	16000-16006 16008 16011-16027 16029-16047 16049-16078 16080-16089 16091-16126 16128-16159	15,000	2,280,000
K	10	3000 HP (SD40-2) general purpose diesel electric locomotives	General Motors	1974	5341 5345-5346 5348-5350 5352-5355	140,000	1,400,000
L	8	3000 HP (GP40-2) general purpose diesel electric locomotives	General Motors	1974	3116 3120-3124 3126 3128	110,000	<u>880,000</u>
		TOTAL					<u>\$36,496,000</u>

RESTRICTED 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	Phosphorus Trichloride
106967	Propargyl Bromide
107108	Mono-N-Propylamine
7446095	Sulphur Dioxide
75741	Tetramethyl Lead
7550450	Titanium Tetrachloride
75354	Vinylidene Chloride

Schedule 2
(to Equipment Lease)

LEASE SUPPLEMENT FOR CATEGORY ____

NOTE: Not to be filed at ICC

This LEASE SUPPLEMENT FOR CATEGORY ____, dated _____, 1992, between U.S. Trust Company of California, N.A., not in its individual capacity but solely as Owner Trustee (the "*Lessor*") and The Denver and Rio Grande Western Railroad Company, a Delaware corporation (the "*Lessee*");

WITNESSETH:

The Lessor and the Lessee have heretofore entered into that certain Equipment Lease dated as of June 1, 1992 (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 with respect to each Item of Equipment in Category ____ on September __, 1992 and each December __, March __, June __ and September __ thereafter, to and including _____ shall be equal to the Item Cost thereof set forth on Schedule 1 hereto multiplied by a rent factor of _____.

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

**EXHIBIT A
(to Equipment Lease)**

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.

U.S. TRUST COMPANY OF CALIFORNIA, N.A.,
not in its individual capacity but solely as
Owner Trustee under the Trust Agreement

By _____
Its Authorized Signatory

Executed this ____ day of June, 1992
in Oak Park, Illinois.

FORM OF INSURANCE LETTER

(Date)

The Denver and Rio Grande
Western Railroad Company

Attn: Director of Risk Management

Re: Equipment Lease dated as of June 1, 1992 between
The Denver and Rio Grande Western Railroad Company (Lessee)
and U.S. Trust Company of California, N.A., (Owner/Trustee)

As requested, this is an opinion letter concerning coverages provided to The Denver and Rio Grande Western Railroad Company.

The following coverages -- all-risk property insurance and public liability insurance -- in my opinion conform with the Insurance Section 11.1 of the above-referenced Equipment Lease provided to our office by The Denver and Rio Grande Western Railroad Company.

The insurance companies used are markets generally used in our normal business transactions for Class I railroads.

[Lessee's Insurance Broker]

cc: U.S. Trust Company of California, N.A.

General Electric Capital Corporation
Attn: Risk Management

EXHIBIT B
(to Equipment Lease)

DEFINITIONS

Re: D&RGW TRUST NO. 92-1

ANNEX I
(to Equipment Lease)

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(Not a part of the Agreement)

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DEFINITIONS

RE: D&RGW TRUST NO. 92-1

GENERAL PROVISIONS

The following terms shall have the following meanings for all purposes of the Operative Agreements referred to below, unless otherwise defined in an Operative Agreement or the context thereof shall otherwise require. In the case of any conflict between the provisions of this Definition Annex and the provisions of the main body of any Operative Agreement, the provisions of the main body of such Operative Agreement shall control the construction of such Operative Agreement.

Unless the context otherwise requires, (i) references to agreements shall be deemed to mean and include such agreements as the same may be amended and supplemented from time to time, and (ii) references to parties to agreements shall be deemed to include the successors and permitted assigns of such parties.

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, without limitation, Casualty Value payments and the fees and expenses of the Owner Participant and U.S. Trust Company of California, N.A., 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 June 1, 1992 among U.S. Trust Company of California, N.A., 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 appraisers 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 one or more of the Fair Market Value 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, 11 U.S.C. §101 *et seq.*

"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 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 as Category A, B, C, D, E, F, G, H, I, J, K or L.

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

"Employee Benefit Plan" shall have the meaning specified in Section 3 of ERISA.

"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.

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

"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.

"Indemnified Parties" shall mean U.S. Trust Company of California, N.A., in its individual capacity and as Owner Trustee, the Owner Participant and their respective affiliates, successors, assigns, agents, servants, 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 June 1, 1992 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 The Denver and Rio Grande Western Railroad Company, a Delaware corporation, and any corporation which succeeds thereto by merger or consolidation or which acquires all or substantially all of the assets thereof.

"Lessor" shall mean U.S. Trust Company of California, N.A., 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.

"Officer's Certificate" shall mean a certificate signed in the case of a corporation by the Chairman or any Vice Chairman, the President, any Vice President, the Chief Financial Officer, the Controller or the Treasurer of such corporation.

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

"Owner Participant" shall mean General Electric Capital Corporation, a New York corporation, and any corporation which succeeds thereto by merger or consolidation or which acquired all or substantially all of the assets thereof.

"Owner Trustee" shall mean U.S. Trust Company of California, N.A., as trustee under the Trust Agreement and any successor thereunder.

"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" and **"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.

"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 September 18, December 18, March 18 and June 18 throughout, and including the final day of, such Renewal Term.

"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 corporation, association or trust which is itself a Subsidiary within the meaning of this definition, or collectively by the Lessee and any one or more such Subsidiaries.

"Tax Indemnity Agreement" shall mean the Tax Indemnity Agreement dated as of June 1, 1992 between the Lessee and the Owner Participant.

"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 Trust Agreement dated as of June 1, 1992 between U.S. Trust Company of California, N.A. and the Owner Participant.

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