

**KELLEY DRYE & WARREN**

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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INTERSTATE COMMERCE COMMISSION

October 1, 1990

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\$45.00

Mr. Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
Twelfth Street & Constitution Ave., N.W.  
Washington, DC 20423

Re: Lease of Locomotives from Meridian Trust Company to Union Pacific Railroad Company

Dear Mr. Strickland:

Enclosed are an original and an originally executed counterpart of the two primary documents described below and one secondary document related to the enclosed primary document, which secondary document is also described below. All of the enclosed documents are to be recorded pursuant to Section 11303 of Title 49 of the United States Code.

The enclosed primary documents are:

- (1) Lease Agreement, dated as of September 1, 1990, between Meridian Trust Company, as lessor (the "Lessor") and Union Pacific Railroad Company, as lessee (the "Lessee"); and
- (2) Indenture and Security Agreement, dated as of September 1, 1990, between Meridian Trust Company, as Owner Trustee (the "Owner Trustee") and Wilmington Trust Company, as Indenture Trustee (the "Indenture Trustee").

The enclosed secondary document is:

Lease and Indenture Supplement No. 1, dated October 1, 1990, among Meridian Trust Company, as lessor, Union Pacific Railroad Company, as lessee and Wilmington Trust Company, as Indenture Trustee. The primary

*Handwritten signature and initials on the left margin.*

KELLEY DRYE & WARREN

Mr. Sidney L. Strickland, Jr. -2-

October 1, 1990

document to which this Lease and Indenture Supplement is connected is being submitted for recording concurrently herewith.

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

Lease Agreement

Lessee:  
Union Pacific Railroad Company  
Martin Tower  
Eighth and Eaton Avenues  
Bethlehem, Pennsylvania 18018

Lessor:  
Meridian Trust Company  
35 North Sixth Street  
Reading, Pennsylvania 19603

Indenture and Security Agreement

Owner Trustee:  
Meridian Trust Company  
35 North Sixth Street  
Reading, Pennsylvania 19603

Indenture Trustee:  
Wilmington Trust Company  
Rodney Square North  
Wilmington, Delaware 19890

Lease and Indenture Supplement No. 1

Lessee:  
Union Pacific Railroad Company  
Martin Tower  
Eighth and Eaton Avenues  
Bethlehem, Pennsylvania 18018

Lessor:  
Meridian Trust Company  
35 North Sixth Street  
Reading, Pennsylvania 19603

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October 1, 1990

Indenture Trustee:  
Wilmington Trust Company  
Rodney Square North  
Wilmington, Delaware 19890

The Lease provides, inter alia for the lease by the Lessor to the Lessee of Rotary Dump Hopper Railcars (the "Railcars"). The Indenture and Security Agreement provides for the granting of a security interest in the Railcars in favor of the Indenture Trustee in order to secure Lessee's performance of certain obligations under the Lease and any Lease and Indenture Supplement executed and delivered from time to time pursuant to such Lease and Indenture and Security Agreement. The Lease and Indenture Supplement No. 1 provides, inter alia, for the lease by the Lessor to the Lessee of 192 Rotary Dump Hopper Railcars bearing road numbers set forth in Exhibit A to Schedule 1 to the Lease and Indenture Supplement No. 1 (a copy of such Exhibit is attached hereto as Exhibit A).

The description of the equipment covered as of the date hereof by the aforesaid Lease, Lease and Indenture Supplement No. 1, and Indenture and Security Agreement is as follows:

192 Rotary Dump Hopper Cars each marked on the sides in letters not less than one inch in height with the words "Owned by a bank or trust company and subject to a security agreement filed with the Interstate Commerce Commission" and bearing the road numbers set forth in Exhibit A.

A fee of Forty-five Dollars (\$45.00) is enclosed. Please time and date stamp the enclosed counterpart of each of the enclosed documents along with the extra copy of this letter as proof of filing and recordation of the enclosed documents and return the original and any extra copies of such documents or this letter not needed by the Commission for recordation to:

James T. Tynion III, Esq.  
Kelley Drye & Warren  
101 Park Avenue  
New York, New York 10178

A short summary of each of the documents to appear in the index follows:

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Mr. Sidney L. Strickland, Jr. -4-

October 1, 1990

- 1) **Lease Agreement:**  
Lease Agreement between Meridian Trust Company, as lessor, 35 North Sixth Street, Reading, Pennsylvania 19603 and Union Pacific Railroad Company, as lessee, Martin Tower, Eighth and Eaton Avenues, Bethlehem, PA 18018, dated as of September 1, 1990, covering up to 515 Rotary Dump Hopper Cars bearing the road numbers set forth in Exhibit A to Schedule 1 to such Lease and Indenture Supplement as may be executed and delivered from time to time pursuant to such Lease.
- 2) **Indenture and Security Agreement:**  
Indenture and Security Agreement, between Meridian Trust Company, as Owner Trustee, 35 North Sixth Street, Reading, Pennsylvania 19603 and Wilmington Trust Company, as Indenture Trustee, Rodney Square North, Wilmington, Delaware 19890 dated as of September 1, 1990, securing Owner Trustee's obligations relating to up to 515 Rotary Dump Hopper Cars bearing the road numbers set forth in Exhibit A to Schedule 1 to such Lease and Indenture Supplement No. 1 as may be executed from time to time pursuant to such Indenture and Security Agreement.
- 3) **Lease and Indenture Supplement No. 1:**  
Lease and Indenture Supplement No. 1 dated October 1, 1990 between Meridian Trust Company, 35 North Sixth Street, Reading, Pennsylvania 19603, as lessor, and Union Pacific Railroad Company, as lessee, Martin Tower, Eighth and Eaton Avenues, Bethlehem, PA 18018 and Wilmington Trust Company, as Indenture Trustee, Rodney Square North, Wilmington, Delaware 19890, covering 192 Rotary Dump Hopper Cars bearing the road numbers set forth in Exhibit A to Schedule 1 to the Lease and Indenture Supplement No. 1 (a copy of such Exhibit is attached hereto as Exhibit A).

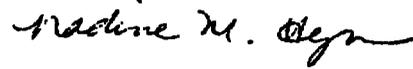
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Mr. Sidney L. Strickland, Jr. -5-

October 1, 1990

If you have any questions, please do not hesitate to call the undersigned.

Very truly yours,



Nadine M. Hyman

NMH/cr  
1191i  
Enclosures

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EXECUTION COPY

INTERSTATE COMMERCE COMMISSION

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LEASE AGREEMENT

dated as of September 1, 1990

between

MERIDIAN TRUST COMPANY,  
not in its individual capacity  
but solely as Owner Trustee,  
as Lessor

and

UNION PACIFIC RAILROAD COMPANY,  
as Lessee

ROTARY DUMP HOPPER RAILCARS

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CERTAIN RIGHTS, TITLE AND INTEREST IN AND TO THIS LEASE AGREEMENT AND TO THE RAILCARS COVERED HEREBY ON THE PART OF MERIDIAN TRUST COMPANY, AS OWNER TRUSTEE, HAVE BEEN ASSIGNED TO AND ARE SUBJECT TO A LIEN AND SECURITY INTEREST IN FAVOR OF WILMINGTON TRUST COMPANY, AS INDENTURE TRUSTEE, UNDER AN INDENTURE AND SECURITY AGREEMENT DATED AS OF SEPTEMBER 1, 1990. TO THE EXTENT, IF ANY, THAT THIS LEASE AGREEMENT CONSTITUTES CHATTEL PAPER (AS SUCH TERM IS DEFINED IN THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN ANY APPLICABLE JURISDICTION), NO SECURITY INTEREST IN THIS LEASE AGREEMENT MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART THAT CONTAINS THE RECEIPT THEREFOR EXECUTED BY WILMINGTON TRUST COMPANY, AS INDENTURE TRUSTEE, ON OR IMMEDIATELY FOLLOWING THE SIGNATURE PAGE THEREOF.

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FILED WITH THE INTERSTATE COMMERCE COMMISSION  
PURSUANT TO 49 U.S.C. § 11303 AND  
DEPOSITED IN THE OFFICE OF THE  
REGISTRAR GENERAL OF CANADA PURSUANT TO  
SECTION 90 OF THE RAILWAY ACT OF CANADA

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Schedule 1A and 1B -- Stipulated Loss Value

Schedule 2A and 2B -- Termination Value

Schedule 3A and 3B -- Basic Rent

Schedule X -- Definitions

Exhibit A -- Form of Lease and Indenture Supplement

LEASE AGREEMENT dated as of September 1, 1990, by and between MERIDIAN TRUST COMPANY, a trust company organized under the laws of the Commonwealth of Pennsylvania, not in its individual capacity but solely as trustee under the Trust Agreement (as defined in Schedule X hereto) (the "Lessor") and UNION PACIFIC RAILROAD COMPANY, a Utah corporation (the "Lessee").

The Lessor and the Lessee agree as follows:

SECTION 1. Definitions.

(a) Terms Defined. Except as otherwise expressly provided, all capitalized terms used in this Lease, the exhibits hereto and any certificates, reports or other documents or instruments made or delivered pursuant to or in connection with this Lease shall have the meanings set forth for such terms in Schedule X hereto (which Schedule X is concurrently being used with certain other Operative Documents and may contain terms not otherwise used in this Lease).

(b) Rules of Interpretation. Except as otherwise expressly provided, the rules of interpretation set forth in Schedule X hereto shall apply to this Lease, the exhibits hereto and any certificates, reports or other documents or instruments made or delivered pursuant to or in connection with this Lease.

SECTION 2. Purchase and Lease; Term.

(a) Purchase and Lease. Effective on each Closing Date, if the conditions set forth in Article IV of the Participation Agreement have been satisfied, (i) the Lessor shall purchase from the Seller the Railcars described in the Bill of Sale delivered on such Date to the Lessor, and through the Lessee acting as the Lessor's agent, shall accept delivery and title to and care, custody and control of such Railcars, (ii) the Lessor shall be deemed to have tendered delivery of such Railcars to the Lessee hereunder and the Lessee shall be deemed to have accepted delivery thereof hereunder, (iii) the Lessor shall lease such Railcars to the Lessee and the Lessee shall lease such Railcars from the Lessor under this Lease for the Rent and Lease Term hereinafter stipulated and upon the terms and conditions herein set forth and (iv) the Lessor and the Lessee shall conclusively evidence that such Railcars have been made subject to this Lease by executing and delivering a Lease and Indenture Supplement substantially in the form attached as Exhibit A hereto covering the Railcars so purchased and leased on such Closing Date.

(b) Lease Term. The interim term for the Railcars delivered on the Initial Closing Date shall commence on the Initial Closing Date and the interim term for the Railcars delivered on the Final Closing Date shall commence on the Final Closing Date. Each such interim term shall continue until the day immediately preceding the applicable Basic Term Commencement Date (each such period being hereinafter collectively called the "Interim Term"). The Basic Term for Railcars subject to each Lease and Indenture Supplement executed hereunder shall commence on the applicable Basic Term Commencement Date and shall continue until 11:59 P.M. (New York City time) on June 30, 2009 (the "Basic Term") (the Initial Term plus the Basic Term and any Renewal Terms actually entered hereunder being referred to herein as the "Lease Term").

### SECTION 3. Rent.

(a) Interim Interest; Interim Rent. Pursuant to Section 2.01(b) of the Participation Agreement, the Lessor has agreed to pay to the Indenture Trustee the interest accruing on the Notes Outstanding on (i) the Initial Contribution Date respecting the Notes issued on the Initial Closing Date and (ii) the Final Contribution Date with respect to the Notes issued on the Final Closing Date. To the extent not so paid by the Lessor on such dates, the Lessee hereby agrees to pay to the Indenture Trustee as Interim Rent such amounts on such dates. The Lessor agrees to give notice to the Lessee and the Indenture Trustee at least five Business Days prior to the Initial Contribution Date or the Final Contribution Date, as the case may be, if the funds for the payment required to be made by the Owner Participant pursuant to Section 2.01(b) of the Participation Agreement will not be paid by the Lessor to the Indenture Trustee in an amount equal to the amount required pursuant to Section 2.01(b) of the Participation Agreement. The Lessee shall have the right to recover the amount, if any, of Interim Rent paid by it in lieu of the Owner Participant pursuant to this paragraph 3(a) on the terms and conditions set forth in Section 2.01(b) of the Participation Agreement.

(b) Basic Rent. Subject to any adjustments or offsets required by paragraphs (e) and (f) of this Section 3, Section 2.01(b) of the Participation Agreement and the immediately following sentence, the Lessee hereby agrees to pay to the Lessor (i) on the first Payment Date for the period from the applicable Basic Term Commencement Date through June 30, 1991 an amount for each Railcar equal to the product of the Lessor's Cost for such Railcar multiplied by the Stub Period Rent Factor set out in Schedule 3A (for Railcars delivered on the Initial Closing Date) or 3B (for Railcars delivered on the Final Closing Date), as the case may be, (ii) on each Payment Date occurring thereafter during the Basic Term, Basic Rent for

each Railcar, in an amount equal to the product of the Lessor's Cost for such Railcar multiplied by the percentage listed in Schedule 3A (for Railcars delivered on the Initial Closing Date) and in Schedule 3B (for Railcars delivered on the Final Closing Date) to this Lease opposite the relevant Payment Date, (iii) for any Renewal Term pursuant to paragraph (a) of Section 4 of this Lease, Basic Rent, payable 43 such dates and in such amounts as provided in such paragraph (a) and (iv) for any extension of the Lease Term contemplated by Section 4(e), Basic Rent, payable on the date such Railcars shall be delivered by the Lessee to the Lessor pursuant to Section 4(b), in an amount provided for in Section 4(e) hereof. Notwithstanding any other provisions of this Section 3 (including, without limitation, any adjustments made pursuant to paragraphs (e) and (f) hereof), on each Payment Date the Lessee shall pay as Basic Rent (without any deductions or offsets) to the Indenture Trustee (to the account and at the place set forth in Schedule 1 to the Participation Agreement) for the account of the Lessor an amount at least sufficient to pay in full any payment then required to be made on account of principal of, and interest on, the Notes then Outstanding (other than by reason of acceleration of maturity thereof). It is understood that all payments (other than Excepted Property) to be made by the Lessee under this Lease will become subject to the lien of the Indenture and to all the rights of the Indenture Trustee thereunder.

(c) Supplemental Rent. In addition to its obligation to pay Interim Rent and Basic Rent hereunder, the Lessee shall pay to the Lessor or such other Person entitled thereto any and all Supplemental Rent (whether provided for herein or in any other Operative Document) as and when the same shall become due and owing, including, without limitation, the following:

(i) The Lessee agrees to pay to the Lessor, on demand, as Supplemental Rent, to the extent permitted by Applicable Law, interest at a rate per annum equal to the Overdue Rate on any part of any installment of Interim Rent, Basic Rent or Supplemental Rent not paid when due (or received by the Indenture Trustee too late on any day when due to permit distribution by the Indenture Trustee to the Holders on said date pursuant to Section 1007 of the Indenture) for any period for which the same shall be overdue;

(ii) Except as provided in Section 13(c) hereof, the Lessee agrees that the Premium, if any, payable with respect to the Notes shall be payable, in accordance with the terms of the Indenture, as Supplemental Rent;

(iii) The Lessee agrees to pay any interest on the Notes provided to be paid in Section 5.01(a) of the Participation Agreement to the extent not paid from funds then on deposit with the Lessor; and

(iv) Fees and expenses of the Owner Trustee and Indenture Trustee and amounts due pursuant to Sections 709 and 1007 of the Indenture.

(d) Manner of Payment; Unconditional Payment. Except as otherwise provided in paragraph (g) of this Section 3, all Rent (except all amounts of Supplemental Rent, indemnities and other payments of any kind which are payable directly to the Owner Participant, or which are payable directly to the Lessor for the sole benefit of the Owner Participant or Meridian), shall be paid by the Lessee to the Indenture Trustee, except as otherwise provided in the Indenture. All Interim Rent, Basic Rent and Supplemental Rent shall be payable in immediately available funds at the place where payment is required to be made on or before 12:00 Noon (New York City time) on the day when each such payment shall be due. Except as specifically provided in this Lease, the Lessee's obligation to pay Interim Rent, Basic Rent and Supplemental Rent payable hereunder and under any Lease and Indenture Supplement shall be absolute and unconditional under any and all circumstances and shall not be affected by any circumstances of any character, including, without limitation, (i) any setoff, counterclaim, recoupment, offset, defense or other right which the Lessee may have against the Lessor, the Indenture Trustee, any Participant or anyone else for any reason whatsoever, including, without limitation, any default by the Lessor or any party to the Participation Agreement or any agreement referred to therein in their respective obligations hereunder or thereunder, (ii) any unavailability of any Railcar, after its delivery and acceptance by the Lessee hereunder, for any reason, including, without limitation, any lack or invalidity of title or any other defect in the title, condition, design, operation, merchantability or fitness for use of such Railcar, (iii) any loss or destruction of, or damage to, such Railcar or interruption or cessation in the use or possession thereof by the Lessee for any reason whatsoever and of whatever duration, (iv) any insolvency, bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding by or against the Lessor, the Indenture Trustee, the Lessee or any other Person, (v) the requisitioning, seizure or other taking of title to or use of such Railcar by any government or governmental authority or otherwise whether or not by reason of any act or omission of the Lessor or the Lessee or the Indenture Trustee, or any other deprivation or

limitation of use of such Railcar in any respect or for any length of time, whether or not resulting from accident and whether or not without fault on the part of the Lessee, (vi) the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, the Participation Agreement or any other Operative Document, (vii) the lack of right, power or authority of the Lessor or any other Person to enter into this Lease, the Participation Agreement or any other Operative Document, (viii) any ineligibility of such Railcar for any particular use, whether due to any failure of the Lessor, the Lessee or any other Person to comply with any law or governmental regulation or otherwise, (ix) any event of force majeure or any frustration, (x) any legal requirement or (xi) any other cause, circumstance or happening, whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. The Lessee hereby waives, to the extent permitted by applicable law, any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease except in accordance with the express terms hereof. Except to the extent of any payment in excess of that required to be made hereunder, each payment of Interim Rent, Basic Rent and Supplemental Rent made by the Lessee shall be final, and the Lessee will not seek to recover all or any part of such payment from the Indenture Trustee, any Holder of a Note, the Lessor or any Participant for any reason whatsoever, absent manifest error, provided, however, that the Lessee shall be entitled to recover from the Indenture Estate all or any part of Supplemental Rent which a court determines that the Indenture Trustee was not entitled to receive. Furthermore, nothing in this Section 3 or in Section 5 shall be construed as (a) a warranty by the Lessee of (i) the value of the Lessor's or Owner Participant's interest upon termination of the Basic Term or any Renewal Term or (ii) the useful life of the Railcars, or (b) a prohibition of or restriction against an assertion of any claim or cause of action by the Lessee with respect to the Lessor, the Indenture Trustee, any Participant or any other Person in an independent action.

(e) Adjustments for Loss of Benefits. In the event that any loss of Tax Benefits occurs for which the Lessee is required to indemnify the Owner Trustee or the Owner Participant under the Tax Indemnity Agreement (whether or not such indemnity payment is made in a lump sum) the Basic Rent, Stipulated Loss Value percentages and Termination Value percentages shall be adjusted by the Owner Participant to maintain in the case of adjustments to Basic Rent the Owner Participant's Net Return and in the case of adjustments to the Stipulated Loss Value percentages and Termination Value

percentages the nominal after-tax yield component of Net Return (to the extent consistent therewith, the calculation method used by the Owner Participant shall minimize the net present value (computed utilizing a discount rate equal to the Coupon Rate) of Basic Rent payments); provided, however, that no such adjustment shall (i) extend the final maturity date of the Notes, (ii) change the principal amount of the Notes Outstanding at such time, (iii) increase or decrease the originally scheduled weighted average life of the Notes by more than 6 months, or (iv) reduce the Basic Rent, Stipulated Loss Value percentages and Termination Value percentages below the amount necessary to pay Scheduled Debt Payments on the Notes or to permit repayment of the Notes as they become due.

(f) Other Adjustments. Prior to each Closing Date as provided in Section 2.03 of the Participation Agreement and on or prior to March 31, 1991, the Basic Rent, the Stipulated Loss Value percentages and the Termination Value percentages set forth in Schedules 1, 2 and 3 to this Lease delivered in accordance with the terms hereof and of the Participation Agreement, and, the amortization payments of the Notes, shall be adjusted upward or downward (on the basis of Lessor's Cost for the number of Railcars delivered at each Closing) if:

(i) delivery and acceptance of any Railcars shall not occur on the dates set forth in Schedule 1 hereto;

(ii) the actual Lessor's Cost for any Railcar varies from \$44,250 by more than 5%;

(iii) Transaction Costs are other than 1.75% of the aggregate Lessor's Cost for the Railcars; or

(iv) any of the Tax Assumptions with respect to any Railcar becomes inaccurate as a result of a change after the date hereof in the Code, including any technical corrections act, regulations, revenue rulings or administrative or judicial interpretations promulgated, enacted or issued after the date hereof and prior to the Closing Date for any such Railcar, including any tax rate changes that may be enacted or issued after the date hereof and prior to such Closing Date regardless of the effective date of such changed tax rate;

which adjustments, calculated for all periods from and after the relevant Closing Date, shall be effective as of such Date and shall be such as to maintain the Owner Participant's Net Return in the case of adjustments to Basic Rent and the Owner Participant's nominal after-tax yield component of Net Return

in the case of adjustments to Stipulated Loss Value percentages and Termination Value percentages (calculated in a manner consistent with the assumptions and calculation method used by the Owner Participant), after giving effect to the changed factors taken into account in such adjustments and to the extent consistent therewith, using a calculation method which shall minimize the net present value (computed utilizing a discount rate equal to the Coupon Rate) of Basic Rent payments; provided, however, that no such adjustment shall (i) extend the final maturity date of the Notes, (ii) change the principal amount of the Notes Outstanding at such time, (iii) increase or decrease the originally scheduled weighted average life of the Notes by more than six months, or (iv) reduce the Basic Rent, Stipulated Loss Value percentages and Termination Value percentages below the amount necessary to pay Scheduled Debt Payments on the Notes or to permit repayment of the Notes as they become due. Such adjustments shall also be made if any refinancing occurs pursuant to Section 3.01 of the Participation Agreement.

(g) Determination of Adjustments. Any adjustment pursuant to Section 3(e) or 3(f) shall initially be computed by the Owner Participant, which shall employ a computer optimization program which results in Basic Rent and Note amortization payment structures similar to those in effect on the relevant Closing Date (any such adjustment to be calculated in a manner consistent with the assumptions and calculation method previously used by the Owner Participant). The results of such computation by the Owner Participant shall promptly be delivered to the Lessee. Within 10 Business Days after the receipt of the results of an adjustment, the Lessee may request that the Verifying Accountant verify, after consultation with the Owner Participant and the Lessee, the accuracy of such adjustment in accordance with Section 3(e) or 3(f), and the Owner Participant and the Lessee hereby agree to provide the Verifying Accountant with all information and materials as shall be reasonably necessary or desirable in connection therewith; provided, however, that in no event shall the Verifying Accountant be permitted to review the documents, programs or procedures used to calculate the Owner Participant's internal rate of return and, provided further, that prior to the selection of any Verifying Accountant hereunder, such Verifying Accountant shall (i) execute a confidentiality agreement with respect to the subject matter of its review, and (ii) agree to return to the Owner Participant any materials of the Owner Participant used by such Verifying Accountant in the course of such verification or the performance of any duties in accordance with this Agreement. If the Verifying Accountant confirms that such adjustment is in

accordance with Section 3(e) or 3(f), it shall so certify to the Lessee, and such certification shall be final, binding and conclusive on the Lessee, the Owner Participant and the Lessor. If the Verifying Accountant concludes that such recalculation or adjustment is not in accordance with Section 3(e) or 3(f), it shall so certify to the Lessee and the Owner Participant, and the Owner Participant shall again compute the required adjustment. Such further adjustment shall again be subject to the provisions of this Section 3(g), until the Verifying Accountant shall certify to Lessee that such adjustment is in accordance with Section 3(e) or 3(f). The final determination of any recalculation or adjustment hereunder shall be set forth in an amendment to this Lease, executed and delivered by the Lessor and the Lessee and consented to by the Owner Participant; provided, however, that failure to execute and deliver such amendment shall not affect the validity and effectiveness of any such recalculation or adjustment. The reasonable fees of the Verifying Accountant in verifying an adjustment pursuant to this Section 3(g) shall be paid by the Lessee within 10 days after demand, except that the Lessor and the Owner Participant shall pay such fees, costs and expenses if the final determination differs from the Owner Participant's original adjustment such that (a) the net present value (calculated at a discount rate equal to the Coupon Rate) of the adjusted Basic Rent is 10 or more basis points higher than the net present value (at such rate) of the Basic Rent set forth in the Owner Participant's original adjustment or (b) the adjusted Stipulated Loss Value or Termination Value varies by more than one-tenth of one percent of the Stipulated Loss Value or Termination Value set forth in the Owner Participant's original adjustment.

(h) Sufficiency of Rent. Notwithstanding any provision to the contrary contained in this Lease or in any other Operative Document, in all events the amounts payable by the Lessee under this Lease shall be at least sufficient to pay the amounts due on the Notes. The amount of each Basic Rent payment payable hereunder shall be at least sufficient to pay, on each Payment Date, Scheduled Debt Payments and after taking into account any Basic Rent payable on such Date (during any period when Basic Rent is payable in arrears) the amount of Stipulated Loss Value or Termination Value payable hereunder, after giving effect to any adjustments of the percentages relating thereto provided for in this Lease, shall be at least sufficient to pay in full, as and when due in accordance with the terms thereof, the principal of and all accrued interest on the Notes from time to time Outstanding. Except as provided in Section 13(c) hereof, any Premium payable with respect to the Notes shall be payable as Supplemental Rent, and the amount of each Supplemental Rent payment payable hereunder shall, if there shall then be Premium or interest calculated at the

Overdue Rate payable on or with respect to the Notes, in any event be at least sufficient to pay, in accordance with the Indenture, all such amounts of Premium and all interest calculated at the Overdue Rate then payable on or with respect to the Notes.

**SECTION 4. Renewal Terms; Redelivery; Purchase Options.**

(a) Renewal Terms. Provided that no Event of Default shall have occurred and then be continuing, the Lessee shall be entitled to renew this Lease pursuant to the following terms and conditions with respect to any or all Railcars then being leased under this Lease on the last day of the Basic Term or any Renewal Term then in effect, for one or more Renewal Terms, commencing on the first day following the end of the Basic Term or any Renewal Term for which a renewal has been effected (each a "Renewal Term Commencement Date"):

(i) Appraisal Determination. The Lessee may (A) by notice to the Lessor at any time at least 180 days (but not more than 365 days) prior to the First Renewal Term Commencement Date, request that determinations be made under subclause (iv)(C) of this paragraph (a) and (B) by notice to the Lessor at any time at least 180 days (but not more than 365 days) prior to the date which would be the Renewal Term Commencement Date in any proposed Fair Market Renewal hereunder, request that a determination be made under subclause (v)(C) of this paragraph (a). No such request pursuant to this clause (i) for a determination shall be deemed an election by the Lessee of a renewal pursuant to the provisions of this paragraph (a).

(ii) Notice. In the event that the Lessee elects to renew this Lease, the Lessee shall provide the Lessor and the Owner Participant with a notice electing such renewal at least 180 days (but not more than 365 days) prior to the Renewal Term Commencement Date on which such elected renewal is to take effect and specifying the number of Railcars which the Lessee desires to re-lease hereunder; provided, however, that the Lessee may withdraw its election to renew the lease of any Railcars, in whole or in part, at any time before the 180th day prior to such Renewal Term Commencement Date. Such notice shall specify the desired Renewal Term which in the case of the First Renewal shall be the First Renewal Term and in the case of a Fair Market Renewal shall be determined in accordance with subclause (v)(A) of this paragraph (a).

(iii) Unit Selection Process. At any time during the Lease Term, in the event the Lessee elects to renew this Lease with respect to (or purchases pursuant to Section 4(c) hereof) less than all Railcars, the Railcars subject to such renewal shall be selected as follows: (1) the Lessee shall designate, and the Lessee and the Lessor shall attempt to agree on, the Railcars subject to such renewal, or (2) in the event the Lessee and the Lessor are unable to agree within 30 days of the Lessee's designation of the Railcars to be re-leased hereunder, the Railcars actually chosen for re-leasing hereunder shall be randomly selected, by an Independent third party chosen by the Lessee and the Lessor (and if the Lessee and Lessor are unable to select such Independent third party, by an Independent third party chosen by the American Arbitration Association), without regard to the condition of any such Railcar; provided, however, in no event shall the number of Railcars actually re-leased or purchased hereunder be less than the amount originally requested by the Lessee, which amount may not be less than 50 Railcars, and, provided further, that no such renewal or purchase may result in less than 100 Railcars being returned to the Lessor (such selection process, as applicable to renewals or purchases of Railcars as the case may be, being herein referred to as the "Unit Selection Process").

(iv) First Renewal. The renewal pursuant to this clause (iv) shall be referred to as the "First Renewal" and shall be made pursuant to the following terms and conditions:

(A) The period of the First Renewal (the "First Renewal Term") for any Railcars shall be the period commencing on the first day following the end of the Basic Term (the "First Renewal Term Commencement Date") and ending on the day immediately preceding the date which is two years from such First Renewal Term Commencement Date.

(B) Basic Rent for Railcars during the First Renewal Term shall be the First Renewal Rent in respect of such Railcars for such period (as determined pursuant to the provisions of subclause (D) below) and such First Renewal Rent shall be payable in arrears on each Payment Date occurring after the last day of the Basic Term. The Stipulated Loss Value for Railcars leased

during the First Renewal Term shall be calculated once on or before the beginning of the First Renewal and shall (x) on the First Renewal Term Commencement Date be equal to 30% of the Lessor's Cost for such Railcars as of such date and (y) thereafter (during the First Renewal Term) be reduced to 20% of Lessor's Cost on a straight-line basis over the period from such Date to the Date specified in subclause (C)(y) below.

(C) In connection with the First Renewal for any or all of the Railcars, a determination shall be made (pursuant to the Appraisal Procedure or otherwise) of (x) the then estimated remaining economic useful life of such Railcars measured from the First Renewal Commencement Date and the date on which there shall remain 20% of such remaining economic useful life, (y) the last date on which the estimated residual value (without regard to inflation or deflation subsequent to the Initial Closing Date) of such Railcars is projected to be greater than or equal to 20% of Lessor's Cost therefor and (z) the Fair Market Sale Value and the Fair Market Rent of such Railcars. Such determination shall be made as of and completed prior to the First Renewal Term Commencement Date.

(D) The First Renewal Rent (the "First Renewal Rent") shall be an amount, determined as of the First Renewal Term Commencement Date, equal to the lesser of (x) Fair Market Rent in respect of such Railcars for such period (as determined pursuant to subclause (C) above), and (y) Fixed Rate Renewal Rent in respect of such Railcars.

(v) Fair Market Renewal. Each renewal pursuant to this clause (v) shall be referred to as a "Fair Market Renewal" and shall be made pursuant to the following terms and conditions:

(A) The period of each Fair Market Renewal (each, a "Fair Market Renewal Term") for any Railcars shall be the period commencing on the Renewal Term Commencement Date for which a Fair Market Renewal is being requested and ending on the last day of the Renewal Term specified by the

Lessee in the notice delivered pursuant to clause (ii) of this paragraph (a), which period shall be two or more whole years, provided that (i) the first Fair Market Renewal Term shall commence on the day immediately succeeding the last day of the First Renewal Term, (ii) all Fair Market Renewals shall run consecutively thereafter and (iii) subject to the following sentence, the Lessee shall have the option of renewing Fair Market Renewals indefinitely. Each such Fair Market Renewal Term shall not go beyond the earlier of the dates determined in subclauses (x) and (y) of clause (iv)(C) of this paragraph (a).

(B) Basic Rent for Railcars during each Fair Market Renewal Term shall be the Fair Market Rent in respect of such Railcars for such period (as determined pursuant to the provisions of subclause (C) below) (the "Fair Market Renewal Rent"), payable in arrears on each Payment Date occurring after the Renewal Term Commencement Date for such Fair Market Renewal Term. During each Fair Market Renewal Term, the Stipulated Loss Value for Railcars then subject to the Lease shall be as provided for in subclause (B) of clause (iv) of this paragraph (a).

(C) In connection with each actual or prospective Fair Market Renewal for any Railcars, a determination shall be made (pursuant to the Appraisal Procedure or otherwise) of (x) the Fair Market Sale Value of such Railcars as of the relevant Renewal Term Commencement Date, and (y) the Fair Market Rent for such Railcars. Such determination shall be made as of and be completed prior to the Renewal Term Commencement Date for such Fair Market Renewal.

(vi) General. All provisions of this Lease shall be applicable during each Renewal Term, except that the Basic Rent and Stipulated Loss Values payable under this Lease during each Renewal Term shall be those specified in this paragraph (a) and except that the Lessee shall have no right (pursuant to Section 13 hereof) to terminate a Renewal Term prior to the end thereof.

(b) Redelivery; Storage. The Lessee shall assemble and deliver possession of the Railcars not subject to a Renewal Term and not purchased by the Lessee in accordance with the

terms of this Lease at the expiration of the Lease Term or any applicable storage period provided herein, in such numbers and to such location or locations on the Lessee's lines or to such interconnection point or points with Lessee's lines (the "Redelivery Locations") as the Lessee shall designate by notice to the Lessor not less than 30 days prior to such redelivery; provided, however, that (A) in no event shall there be more than four separate Redelivery Locations, and (B) if the Lessor reasonably objects to any Redelivery Location, the Lessor and the Lessee shall agree in good faith on an appropriate alternative location. Any Railcar delivered to a Redelivery Location (or into storage, as the Lessor may have requested as provided below) shall be deemed to be redelivered hereunder (and Rent with respect to such redelivered Railcars shall cease to accrue with respect thereto) on the later to occur of (i) the expiration of the Lease Term with respect to such Railcars (ii) the actual redelivery of such Railcar to such Redelivery Location or into storage. The Lessee will, at the request of Lessor made 20 days prior to the end of the Lease Term, store each such Railcar free of charge and at the Lessee's expense and risk on storage tracks selected and owned by the Lessee for a period commencing on the date of the actual delivery thereof to such storage tracks and terminating on a date not later than 60 days after the later of (i) the expiration of the Lease Term with respect to such Railcar and (ii) the date of actual delivery thereof to such storage tracks. During such period, the Lessee will upon ten days prior written notice from the Lessor, to the extent practicable, assemble such Railcars in groups of at least 50. In addition, the Lessor shall have the right to store each such Railcar redelivered to it on storage tracks selected and owned by the Lessee for an additional period of 90 days after the expiration of the free storage period referred to in the preceding sentence; provided, however, that the Lessee may charge the Lessor an amount based on the then normal rates charged by the Lessee to third parties for storage of railcars of the same or similar Type on its tracks (or in the event that Lessee has no such normal charge at such time, then at the rate charged today adjusted for inflation), and such additional storage shall be at the Lessor's expense and risk. The Lessee shall be responsible for all costs and expenses of gathering and storing any Railcar not redelivered pursuant to the terms of this Section 4 and the Lessee shall continue to insure and bear the risk of loss of any such Railcar in accordance with the Lease until so redelivered.

(c) Purchase at Expiration of Basic Term or Renewal Term. Provided that no Event of Default shall have occurred and be continuing, the Lessee shall be entitled at the

expiration of the Basic Term or any Renewal Term, as the case may be, to purchase, pursuant to the following terms and conditions, any or all of the Railcars then being leased under this Lease as follows:

(i) The Lessee may, by notice to the Lessor at any time not less than 180 days (but not more than 365 days) prior to the expiration of the Basic Term or any Renewal Term, as the case may be, with respect to the Railcars then being leased under this Lease, request that a determination be made under clause (iv) of this paragraph (c) of the Fair Market Sale Value of such Railcars. No such request for a determination pursuant to this clause (i) shall be deemed an election by the Lessee for a purchase pursuant to the provisions of this paragraph (c).

(ii) In the event that the Lessee elects to purchase any such Railcars, the Lessee shall provide the Lessor with a notice making such election at least 180 days (but not more than 365 days) prior to the expiration of the Basic Term or applicable Renewal Term, as the case may be, with respect to the Railcars to be purchased, such notice to specify the number of Railcars to be purchased hereunder; provided, however, that the Lessee may withdraw its offer to purchase any Railcars, in whole or in part, at any time before the 180th day prior to the expiration of the Basic Term or applicable Renewal Term, as the case may be. In the event the Lessee shall elect to purchase less than all Railcars then subject to this Lease, the Unit Selection Process shall be employed in determining which Railcars shall be purchased hereunder including the limitations on partial purchases provided in the Unit Selection Process.

(iii) The Lessee shall pay to the Lessor, on the expiration of the Basic Term or applicable Renewal Term, as the case may be, (a) with respect to Railcars to be purchased on the expiration of the Basic Term, an amount equal to the lesser of (i) the Fair Market Sale Value for such Railcars and (ii) 50% of Lessor's Cost of such Railcars, provided that such amount shall in no event be less than the Stipulated Loss Value for such Railcars as of such date or (b) with respect to Railcars to be purchased on the expiration of any Renewal Term, an amount equal to the Fair Market Sale Value for such Railcars, and upon such payment and the payment by the Lessee of all other Rent payable

hereunder on or before such expiration date (including, without limitation, the Basic Rent becoming due and payable on such expiration date), the Lessor shall transfer all its right, title and interest in and to such Railcars to the Lessee, without any representation, recourse or warranty on the part of the Lessor except that the Lessor shall warrant to the Lessee that such Railcars are free and clear of all Owner Encumbrances.

(iv) In connection with an actual or prospective purchase by the Lessee of any Railcars pursuant to this Section 4(c), a determination shall be made (pursuant to the Appraisal Procedure) of the Fair Market Sale Value of such Railcars. Such determination shall be made within the time periods required by the Appraisal Procedure and be made as of, and completed prior to, the expiration of the Basic Term or applicable Renewal Term, as the case may be, with respect to such Railcars.

(d) Time is of the Essence. The Lessor and the Lessee agree that the provisions of this Section 4 must be fulfilled in a timely manner and that time is of the essence in connection with the performance of each such party's obligations under this Section 4.

(e) Extension of Lease Term. Upon the expiration of the Basic Term and all applicable Renewal Terms, the Lease Term for any Railcar shall be extended for any period necessary for the return of such Railcar to the location designated pursuant to Section 4(b); provided, however, that no such extension shall exceed 90 days. In addition to any other remedy the Lessor may be entitled to for failure by the Lessee to timely redeliver the Railcars on or prior to the expiration of the Basic Term or any applicable Renewal Term, the Lessee agrees to pay the daily equivalent of 50% of Average Rent on each Railcar not so timely redelivered, from and including the final Payment Date to but excluding the date of actual redelivery hereunder.

#### SECTION 5. Disclaimer of Warranties.

(a) No Representation or Warranty. THE LESSEE ACKNOWLEDGES THAT (i) THE RAILCARS ARE OF DESIGN AND MANUFACTURE SELECTED BY THE LESSEE, (ii) THE RAILCARS ARE SUITABLE FOR THE LESSEE'S PURPOSES AND (iii) NEITHER THE LESSOR, THE INDENTURE TRUSTEE NOR ANY PARTICIPANT IS A MANUFACTURER OR DEALER IN SUCH PROPERTY AND NEITHER HAS INSPECTED THE RAILCARS PRIOR TO DELIVERY TO AND ACCEPTANCE BY

THE LESSEE. THE LESSEE ACKNOWLEDGES THAT NONE OF THE OWNER PARTICIPANT, THE LESSOR, THE INDENTURE TRUSTEE NOR ANY LOAN PARTICIPANT MAKES ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND WAIVES, AS BETWEEN ITSELF AND THE LESSOR AND ANY PARTICIPANT, ANY AND ALL RIGHTS OR CLAIMS, AS TO THE DESIGN, OPERATION OR CONDITION OF THE RAILCARS OR AS TO THE VALUE, CONDITION, DESIGN OR MERCHANTABILITY OF THE RAILCARS, OR AS TO THE FITNESS OF THE RAILCARS FOR ANY PARTICULAR USE OR PURPOSE, OR AS TO THE ABSENCE OF LATENT OR OTHER DEFECTS WHETHER OR NOT DISCOVERABLE, OR AS TO THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT, OR AS TO THE ABSENCE OF ANY OBLIGATIONS BASED ON STRICT LIABILITY IN TORT OR, EXCEPT AS SET FORTH IN SECTION 5(b) OR AS OTHERWISE PROVIDED IN THE OPERATIVE DOCUMENTS, ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE RAILCARS AND UNDER NO CIRCUMSTANCES WHATSOEVER SHALL MERIDIAN OR THE LESSOR OR ANY PARTICIPANT BE LIABLE OR RESPONSIBLE TO THE LESSEE FOR ANY CONSEQUENTIAL DAMAGES. THE PROVISIONS OF THIS SECTION 5 HAVE BEEN NEGOTIATED AND, EXCEPT AS PROVIDED ABOVE, ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, BY THE LESSOR, THE INDENTURE TRUSTEE AND ANY PARTICIPANT IN ANY CAPACITY, WITH RESPECT TO ANY RAILCAR, OR ANY PART THEREOF WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT OR OTHERWISE.

(b) Title. Notwithstanding the provisions of the foregoing paragraph (a), the Lessor represents and warrants that on each Closing Date it will have whatever title to the Railcars being delivered on such Date as has been conveyed to it on such date by the Seller, subject to no Owner Encumbrances.

SECTION 6. Use and Operation of Railcars; Certain Agreements. During the Lease Term, so long as no Event of Default has occurred and is continuing, the Lessee has the exclusive right to possession, control and full use of the Railcars leased hereunder and may use such Railcars in any lawful trade or commerce, provided that the Lessee shall use each Railcar only in the manner for which it was designed and intended, that such Railcars shall not be used or operated in any manner contrary to any Applicable Law and that such Railcars shall be operated primarily on domestic routes in the United States of America.

SECTION 7. Maintenance; Return Condition.

(a) Maintenance. The Lessee, at its own expense and risk, shall throughout the Lease Term maintain and repair the Railcars so as to keep the Railcars in as good operating condition as when originally delivered, ordinary wear and tear

excepted, in accordance with maintenance standards at least equal to the industry standards of maintenance for similar Types of railcars operating on the lines of Class I Railroads and in the manner and in the same condition as the Lessee would maintain and repair similar equipment owned and leased by it at such time so that such Railcars will remain (i) in compliance with any and all Applicable Law and industry regulations, as would have been applied without regard to any changes of ownership or changes in marks that result from action by the Lessor during the Lease Term other than for actions specifically requested by the Lessee, and (ii) mechanically suitable for interchange by the Lessee. The Lessee agrees that it will not discriminate against any Railcar with respect to its use, operation or maintenance in contemplation of the expiration or termination of this Lease. Notwithstanding the foregoing, the Lessee, in its discretion, may withdraw from transportation service any Railcar for any reason at and for any time, during which time the Lessee shall not be required to maintain or repair such Railcar, but otherwise any such Railcar shall remain subject to the terms of this Lease; provided, however, that (w) the Lessee shall remain responsible for the preservation, safekeeping, use, operation and safe storage of such Railcar, (x) the Lessee's actions with respect to such Railcar shall not impair the value, utility, useful life or residual value that such Railcar would have had had it been kept in service and maintained in accordance with this Lease, (y) prior to any such Railcar being placed in transportation service thereafter, the Lessee shall maintain or repair or shall cause such Railcars to be maintained or repaired in accordance with the terms of this Lease and (z) the foregoing shall not affect any of the Lessee's obligations to return such Railcar in the manner and condition specified in Section 4(b) and 7(b) hereof.

(b) Return Condition. At the time of any return, the Railcars so being returned shall be free and clear of all liens, security interests, charges and encumbrances and rights of others (except any Owner Encumbrances and Permitted Encumbrances, it being understood that the Lessee will promptly and diligently cause any such Permitted Encumbrances to be discharged and, at the Lessor's request, the Lessee shall bond or provide such other form of security for payment and discharge of such Permitted Encumbrances as the Lessor may reasonably request) and shall be in the condition required by this Section 7 (other than the last sentence of Section 7(a) and as if the Railcars had been used solely in coal-carrying service and had been maintained in accordance with industry standards and Lessee practices for coal-carrying railcars of the same Type as the Railcars). The Lessor or its agent may

inspect any Railcar returned hereunder to determine whether such Railcar is in the condition required by this Section 7(b) at such time and location as the Lessor and the Lessee may reasonably establish. At such inspection, inspectors representing both the Lessee and the Lessor, or an Independent inspector satisfactory to both parties, shall be present and shall determine and state the agreed repairs or work necessary to place such Railcar on the date of return in the condition required by this Section 7(b). The Lessee and the Lessor shall bear the cost of their respective inspectors.

**SECTION 8. Inspection.** The Lessor, the Owner Participant and the Indenture Trustee, or their duly authorized representatives, may inspect (during normal business hours (Monday through Friday, 8:00 a.m. to 4:00 p.m.)), upon reasonable notice and at their own risk and expense, the Railcars and applicable maintenance and use records relating thereto, and the Lessee shall make the foregoing available to each such party, but none of the Lessor, the Owner Participant or the Indenture Trustee shall have any duty to do so; provided, however, that any such inspection shall in no way interfere with any repairs or maintenance or the use and operation of the Railcars; and provided further, that in exercising such right of inspection, the Lessor, the Owner Participant, the Indenture Trustee and their duly authorized agents or representatives shall not unreasonably interfere with the Lessee's normal business operations and will abide by all Lessee's rules and regulations regarding safety and operation.

**SECTION 9. Improvements.**

(a) **Improvements.** The Lessee shall make such Improvements to the Railcars as shall be required in order to comply with Section 7. In addition, the Lessee may make such other Improvements to the Railcars as the Lessee may deem desirable but only to the extent that (i) in the case of Severable Improvements, such Severable Improvements are readily removable without causing material damage to the Railcars and without materially impairing their fair market sale value, utility or remaining economic life at the end of the Lease Term (determined as if such Improvements had not been made) and (ii) in the case of Nonseverable Improvements, such Nonseverable Improvements do not diminish the Railcars' fair market sale value, utility or remaining economic life at the end of the Lease Term.

(b) **Title; Removal of Severable Improvements.** Title to each Nonseverable Improvement shall, without further act, vest in the Lessor. Title to each Severable Improvement shall, without further act, vest or remain, as the case may be, in the

Lessee, and, provided no Event of Default shall then have occurred and be continuing, the Lessee at its own expense and risk shall have the right to remove any Severable Improvement from the Railcars at any time during or at the expiration of the Lease Term. On the expiration of the Lease Term, any Severable Improvement not so removed shall become the property of the Lessor free and clear of all rights of the Lessee, without further act. The Lessor shall have the right on the expiration date of the Lease Term (i) to purchase any Severable Improvements from the Lessee in consideration of the payment to the Lessee of the Fair Market Sales Value thereof (as determined pursuant to the Appraisal Procedure) or (ii) to require the Lessee to remove such Severable Improvements.

(c) Removal of Property; Replacements. The Lessee may, in the ordinary course of maintenance or repair of any Railcar, remove any item of property constituting a part of such Railcar, and unless the removal of such item is required by Section 7, the Lessee shall replace such item as promptly as possible by an item of property that is free and clear of all liens, encumbrances and rights of any Person (other than Permitted Encumbrances) and subject to the lien of the Indenture and in as good operating condition as, and with a value, utility and useful life at least equal to, the item of property being replaced. Any item of property removed from such Railcar as provided in the preceding sentence shall remain the property of the Lessor free and clear of all rights of the Lessee until replaced in accordance with the terms of said sentence, but shall then, without further act, become the property of the Lessee. Any such replacement property shall, without further act, become the property of the Lessor and be deemed part of such Railcar for all purposes hereof.

(d) Identification Marks. The Lessee shall (i) cause each Railcar to be kept numbered with the identifying number as set forth in Schedule 1 to the Lease and Indenture Supplement executed and delivered on the relevant Closing Date and (ii) keep and maintain, as soon as practicable after such Railcar becomes subject to the terms of this Lease, plainly, distinctly, permanently and conspicuously marked on both sides of such Railcar in letters not less than one inch in height, the words "Owned by a bank or trust company and subject to a security agreement filed with the Interstate Commerce Commission" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by Applicable Law in order to protect the title of the Lessor and the rights of the Lessor and the Indenture Trustee under the Operative Documents. The Lessee will not place any such Railcar in operation or exercise

any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such word or words which may be removed, defaced, obliterated or destroyed. The Lessee will not permit the identifying number of any Railcar to be changed except in accordance with a Lease amendment or statement of new identifying numbers to be substituted therefor, which Lease amendment or statement shall have been previously filed, recorded or deposited with the Lessor and Indenture Trustee and in all public offices where this Lease will have been filed, recorded and deposited. Except as above provided, the Lessee will not allow the name of any Person to be placed on the Railcars (other than that of the manufacturer of such Railcars) as a designation that might reasonably be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Railcars to be lettered with the names or initials or other insignia customarily used by the Lessee, its sublessees or any of their respective Affiliates on railroad equipment used by it or its sublessees of the same or a similar Type.

#### SECTION 10. Liens.

(a) Liens. None of the Lessee and any sublessee nor any other Person shall directly or indirectly have any right, power or authority to create, assume, incur or permit to exist any lien or security interest on or with respect to any Railcar, other than Permitted Encumbrances. The Lessee shall notify the Lessor promptly of the imposition of any such lien or security interest (other than Owner Encumbrances) and shall at its own cost and expense promptly cause the same to be discharged, dismissed or removed, and in any event within 30 days after the Lessee first knows of the existence of any such lien or security interest; provided, that notwithstanding the foregoing, the Lessee shall have the right to contest any such lien or security interest in good faith by appropriate proceedings, diligently prosecuted or appealed so long as such lien or security interest does not involve any non-de minimis risk of a sale, forfeiture or loss of such Railcar and so long as the Lessee has provided adequate security therefor in the reasonable opinion of the Lessor and the Indenture Trustee.

(b) Release of Liens. The Lessee agrees that it will, at its own cost and expense, promptly take such action as may be necessary duly to discharge any liens and security interests that are not Permitted Encumbrances or Owner Encumbrances or in the event that any Railcar shall be attached, levied upon or taken into custody, or detained or sequestered, by virtue of any proceeding in any court or tribunal, or by any governmental or other authority on account

of any such lien or security interest, the Lessee shall cause such Railcar to be released and all such liens and security interests to be promptly discharged (except to the extent that the same shall be contested by the Lessee in good faith by appropriate proceedings, diligently prosecuted or appealed so long as such lien or security interest does not involve any non-de minimis risk of a sale, forfeiture or loss of such Railcar and so long as the Lessee has provided adequate security therefor in the reasonable opinion of the Lessor and the Indenture Trustee). The Lessee shall protect, save and keep harmless the Owner Participant, the Lessor, the Indenture Trustee and the Holders from time to time of the Notes and their respective successors and assigns from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses (including reasonable legal fees) of whatsoever kind and nature that may be imposed on, incurred by or asserted at any time (whether before, during or after the Lease Term) against the Owner Participant, the Lessor, the Indenture Trustee or any Holder in any way relating to or arising out of any such liens or security interests that are not Permitted Encumbrances or Owner Encumbrances, but under no circumstances whatsoever shall the Lessee be liable for or responsible to the Owner Participant, the Indenture Trustee or any Holder for any incidental or consequential damages.

SECTION 11. Insurance.

(a) The Lessee shall at all times after each Closing Date, at its own expense, carry and maintain or cause to be carried and maintained (i) property insurance with respect to each Railcar subject to this Lease and (ii) public liability insurance with respect to third party personal and property damage, in each case with such deductibles, in such amounts, against such risks, with such insurance companies of recognized responsibility and subject to such self-insurance, in each case as is consistent with prudent industry practice for Class I Railroads, and in any event, in amounts not less than and against such risks so as to be at least equal to the insurance, if any, maintained by the Lessee with respect to similar Types of railcars owned or leased by the Lessee. The Lessor and the Indenture Trustee shall be named additional insureds on each such policy.

(b) The proceeds of any insurance for damage to any Railcar not constituting an Event of Loss shall be applied in payment for the repair of such damage to the extent required to maintain such Railcar in accordance with Section 7, if such repair shall not have already been paid for by the Lessee, or,

if already paid by the Lessee, to reimburse the Lessee for its payment of such repair and any balance remaining after compliance with said Section 7 shall be paid over to, or retained by, the Lessee.

(c) The Lessee agrees that it will not do any act or voluntarily suffer or permit any act to be done whereby any insurance required to be maintained hereunder shall or may be suspended or impaired and will not suffer or permit any Railcar to be used in a manner not permitted under the insurance policies, if any, maintained hereunder without first covering such Railcar for such use.

(d) Any Participant, the Indenture Trustee or the Lessor may at its own expense provide insurance on or with respect to the Railcars or the operation thereof unless such insurance would conflict with or otherwise limit any insurance maintained by the Lessee pursuant to this Section 11; provided, however, that any insurance so maintained by the Indenture Trustee, the Lessor or any Participant shall provide by its terms that the insurer shall have no rights of subrogation against the Lessee with respect to claims thereunder.

(e) The Lessee will arrange to be delivered to the Lessor, each Loan Participant and the Indenture Trustee on or prior to the Initial Closing Date a certificate of a Responsible Officer of the Lessee to the effect that the insurance required hereunder has been obtained and is in full force, together with certificates of insurance signed by the insurer or an independent insurance broker of national reputation-evidencing same. The Lessor may, but not more than once in any twelve month period, request from the Lessee and the Lessee shall promptly thereafter furnish to the Lessor and the Indenture Trustee, a certificate of a Responsible Officer setting forth all insurance maintained by the Lessee pursuant to this Section 11 and describing such policies, if any, including the amounts of coverage, any deductible amounts, the names of the insurance providers and a general description of each such policy's terms.

#### SECTION 12. Loss, Requisition or Seizure.

(a) Requisition. A taking of any Railcar for use by any governmental entity shall not terminate this Lease with respect to such Railcar, but the Lessee shall remain liable for all its obligations hereunder and under the other Operative Documents with respect to such Railcar, including, without limitation, its liability for payment of Rent, unless and until such taking becomes an Event of Loss hereunder, at which time

the provisions of Section 12(b) shall apply. So long as such taking shall not have become an Event of Loss hereunder, all payments received by the Lessor or the Lessee for use of such Railcar as a result of such taking during the Lease Term shall be paid over to, or retained by, the Lessee except if a Default described in Section 15(a), (b), (e) or (f) or an Event of Default shall have occurred and be continuing, in which event such payments shall be payable to the Lessor, or to whomever shall be entitled to receive the same subject to an accounting between the Lessor and the Lessee immediately upon the curing of such Default or Event of Default. Provided no Default described in Section 15(a), (b), (e) or (f) or an Event of Default shall have occurred and be continuing, after an Event of Loss with respect to a Railcar, all payments received by the Lessor or the Lessee for use of such Railcar under this paragraph (a) shall be paid over to, or retained by, the Lessee if the Lessee has either made payment to the Lessor for any such Railcar as provided in Section 12(b) or replaced any such Railcar as provided in Section 12(c). Otherwise during the occurrence of such Default or Event of Default all such payments shall be retained by or paid over to the Lessor or to whomever shall be entitled to receive the same subject to an accounting between the Lessor and the Lessee immediately upon the curing of such Default or Event of Default.

(b) Event of Loss. Subject to the provisions of paragraph (c) below, after an Event of Loss, the Lessee shall pay to the Lessor, or to whomever shall be entitled to receive the same, on or prior to the first Payment Date following such Event of Loss, unless such first Payment Date shall occur less than 60 days after such Event of Loss, in which event on the second Payment Date after such Event of Loss (x) the Stipulated Loss Value for any Railcar which has suffered an Event of Loss and for which Stipulated Loss Value has not theretofore been paid, computed as of the appropriate Payment Date, as applicable, plus (y) all other unpaid Rent for such Railcar accrued to the date of such payment of Stipulated Loss Value, provided that no payment of Basic Rent shall be made on such date if Basic Rent is then being paid in advance. After the payment in full of such Stipulated Loss Value and such other amounts, the Lessee's obligation to pay further Basic Rent with respect to such Railcar shall terminate.

All payments received by the Lessor or the Lessee from any governmental authority or otherwise as compensation for an Event of Loss with respect to any Railcar shall be applied to pay the Stipulated Loss Value of such Railcar, if not already paid by the Lessee or if already paid by the Lessee, shall be applied to reimburse the Lessee for its payment of Stipulated

Loss Value, and the balance, if any, of such payments shall be shared between the Lessee and the Lessor as their interests may appear; provided, however, that the balance of any such payments constituting insurance payments shall be retained by the Lessee. In the event that the Lessee shall make payment as provided above, including payment by application of compensation or insurance proceeds and shall pay all other Rent then owing under this Lease with respect to a Railcar subject to an Event of Loss, this Lease shall terminate with respect to such Railcar and the Lessee or its designee (i) shall be subrogated to all rights that the Lessor shall have with respect to such Railcar, (ii) shall, subject to the Lessee's obtaining any governmental consents required, receive, at the Lessee's expense, assignments and bills of sale from the Lessor (in such form as the Lessee or such designee shall reasonably require) of any or all such rights, together with all the Lessor's right, title and interest in and to such Railcar, free and clear of any Owner Encumbrances, and (iii) shall have the right to abandon such Railcar to underwriters on behalf of the Lessor as well as itself. In such case, the Lessor, at the Lessee's expense, shall execute or cause to be executed such documents and take such other action as the Lessee shall require to effect the surrender to the insurance underwriters of such Railcar. The Lease Term shall terminate with respect to such Railcar upon payment of Stipulated Loss Value and all Rent therefor then owing.

(c) Replacement. Provided no Default described in Section 15(a), (b), (e) or (f) or Event of Default shall have occurred and be continuing, in lieu of payment of all or a portion of the Stipulated Loss Value for any Railcar due and owing as provided in subsection (b) above, the Lessee may, on or prior to the date on which such Stipulated Loss Value would have otherwise been due, convey or cause to be conveyed to Lessor, as replacement for any such Railcar with respect to which an Event of Loss occurred, title to a Replacement Railcar free and clear of all liens other than Permitted Encumbrances and Owner Encumbrances and having a value, utility and useful life at least equal to, and being in as good operating condition as, such Railcar with respect to which an Event of Loss occurred assuming such Railcar was in the condition and repair required by the terms hereof immediately prior to the occurrence of such Event of Loss (other than the last sentence of Section 7(a)). Notwithstanding anything to the contrary contained in the immediately preceding sentence, the Lessee may not avail itself of the right to convey title to the Lessor of a Replacement Railcar in lieu of paying the Stipulated Loss Value for any Railcar deemed to have suffered an Event of Loss if the use of such Railcar in the normal course of interstate

rail transportation shall have been prohibited for a continuous period in excess of six months as a result of any rule, regulation, order or other action by the United States government or any agency or instrumentality thereof. Prior to or at the time of any such conveyance, the Lessee, at its own expense, will furnish the Lessor with a bill of sale, in form and substance reasonably satisfactory to Lessor, with respect to such Replacement Railcar. Upon full compliance by the Lessee with the terms of this subsection (c), the Lessor will transfer to the Lessee, without recourse or warranty (except as to the absence of Owner Encumbrances), all of the Lessor's right, title and interest, if any, in and to such replaced Railcar with respect to which an Event of Loss occurred. For all purposes hereof, each such Replacement Railcar shall, after such conveyance, be deemed part of the property leased hereunder and shall be deemed a "Railcar" as defined herein. No Event of Loss with respect to a Railcar under the circumstances contemplated by the terms of this Section 12(c) shall result in any reduction in Basic Rent.

SECTION 13. Termination for Obsolescence or Surplus.

(a) Notwithstanding any provision herein contained to the contrary, so long as no Default or Event of Default shall have occurred and be continuing, in the event that a Responsible Officer of the Lessee shall in his reasonable judgment make a determination that certain of the Railcars shall have become economically obsolete or surplus to the Lessee's requirements and shall have delivered to the Lessor and the Indenture Trustee an Officer's Certificate to such effect, the Lessee shall have the right (the "Termination Right") at its option, on at least 180 days' prior written notice to the Lessor and the Indenture Trustee, to terminate this Lease with respect to all of the Railcars leased hereunder or, if less than all, with respect to not less than 50 of the Railcars then being leased under this Lease, in such latter case, selected in accordance with the Unit Selection Process (other than the two provisos to Section 4(a)(iii)), on any Payment Date (for the purpose of this Section 13(a) called the "Termination Date") specified in such notice (a "Termination Notice"); provided, however, that the Lessee agrees, on behalf of the Lessor, to give a notice of redemption to the Indenture Trustee with respect to that portion of the Notes Outstanding to be redeemed pursuant to Section 401(d) of the Indenture in connection with such termination; and provided further, that (i) any Termination Date shall occur no earlier than the fifth anniversary of the Basic Term Commencement Date, (ii) the Termination Right may be exercised no more than four times during the Lease Term, the fourth exercise of which shall

include all Railcars then subject to the Lease, (iii) no partial termination may result in less than 100 Railcars remaining subject to this Lease, (iv) notwithstanding anything to the contrary contained herein, the Lessee shall have the right to revoke any Termination Notice delivered hereunder on one occasion with respect to each Termination Notice not less than 30 days prior to the Termination Date, (v) on the Termination Date each such Railcar shall be in the same condition and at the same location as if being returned pursuant to Section 4 free and clear of all liens, charges, security interests and encumbrances (except as permitted by Section 7(b)), and (vi) such Termination Date shall occur on a Payment Date at least 30 days after the Lessee, on behalf of the Lessor, gives the notice to the Indenture Trustee referred to in the first proviso to this sentence to redeem for each such Railcar an aggregate principal amount of Notes Outstanding equal to the product of (x) the aggregate principal amount of Notes Outstanding that were issued on the Closing Date on which such Railcar was delivered after application by the Indenture Trustee of Basic Rent to the payment due on such Termination Date (but only if such Basic Rent is then payable in arrears) and (y) a fraction the numerator of which is the Lessor's Cost for such Railcar and the denominator of which is the aggregate Lessor's Cost for all of the Railcars then subject to this Lease that were delivered on the Closing Date such Railcar was delivered.

(b) Subject to the provisions of Section 13(a) hereof, within 30 days of receipt of the Termination Notice, the Lessor may elect, by prior written notice to the Lessee, to retain ownership of any Railcars being terminated. In such case, Lessee shall have no further obligation to pay Rent or Supplemental Rent as of such Termination Date with respect to the Railcars being so terminated. In the event Lessor shall not so elect, then during the period from the expiration of such 30 day period until the day immediately preceding the Termination Date, the Lessee, as agent for the Lessor, shall use commercially reasonable efforts to obtain bids for the purchase of such Railcars, provided it is understood that the Owner Participant shall have the right to participate in the bidding to become a purchaser thereof. On the day immediately preceding the Termination Date, the Lessee shall certify to the Lessor the amount of any such bids and the name and address of the party submitting any such bids. On the Termination Date (or such later date as the Lessor and the Lessee may mutually agree) the Lessor shall sell such Railcars for cash to the bidder who shall have submitted the highest bid prior to the Lessee's certification described above; provided, however, that the purchaser of such Railcars shall be a Person other than the Lessee, any Affiliate of the Lessee or any successor or assign

of the Lessee. The sales price (net of costs and expenses, including all applicable sales taxes, of the Lessor and of the Owner Participant) realized at such sale shall be paid to the Lessor or to whoever shall be entitled to receive the same, and, in addition, on the Termination Date the Lessee shall pay to the Lessor, or to whoever shall be entitled to receive the same, the Basic Rent due on such Date (if then payable in arrears) and the amount, if any, by which (i) the Termination Value for such Railcars, computed as of such Payment Date, exceeds (ii) the sales price of such Railcars (net of costs and expenses, including all applicable sales taxes, of the Lessor and the Owner Participant); provided, however, that if no sale occur on the date scheduled therefor as above provided, this Lease shall continue in full force and effect. In the event of termination of this Lease pursuant to this Section 13 and the receipt by the Lessor, or by whoever shall be entitled to receive the same, of all amounts above described as payable, the obligation of the Lessee to pay Basic Rent in respect of such Railcars on each Payment Date shall terminate. The Lessor shall be under no duty to solicit bids (but shall have the right to do so), to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale pursuant to this Section 13 other than to transfer or to cause to be transferred to the purchaser named in the highest bid certified by the Lessee to the Lessor as above provided all the Lessor's right, title and interest in and to such Railcars. Any sale pursuant to this Section 13 shall be free and clear of the Lessee's rights to such Railcars and any Owner Encumbrances, but otherwise shall be made without any representation, recourse or warranty whatsoever on the part of the Lessor except that the Lessor shall warrant to the purchaser that such Railcars are free and clear of all Owner Encumbrances.

(c) If the Lessor elects to retain such Railcars as set forth above in the first sentence of Section 13(b), the Lessor shall (i) on the Termination Date, pay, or provide for the payment of, an aggregate principal amount of the Notes Outstanding for each such Railcar designated as obsolete or surplus equal to the product of (A) the aggregate principal amount of Notes that were issued on the Closing Date on which such Railcar was delivered after the application by the Indenture Trustee of Basic Rent to the payment due on such Termination Date and (B) a fraction the numerator of which is the aggregate Lessor's Cost for such Railcar and the denominator of which is the aggregate Lessor's Cost for all of the Railcars then subject to this Lease that were delivered on the Closing Date on which such Railcar was delivered, (ii) pay any Premium and accrued interest on the amount of principal calculated pursuant to clause (i) to the Termination Date, and

(iii) upon receipt from the Lessee of the amount of Basic Rent payable on such Termination Date (if payable in arrears) plus all other Rent then due, deliver to the Lessee a release of all obligations of the Lessee to pay additional Basic Rent with respect to such Railcars, as well as of the obligation of the Lessee to pay Termination Value in respect thereof.

#### SECTION 14. Assignment and Sublease.

(a) Assignment. If no Default or Event of Default has occurred and is continuing, the Lessee may (i) without the prior consent of the Lessor or the Indenture Trustee, assign or transfer all of its rights and obligations under this Lease and the other Operative Documents to any Affiliate in Lessee's consolidated tax group for Federal income tax purposes or to any entity with which Lessee shall have merged or consolidated or which shall have acquired all or substantially all of the railroad properties of Lessee, provided (A) such assignee or transferee shall have duly assumed the obligations of Lessee under the Lease by written instrument reasonably satisfactory to the Lessor, the Indenture Trustee and the Holders of the Notes and (B) such assignment or transfer will not be the cause of an Event of Default under such Lease and (ii) assign its rights and obligations under this Lease and the other Operative Documents to which it is a party, to other entities, provided that if Lessee does not remain liable for its obligations under this Lease, and the other Operative Documents to which it is a party, such assignment shall be subject to the prior written consent of the Lessor, each Holder and the Indenture Trustee (so long as the Indenture shall not have been discharged in accordance with its terms). Upon any such assignment complying with the foregoing, the Lessee shall be released from its obligations hereunder, and, if requested by the Lessee, the Lessor, at the expense of the Lessee, shall execute and deliver such documents as may be necessary or appropriate to effectuate and confirm such release. Any assignment done in violation of this Section 14(a) shall be void.

(b) Sublease. The Lessee shall have the right, so long as no Event of Default shall have occurred and be continuing, to enter into a sublease of or interchange arrangement for any Railcar provided that (i) each such sublease shall be expressly subject and subordinate to the terms of this Lease; (ii) the Lessee shall remain liable for all its obligations under this Lease and the other Operative Documents to which it is a party to the same extent as if such sublease or interchange arrangement were not in effect and (iii) each such sublease shall require that such sublessee use the Railcars for the purpose for which they were designed and intended. No such sublease shall relieve the Lessee of its obligations hereunder.

(c) Indenture. The Lessee hereby specifically consents to the mortgage, pledge and assignments effected or to be effected by the Indenture. The Lessee agrees to deliver any further consents and acknowledgments with respect to any such mortgage, pledge or assignments as the Lessor or the Indenture Trustee may reasonably request.

(d) Assignment by Lessor. The Lessor agrees that it will not assign or transfer its right, title and interest in and to this Lease or any Railcar, except as contemplated by the Indenture and except that the Lessor may prior to the end of the Basic Term or any Renewal Term, as the case may be, agree to sell or otherwise dispose of such Railcar effective at or after the end of the Basic Term or such Renewal Term, as the case may be, provided that any such agreement is stated expressly to be subject and subordinate to the Indenture, unless the Indenture is no longer in effect, and to the rights of the Lessee hereunder. Prior to executing any such assignment of its rights hereunder, the Lessor shall notify the Lessee and the Indenture Trustee thereof.

SECTION 15. Events of Default. Each of the following events shall constitute an "Event of Default" (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body or other Applicable Law):

(a) the Lessee shall fail to make any payment of Basic Rent, Interim Rent or Supplemental Rent (to the extent such Supplemental Rent constitutes payment of Premium on the Notes) on the date the same shall become due and such failure shall be continuing at the end of the first Business Day after Lessee's receipt of written notice of such failure; or

(b) the Lessee shall fail to make any payment of Supplemental Rent (other than Supplemental Rent which constitutes payment of Premium on the Notes) or any other payment required hereunder other than those covered in clause (a) above before the end of the 5th Business Day after the Lessee (and, if such demand is being made by the Indenture Trustee, the Lessor) shall have received written demand for such payment from the Lessor or the Indenture Trustee; or

(c) the Lessee shall fail to perform or observe or shall otherwise breach, in a material respect, any other covenant, condition or agreement to be performed

or observed by it hereunder or under any other Operative Document to which it is a party (except for the Tax Indemnification Agreement) and such failure or breach shall continue unremedied for a period of 30 days after the Lessee shall have received notice thereof from the Lessor or the Indenture Trustee with respect to its obligations hereunder or under any other Operative Document to which it is a party; provided, however, if Lessee has diligently commenced to cure such failure using commercially reasonable efforts and such failure is of such a nature that it cannot be cured within such 30 day period, but in the reasonable opinion of Lessor, the Owner Participant and the Indenture Trustee, it is capable of being cured within a reasonable additional period not in any event in excess of 60 additional days following such 30 day period and provided further that in the reasonable opinion of Lessor, the Owner Participant and the Indenture Trustee such failure shall not have a material adverse affect on the aggregate value of the Railcars then being leased hereunder and not result in any criminal penalty or civil penalty on the Lessor, the Owner Participant or the Indenture Trustee, then such failure shall not constitute an Event of Default until the end of such additional 60 day period; or

(d) any representation or warranty made by the Lessee herein or in any Operative Document (other than the Tax Indemnification Agreement) or any document or certificate (other than representations or warranties relating to the Appraisal) furnished by it to the Lessor, the Indenture Trustee or any Participant shall prove at any time to be incorrect as of the date made in any material respect and shall not have been cured on or prior to 30 days after the Lessee shall have received written notice from the Lessor or the Indenture Trustee; or

(e) the Lessee shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency law (as now or hereafter in effect) or an answer admitting the material allegations of a petition filed against the Lessee in any such proceeding, or the Lessee shall by voluntary petition, answer or consent, seek relief under the provisions of any now existing or future bankruptcy, insolvency or other similar law providing

for the liquidation, reorganization or winding-up of corporations, or providing for an agreement, composition, extension or adjustment with its creditors; or

(f) a receiver, trustee, liquidator or custodian of the Lessee or of a substantial part of its property shall be appointed by court order and such order shall remain in effect for more than 60 days; or the Lessee shall be adjudicated bankrupt or insolvent or any of its properties shall be sequestered by court order and such order shall remain in effect for more than 60 days; or a petition shall be filed against the Lessee under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and shall not be dismissed within 60 days after such filing; or the Lessee makes a general assignment for the benefit of its creditors; or the Lessee admits in writing its inability to pay its debts generally as they become due, or is unable to pay or is generally not paying its debts as they become due.

**SECTION 16. Action Following an Event of Default.**

Upon the occurrence of an 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 (except that no such declaration shall be required in the case of an Event of Default pursuant to paragraph (e) or (f) of Section 15) 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 so elect, to the extent permitted by and subject to compliance with, any mandatory requirements of Applicable Law then in effect:

(a) Redelivery and Retaking. By notice in writing to the Lessee, the Lessor may terminate this Lease, whereupon all right of the Lessee to the possession and use of the Railcars 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 cause the Lessee, at the Lessee's expense, to, and the Lessee hereby agrees that it will, promptly redeliver the Railcars, or cause the Railcars to be redelivered, to the Lessor with all reasonable dispatch and in the same manner and in the same condition as if the

Railcars were being redelivered in accordance with all the provisions of Sections 4(b) and 7(b) and all obligations of the Lessor under said Sections and this Lease shall apply to such redelivery, provided, that the Lessor shall have the right to store each such redelivered Railcar on storage tracks selected and owned by the Lessee free of charge and at the Lessee's risk for a period commencing on the date of the actual delivery thereof to such storage tracks and terminating on a date 365 days after the actual delivery of such Railcar to such storage tracks; or the Lessor or its agent, at the Lessor's option, without further notice, may, but shall be under no obligation to, retake the Railcars wherever found, and irrespective of whether the Lessee, any sublessee or any other Person is in possession of the Railcars or any of them, all upon notice and with process of law, and for that purpose the Lessor or its agent may enter upon any premises, where any such Railcar is and may take possession thereof, except that Lessor shall be liable for damages resulting from the willful misconduct or gross negligence of Lessor, Lessor's assignees or their respective agents and representatives in any such entry or repossession. The exercise by the Lessor of its remedies under this paragraph (a) shall be without prejudice, and in addition to any of the Lessor's other remedies referred to below in this Section 16.

(b) Liquidated Damages. Provided the Lessor shall not have exercised any remedies under paragraph (c) of this Section 16, the Lessor, by written notice to the Lessee specifying a payment date not earlier than ten nor later than 100 days from the date of such notice, may require the Lessee to pay to the Lessor, and the Lessee hereby agrees that it will 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, and in lieu of any further Basic Rent payments hereunder with respect to any Railcar, all Basic Rent (if payable in arrears) for such Railcar, payable on the Payment Date occurring on or before the payment date specified in such notice, plus any Supplemental Rent then due, plus an amount equal to the Stipulated Loss Value for such Railcar computed as of the Payment Date immediately preceding the payment date specified in such notice (or as of such payment date if such payment date is a Payment Date), together with interest on such amount at the Overdue Rate for the period, if any, from the Payment Date as of which such Stipulated Loss Value shall be computed to and including the date of actual payment, and,

provided, that if the Lessee shall have made the foregoing payments in full, the Lessor shall thereafter pay over to the Lessee, as and when from time to time received, the net proceeds of any sale, lease or other disposition of such Railcar (after deducting all costs and expenses whatsoever incurred by the Lessor, the Owner Participant and the Indenture Trustee in connection therewith and all other amounts which may become payable to the Lessor and the Owner Participant with respect thereto) up to the amount of such Stipulated Loss Value actually paid.

(c) Alternate Liquidated Damages. Whether or not the Lessor shall have exercised, or shall thereafter at any time exercise, any options, rights or remedies under paragraph (a) or (d) of this Section 16, the Lessor, in lieu of exercising its rights under paragraph (b) of this Section 16, may, by notice to the Lessee specifying a Payment Date which is not earlier than ten days after the date of such notice, demand that the Lessee pay to the Lessor and the Lessee shall pay to the Lessor, on such Payment Date, as liquidated damages for loss of a bargain and not as a penalty, and in lieu of Basic Rent for any Railcar due after such Payment Date, all unpaid Basic Rent for such Railcar payable on each Payment Date (if payable in arrears) occurring on or prior to such Payment Date, plus any Supplemental Rent then due with respect therefor, plus whichever of the following amounts the Lessor, in its sole discretion, shall specify in such notice (together with interest on such amount at the Overdue Rate for the period from the Payment Date specified in such notice to the date of actual payment):

(i) an amount equal to the excess, if any, of the Stipulated Loss Value of such Railcar computed as of the Payment Date specified in such notice, over the Fair Market Rent thereof, determined by an Appraiser selected by the Lessor, for the remainder of the Lease Term applicable to such Railcar after discounting such Fair Market Rent semi-annually to present worth as of such Payment Date at a rate equal to the greater of (A) the Coupon Rate and (B) the Prime Rate; or

(ii) an amount equal to the excess, if any, of the Stipulated Loss Value of such Railcar computed as of the Payment Date specified in such notice, over the Fair Market Value thereof, determined by an Appraiser selected by the Lessor, as of such Payment Date;

provided, however, that if such Railcar cannot be repossessed the Fair Market Rent and the Fair Market Sale Value of such Railcar for purposes of this Section 16(c) shall be deemed to be equal to zero.

(d) Sale; Use. The Lessor or its agent may sell any Railcar at a public or private sale, by such advertisement or publication, if any, as the Lessor may determine, or otherwise may dispose of, hold, use, operate, lease (whether for a period greater or less than the balance of what would have been the Lease Term in the absence of the termination of the Lessee's rights to such Railcar) to others or keep idle such Railcar, all on such terms and conditions and at such place or places as the Lessor may in its sole discretion determine and all free and clear of any rights of the Lessee and of any claim of the Lessee in equity, at law or by statute, whether for loss or damage or otherwise, and without any duty to account to the Lessee except to the extent specifically provided above; provided, however, that unless the Lessor has waived in writing its right to claim any deficiency payment against the Lessee, in the event the sale proceeds actually received for such Railcars do not produce on a net basis the otherwise due Stipulated Loss Value therefor, the Lessor agrees that any action or inaction by the Lessor shall not impair the value, utility, useful life or residual value of any such Railcar from the condition of such Railcar when the Lessor obtained possession thereof pursuant to Section 16(a).

(e) Other Remedies. Subject to and without prejudice to any right or claim of the Indenture Trustee under the Indenture, the Lessor may exercise any other right or remedy, not inconsistent with the foregoing, that may be available to it under applicable law in equity or proceed by appropriate court action to enforce the terms of this Lease or to recover damages for the breach hereof.

In addition, the Lessee shall be liable for any and all Supplemental Rent payable hereunder before, during or after the exercise of any of the foregoing remedies, which Supplemental Rent shall include, on an After-Tax Basis, all reasonable legal fees and other costs and expenses incurred by the Lessor, the Owner Participant, any Holder and the Indenture Trustee solely by reason of the occurrence of any Event of Default or solely by reason of the exercise by the Lessor, the

Owner Participant, any Holder or the Indenture Trustee of any remedy hereunder, including, without limitation, any redelivery or retaking of such Railcar in accordance with this Section 16 or the placing of such Railcar in the condition required by the terms of Sections 4(c) and 7(b) (other than the last sentence of Section 7(a)). Except as specifically provided herein, no remedy referred to in this Section 16 is intended to be exclusive, but each shall be cumulative and is in addition to, and may be exercised concurrently with, any other remedy which is referred to in this Section 16 or which may otherwise be available at law, or in equity. To the extent not required to satisfy any Notes and other amounts then payable under the Indenture or amounts due to Lessor under the Lease and other Operative Documents, there shall be deducted from the aggregate amount recoverable by the Lessor any remaining moneys held by the Lessor which would have been required by the terms hereof or any other Operative Agreement to have been paid to the Lessee but payment of which has been suspended due to the occurrence of an Event of Default. To the extent permitted by Applicable Law, the rights of the Lessor and the obligations of the Lessee under this Section 16 shall be effective and enforceable regardless of the pendency of any proceeding which has or might have the effect of preventing the Lessor and the Lessee from complying with the terms of this Lease. No express or implied waiver by the Lessor of any Event of Default shall in any way be, or be construed to be, a waiver of any further or subsequent Event of Default.

**SECTION 17. Notices.** All notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms hereof shall be in writing, and any such notice shall become effective after the earlier of actual receipt or five Business Days after being deposited in the mails, certified or registered, with appropriate postage prepaid for first class mail or, if delivered by hand or courier service or in the form of the telex or facsimile transmission (with evidence of delivery attached thereto), when received, and, shall be addressed (i) if to the Lessee or to the Lessor to the respective addresses set forth below the signatures of such parties on the signature pages of the Participation Agreement, or (ii) in the case of any addressee, to such other address as any such addressee may designate by notice given to the parties hereto.

**SECTION 18. Further Assurances; Perfection of Security Interests.** Each party hereto shall promptly and duly execute and deliver to the other party or the Indenture Trustee such further documents and assurances and take such further action as the same may from time to time be reasonably

requested in order more effectively to carry out the intent and purpose of this Lease and to establish and protect the rights and remedies created or intended to be created in favor of the Lessee, the Lessor and the Indenture Trustee hereunder and under the Indenture. Upon termination of this Lease (by expiration or otherwise), the Lessor shall, upon Lessee's request and at Lessee's expense, execute and deliver to the Lessee or the Indenture Trustee such further documents and assurances and take such further actions as the Lessee may reasonably request, in order to satisfy any and all Liens provided for in the Indenture. The Lessee will at all times cause to be kept filed and refiled any required financing and continuation statements and cause to be taken such other actions, as in the opinion of counsel to the Lessor, the Indenture Trustee or to the Owner Participant are required by law in order fully to perfect, preserve and protect the lien of the Indenture. The Lessee will pay or cause to be paid all taxes, fees and other charges in connection with such filing and refileing.

**SECTION 19. Successor Banks and Trustees.** The Lessee agrees that in the case of the appointment of any successor trustee pursuant to the terms of the Trust Agreement or the Indenture, such successor trustee shall, upon written notice by such successor trustee to the Lessee, succeed to all the respective rights, powers and title of Meridian and the Lessor hereunder or to all the rights and powers of the Indenture Trustee hereunder, as the case may be, and shall be deemed to be the owner or mortgagee, respectively, of the Railcars for all purposes hereof, without the necessity of any consent or approval by the Lessee and without in any way altering the terms of this Lease or the Lessee's obligations hereunder. One such appointment and designation of a successor trustee shall not exhaust the right to appoint and designate further successor trustees pursuant to the Trust Agreement or the Indenture, but such right may be exercised repeatedly as long as this Lease shall be in effect. The trustee or any successor trustee from time to time serving thereunder may, but shall not be obligated to, appoint one or more of its officers as attorney-in-fact for such trustee or such successor trustee, as the case may be, to execute any and all notices, consents and approvals or other documents necessary or desirable to be executed in connection with this Lease or with the Railcars.

**SECTION 20. The Indenture Trustee.** The provisions of this Lease that require or permit action by, the payment of any moneys to, the consent or approval of, the furnishing of any instrument or information to, or the performance of any other obligation to, the Indenture Trustee shall not be effective,

and the Sections hereof containing such provisions shall be read as though there were no such requirements or provisions and all moneys otherwise payable to the Indenture Trustee hereunder shall be paid to the Lessor after the lien of the Indenture has been released in accordance with Section 501 of the Indenture and the Indenture Trustee shall have given the Lessee and the Lessor written notice of the satisfaction and discharge of the Indenture.

SECTION 21. Warranty Enforcement. For so long as no Event of Default has occurred and is continuing, the Lessor constitutes the Lessee as the agent and attorney-in-fact of the Lessor for the purpose of exercising and enforcing, and with full right, power and authority to exercise and to enforce, to the exclusion of the Lessor and all Persons claiming through or under the Lessor, all of the right, title and interest of the Lessor in, under and to all manufacturer's warranties in respect of the Railcars. The Lessor shall execute and deliver any instruments necessary to enable the Lessee to enforce such rights.

SECTION 22. Lessor's Right to Perform for the Lessee. If the Lessee fails to make any payment of Rent required to be made by it hereunder or fails to perform or comply with any of the terms of this Lease or any of its agreements contained herein, the Lessor may, on behalf of the Lessee and upon notice to the Lessee, itself make such payment, perform such agreement or remedy such failure to perform or comply and such payment, performance or remedy of such failure shall be a cure in respect of any Event of Default which has occurred as a result of the Lessee's failure to pay such Rent or to perform or comply with such term or agreement, as the case may be. The amount of any such payment and the amount of the reasonable expenses of the Lessor incurred in connection with such payment or performance, together with interest thereon, to the extent permitted by Applicable Law, at the Overdue Rate, shall be deemed Supplemental Rent, payable promptly by the Lessee to the Lessor upon demand. This Section 22 is not, however, intended in any way as between the Owner Participant and the Lessor, on the one hand, and the Indenture Trustee and the Loan Participants, on the other hand, to expand or otherwise vary the cure rights of the Owner Participant and the Lessor set forth in Section 603 of the Indenture, or the limitations on exercise thereof set forth therein. The Lessor is under no obligation to the Lessee or any other Person to do any such act or make any such expenditures.

SECTION 23. Filings. Prior to the delivery and acceptance of any Railcar, the Lessee will, at its sole expense, (i) cause this Lease, the Indenture and the relevant Lease and Indenture Supplement to be (a) duly filed and

recorded with the ICC in accordance with 49 U.S.C. § 11303 of the Interstate Commerce Act and (b) deposited in the Office of the Registrar General of Canada pursuant to Section 90 of the Railway Act of Canada, and (ii) cause financing statements under the Uniform Commercial Code to be filed against the Lessor in respect of the security interests created by the Indenture in all places reasonably specified by the Indenture Trustee or the Loan Participants as necessary or desirable to perfect such security interests. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, deposit, register and record (and will refile, redeposit, reregister or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Indenture Trustee as its assignee under the Indenture for the purpose of protecting the Lessor's title to, or such assignee's security interest in, any Railcar and the Lease, and in connection with any such action, will deliver to the Lessor and such assignee proof of such filings. The Lessee will pay all costs, charges and expenses incident to any such filing, refiling, recording and rerecording, depositing and redepositing of any such instruments.

#### SECTION 24. Miscellaneous.

(a) Amendments. The terms of this Lease shall not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by the party or parties to be charged.

(b) Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(c) 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.

(d) Liabilities of Lessor. It is expressly agreed, anything herein to the contrary notwithstanding, that each and all of the representations, warranties, covenants, undertakings and agreements herein made on the part of Lessor or Owner Trustee are made and intended not as personal representations, warranties, covenants, undertakings and agreements by Meridian, or for the purpose or with the intention of binding Meridian personally, but are made and intended for the purpose of binding only the Trust Estate, and this Lease is executed and delivered by Meridian not in its own right but solely in the exercise of the powers expressly conferred upon it as Owner

Trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against Meridian on account of this Lease or on account of any representation, warranty, covenant, undertaking or agreement of Lessor or Owner Trustee, either expressed or implied herein, all such personal liability, if any, being expressly waived and released by Lessee and by all Persons claiming by, through or under it, and that all recourse against Meridian or Owner Participant under this Lease shall be limited to the Trust Estate. Nothing herein shall be interpreted to relieve Meridian from any personal liability expressly assumed in any Operative Document.

(e) Descriptive Headings. The descriptive headings of the several sections and paragraphs of this Lease are inserted for convenience of reference only and do not constitute a part of this Lease.

(f) Counterparts. This Lease may be executed by the parties hereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument.

(g) Chattel Paper. The parties hereto agree that certain rights, title and interest of the Lessor in and to this Lease and to the Railcars have been assigned to and are subject to a lien and security interest in favor of the Wilmington Trust Company, as Indenture Trustee under the Indenture. To the extent, if any, that this Lease constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Lease may be created through the transfer or possession of any counterpart other than the original counterpart that contains the receipt therefor executed by Wilmington Trust Company, as Indenture Trustee on or immediately following the signature page thereof.

(h) Severability of Provisions. Any provision of this Lease which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be 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 provision in any other jurisdiction. To the extent permitted by Applicable Law, the Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

(i) Governing Law. This Lease shall in all respects be governed by, and construed in accordance with, the law of the State of New York (excluding the laws applicable to conflicts or choice of law), including all matters of construction, validity and performance.

(j) Quiet Enjoyment. The Lessor hereby acknowledges and agrees to the provisions of Section 10.02 to the Participation Agreement which are hereby incorporated by reference.

(k) Execution. Although this Lease is dated as of the date first above written for convenience, the actual dates of execution hereof by the parties hereto are respectively the dates set forth under the signatures hereto, and this Lease shall be effective on, and shall not be binding upon any of the parties hereto until, the latest of such dates.

IN WITNESS WHEREOF, each of the parties hereto, pursuant to due corporate authority, has caused this Lease to be duly executed in its corporate name by its officers, thereunto duly authorized, all as of the date set forth below and each of the undersigned signatories hereto declares pursuant to 28 U.S.C. § 1746 under penalty of perjury under the laws of the United States of America that the foregoing is a true and correct document and was executed and delivered on the date indicated below its signature.

**MERIDIAN TRUST COMPANY,**  
not in its individual capacity  
but solely as Owner Trustee

By: *P. M. Clancy*  
Name: *Paul M. Clancy*  
Title: *Account Officer*

Executed on this 1 day of  
October, 1990

**UNION PACIFIC RAILROAD COMPANY,**  
as Lessee

By: *John B. Larsen*  
Name: *John B. Larsen*  
Title: **Assistant Treasurer**

Executed on this 1 day of  
October, 1990

Receipt of this original counterpart  
of this Lease is hereby acknowledged  
this \_\_\_ day of \_\_\_\_\_, 1990.

**WILMINGTON TRUST COMPANY,**  
as Indenture Trustee

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

SCHEDULE 1A  
to Lease

STIPULATED LOSS VALUE  
(For Rotary Dump Hopper Cars  
Delivered on the Initial Closing Date)

If the event giving rise to an obligation to pay Stipulated Loss Value occurs and the actual date as of which the Owner Participant shall incur Federal income tax consequences shall be earlier or later than the date assumed in originally calculating the applicable Stipulated Loss Value, such value shall be appropriately adjusted, based upon the date as of which the Owner Participant incurred such tax consequences but otherwise on the same assumptions used to calculate the Stipulated Loss Values set out herein. In any case where Stipulated Loss Value shall be payable, there shall be added to the amount determined pursuant to the following schedule, the amount of any Premium payable in respect of the Notes.

During the Basic Term, if a payment of Stipulated Loss Value in respect of a Railcar is required to be made, the Lessee shall, if Basic Rent is then being paid in arrears, be obligated to pay in addition to such Stipulated Loss Value the Basic Rent (payable in arrears) with respect to such Railcar due on the applicable Payment Date. Conversely, if a payment of Stipulated Loss Value in respect of a Railcar is required to be made during a period when Basic Rent is being paid in advance, the Lessee shall not be obligated to pay the Basic Rent due on the applicable Payment Date (the same being incorporated in the Stipulated Loss Value).

The Stipulated Loss Value set forth in this Schedule 1 shall be applicable in respect of the Rotary Dump Hopper Cars leased hereunder on the dates set forth herein.

Payment Date

Percentage of  
Lessor's Cost

SCHEDULE 1B  
to Lease

STIPULATED LOSS VALUE  
(For Rotary Dump Hopper Cars  
Delivered on the Final Closing Date)

If the event giving rise to an obligation to pay Stipulated Loss Value occurs and the actual date as of which the Owner Participant shall incur Federal income tax consequences shall be earlier or later than the date assumed in originally calculating the applicable Stipulated Loss Value, such value shall be appropriately adjusted, based upon the date as of which the Owner Participant incurred such tax consequences but otherwise on the same assumptions used to calculate the Stipulated Loss Values set out herein. In any case where Stipulated Loss Value shall be payable, there shall be added to the amount determined pursuant to the following schedule, the amount of any Premium payable in respect of the Notes.

During the Basic Term, if a payment of Stipulated Loss Value in respect of a Railcar is required to be made, the Lessee shall, if Basic Rent is then being paid in arrears, be obligated to pay in addition to such Stipulated Loss Value the Basic Rent (payable in arrears) with respect to such Railcar due on the applicable Payment Date. Conversely, if a payment of Stipulated Loss Value in respect of a Railcar is required to be made during a period when Basic Rent is being paid in advance, the Lessee shall not be obligated to pay the Basic Rent due on the applicable Payment Date (the same being incorporated in the Stipulated Loss Value).

The Stipulated Loss Value set forth in this Schedule 1 shall be applicable in respect of the Rotary Dump Hopper Cars leased hereunder on the dates set forth herein.

Payment Date

Percentage of  
Lessor's Cost

SCHEDULE 2A  
to Lease

TERMINATION VALUE  
(For Rotary Dump Hopper Cars  
Delivered on the Initial Closing Date)

If the event giving rise to an obligation to pay Termination Value occurs and the actual date as of which the Owner Participant shall incur Federal income tax consequences shall be earlier or later than the date assumed in originally calculating the applicable Termination Value, such value shall be appropriately adjusted, based upon the date as of which the Owner Participant incurred such tax consequences but otherwise on the same assumptions used to calculate the Termination Values set forth herein. In any case where Termination Value shall be payable, there shall be added to the amount determined pursuant to the following schedule, the amount of any Premium payable in respect of the Notes.

During the Basic Term, if a payment of Termination Value in respect of a Railcar is required to be made, the Lessee shall, if Basic Rent is then being paid in arrears, be obligated to pay in addition to such Termination Value the Basic Rent (payable in arrears) with respect to such Railcar due on the applicable Payment Date. Conversely, if a payment of Termination Value in respect of a Railcar is required to be made during a period when Basic Rent is being paid in advance, the Lessee shall not be obligated to pay the Basic Rent due on the applicable Payment Date (the same being incorporated in the Termination Value).

The Termination Value set forth in this Schedule 2 shall be applicable in respect of the Rotary Dump Hopper Cars leased hereunder on the dates set forth herein.

Payment Date

Percentage of  
Lessor's Cost

**SCHEDULE 2B**  
**to Lease**

**TERMINATION VALUE**  
**(For Rotary Dump Hopper Cars**  
**Delivered on the Final Closing Date)**

If the event giving rise to an obligation to pay Termination Value occurs and the actual date as of which the Owner Participant shall incur Federal income tax consequences shall be earlier or later than the date assumed in originally calculating the applicable Termination Value, such value shall be appropriately adjusted, based upon the date as of which the Owner Participant incurred such tax consequences but otherwise on the same assumptions used to calculate the Termination Values set forth herein. In any case where Termination Value shall be payable, there shall be added to the amount determined pursuant to the following schedule, the amount of any Premium payable in respect of the Notes.

During the Basic Term, if a payment of Termination Value in respect of a Railcar is required to be made, the Lessee shall, if Basic Rent is then being paid in arrears, be obligated to pay in addition to such Termination Value the Basic Rent (payable in arrears) with respect to such Railcar due on the applicable Payment Date. Conversely, if a payment of Termination Value in respect of a Railcar is required to be made during a period when Basic Rent is being paid in advance, the Lessee shall not be obligated to pay the Basic Rent due on the applicable Payment Date (the same being incorporated in the Termination Value).

The Termination Value set forth in this Schedule 2 shall be applicable in respect of the Rotary Dump Hopper Cars leased hereunder on the dates set forth herein.

Payment Date

Percentage of  
Lessor's Cost

SCHEDULE 3A  
to Lease

BASIC RENT  
(For Rotary Dump Hopper Cars  
Delivered on the Initial Closing Date)

Payment Date

Percentage of  
Lessor's Cost

SCHEDULE 3B  
to Lease

BASIC RENT  
(For Rotary Dump Hopper Cars  
Delivered on the Final Closing Date)

Payment Date

Percentage of  
Lessor's Cost

DEFINITIONS

"Act" shall have the meaning assigned in Section 1202 of the Indenture.

"Additional Notes" shall have the meaning assigned in Section 301 of the Indenture.

"Affiliate" of any specified Person shall mean any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"After-Tax Basis" shall have the meaning assigned in Section 14.01(j) of the Participation Agreement.

"Amortization Deductions" shall mean deductions claimed by the Owner Participant with respect to the Transaction Costs over the Interim and Basic Terms.

"Applicable Law" shall mean all applicable laws (foreign or domestic), treaties, judgments, decrees, injunctions, writs and orders of any court, governmental agency or authority and rules, regulations, orders, directives, licenses and permits of any governmental body, instrumentality, agency or authority, including without limitation, all rules and regulations of the United States Department of Transportation, the Federal Railroad Administration and the ICC and the current Interchange Rules and Supplements thereto of the Mechanical Division, Association of American Railroads as the same may be in effect from time to time.

"Appraisal" shall have the meaning specified in Section 4.01(d) of the Participation Agreement.

"Appraisal Procedure" shall mean the procedure specified in the succeeding sentences for determining an amount or value. If either the Owner Trustee (or the Owner Participant) or the Lessee shall give written notice to the other, in accordance with the Operative Documents, requesting determination of such amount or value by appraisal, the Owner Participant and the Lessee shall consult for the purpose of appointing a mutually acceptable qualified Independent Appraiser. If such parties shall be unable to agree on an appraiser within 20 days of the first giving of such notice (the "Appraisal Request Date"), such amount or value shall be determined by a panel of three Independent Appraisers, one of whom shall be selected by the Lessee, another of whom shall be selected by the Owner Participant and the third of whom shall be selected by such other two Appraisers or, if such Appraisers shall be unable to agree upon a third Appraiser within 10 days of the selection date of the second of such two Appraisers, by the American Arbitration Association; provided, that if either party shall not select its Appraiser within 35 days after the Appraisal Request Date, such amount or value shall be determined solely by the Appraiser selected by the other party. The Appraiser or Appraisers appointed pursuant to the foregoing procedure shall be instructed to determine such amount or value within 45 days after the final appointment of any Appraiser pursuant hereto (but in no event may such determination be made more than 110 days following the Appraisal Request Date), and such determination shall be final and binding upon the parties. If three Appraisers shall be appointed, (a) if the median of the determinations of the Appraisers shall equal the mean of such determinations, such mean shall constitute the determination of the Appraisers, otherwise (b) the determination of the Appraiser that shall differ most from the other two Appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall constitute the determination of the Appraisers. Fees and expenses relating to an Appraisal Procedure shall be payable as follows:

(i) if the Appraisal Procedure is utilized in connection with the exercise of remedies upon the occurrence of an Event of Default under the Lease or in connection with the possible exercise of a renewal option pursuant to Section 4(a) of the Lease, all such fees and expenses shall be borne by the Lessee; and

(ii) in all other instances, each party shall bear (A) its respective fees and expenses with respect to any Appraisal Procedure and (B) one-half of the fees and expenses of the Appraisers participating in any Appraisal Procedure.

"Appraiser" shall mean Connell Finance Company, Inc. in the case of the Appraisal delivered pursuant to Section 4.01(d) of the Participation Agreement and otherwise a Person engaged in the business of appraising property.

"Approvals" shall have the meaning specified in Section 4.01(c) of the Participation Agreement.

"Assumed Rate" shall mean Federal corporate income taxation at a 34% rate and New Jersey State corporate income taxation at a 9% rate.

"Authorized Person" shall mean (i) with respect to the Owner Trustee, any Person authorized by or pursuant to the organizational documents, the by-laws or any Board Resolution of Meridian (whether general or specific) to execute, deliver and take all other actions on behalf of the Owner Trustee in respect of any of the Operative Documents and (ii) with respect to any other entity, any Person authorized by or pursuant to the charter documents, the by-laws or any Board Resolution (in the case of a corporation), partnership agreement (in the case of a partnership), or trust agreement (in the case of a trust) to execute, deliver and take all other actions on behalf of such entity in respect of any of the Operative Documents.

"Average Life" with respect to the Series A Notes issued on the Initial Closing Date shall mean 11.56 years and with respect to the Series A Notes issued on the Final Closing Date shall mean 11.23 years, calculated from each such Closing Date, as such periods may be adjusted pursuant to Section 201 of the Indenture.

"Average Rent" shall mean an amount equal to the quotient of (i) the amount of Basic Rent due and owing for periods from and after July 1, 1991 during the Basic Term in respect of the Railcars, divided by (ii) 36.

"Bankruptcy Code" shall mean the Bankruptcy Code of 1978, as amended, 11 U.S.C. §§ 101-1330.

"Basic Rent" shall mean the rent payable throughout the Lease Term pursuant to, and computed in accordance with, Section 3(b) of the Lease.

"Basic Term" with respect to any Railcar shall mean the period for which such Railcar is leased as provided in Section 2(b) of the Lease.

"Basic Term Commencement Date" shall mean the date six months after each respective Closing Date.

"Bill of Sale" shall mean each warranty bill of sale of the Seller, dated a Closing Date, for the Railcars being delivered on such Closing Date.

"Board of Directors" shall mean, with respect to any Person, either the board of directors of such Person or any duly authorized committee of said board.

"Board Resolution" shall mean, with respect to any Person, a copy of a resolution certified by the secretary or an assistant secretary of such Person to have been duly adopted by the Board of Directors of such Person and to be in full force and effect on the date of such certification.

"Business Day" shall mean any day other than a Saturday or Sunday or other day on which the banks in New York, New York, Reading, Pennsylvania, or Wilmington, Delaware are authorized or obligated to remain closed.

"Claim" shall have the meaning assigned in Section 14.01 of the Participation Agreement.

"Class I Railroad" shall have the meaning set forth in 49 C.F.R. Part 1201.

"Closing" with respect to any Railcar shall mean the delivery of such Railcar to and acceptance thereof by or on behalf of the Owner Trustee from the Seller and the delivery of such Railcar by the Owner Trustee to and acceptance thereof by the Lessee pursuant to the Lease and Indenture Supplement delivered in connection therewith as provided in the Participation Agreement and Section 2 of the Lease.

"Closing Date" shall mean a date, which shall be a Business Day, on which a Closing occurs, provided that in no event shall a Closing occur later than December 31, 1990.

"Closing Notice" shall have the meaning assigned in Section 2.03 of the Participation Agreement.

"Code" shall mean the Internal Revenue Code of 1986 (or any successor federal income tax statute).

"Commitment" shall mean in the case of each Loan Participant on each Closing Date, the principal amount of the Note to be purchased by such Loan Participant on such Closing Date pursuant to Section 2 of the Participation Agreement and, in the case of the Owner Participant on each Closing Date, the amount of the investment to be made by the Owner Participant on each Closing Date pursuant to Section 2 of the Participation Agreement.

"Coupon Rate" shall mean the interest rate accruing on the Notes, being 9.65% per annum for the Series A Notes.

"Current Cost" shall have the meaning assigned in the Tax Indemnification Agreement.

"Default" shall mean an event or condition which, with giving of notice, or lapse of time, or both, would become an Event of Default.

"Employee Benefit Plan" shall mean both an "employee benefit plan" as defined in ERISA and a "plan" as defined in the Code.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, or any comparable successor law and the rules issued and regulations promulgated thereunder.

"Event of Default" shall mean any of the events referred to in Section 15 of the Lease.

"Event of Loss" shall mean with respect to any Railcar any of the following events occurring during the Lease Term: (i) such Railcar suffers an actual or constructive total loss in the reasonable opinion of a Responsible Officer of the Lessee, (ii) (A) such Railcar becomes worn out or suffers destruction or damage beyond economic repair or (B) such Railcar is rendered permanently unfit for commercial use by the Lessee and for the purpose for which it was designed, in each case as determined in good faith by the Lessee and evidenced by a certificate of the Treasurer or Assistant Treasurer of the Lessee to such effect, (iii) such Railcar is taken, condemned or requisitioned for title by any governmental authority, (iv) such Railcar is taken, condemned or requisitioned for use by (a) the United States government or (b) any other governmental authority for a period extending beyond the Basic Term and any Renewal Term then in effect, (v) such Railcar is lost, stolen or otherwise disappears for a period in excess of 30 days or (vi) the use of such Railcar in the normal course of interstate rail transportation shall have been prohibited for a continuous period in excess of six months as a result of any rule, regulation, order or other action by the United States government or any agency or instrumentality thereof. The date of such Event of Loss shall be the date of such loss, damage, condemnation, taking, requisition or disappearance, except that for purposes of clause (iv) above, no Event of Loss shall be deemed to have occurred until the earlier of (1) the last day of the Basic Term or any Renewal Term then in effect (unless the Owner Participant shall elect in writing to accept return of such Railcar subject to government requisition) and (2) the

Lessee's declaration of the occurrence of an Event of Loss at any time following (a) twelve months after such taking or requisition with respect to events referred to in clause (iv)(a) hereof or (b) 180 days with respect to events referred to in clause (iv)(b) hereof.

"Excepted Property" shall have the meaning assigned in the Granting Clauses of the Indenture.

"Excepted Rights" shall have the meaning assigned in the Granting Clauses of the Indenture.

"Excess Amount" shall have the meaning assigned in Section 13.01 of the Participation Agreement.

"Expenses" shall have the meaning ascribed thereto in Section 7.01 of the Owner Trust Agreement.

"Fair Market Renewal" shall have the meaning assigned in Section 4(a)(v)(B) of the Lease.

"Fair Market Renewal Rent" shall have the meaning assigned in Section 4(a)(v)(B) of the Lease.

"Fair Market Renewal Term" shall have the meaning assigned in Section 4(a)(v)(A) of the Lease.

"Fair Market Rent" for any Railcar shall mean, for any period, the rent for such Railcar (excluding any Severable Improvements title to which has vested in the Lessee) for such period that would be obtained for a lease of such Railcar in an arm's-length transaction between an informed and willing owner and an informed and willing lessee, each under no compulsion to lease, which determination shall be made (i) without deduction for any costs of removal of such Railcar from the location of current use, and (ii) on the assumption that such Railcar is (a) free and clear of all liens and is in the condition and repair in which it is required to be returned pursuant to Sections 4 and 7 (other than the last sentence of Section 7(a)) of the Lease (but otherwise on an "as is" basis) and (b) interchangeable under the rules of the Association of American Railroads and other Applicable Law.

"Fair Market Sale Value" for any Railcar shall mean the sale value of such Railcar (excluding any Severable Improvements title to which has vested in the Lessee) that would be obtained in an arm's-length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer under no compulsion to buy, which determination shall be made (i) without deduction for any costs

of removal of such Railcar from the location of current use, and (ii) on the assumption that such Railcar is (a) free and clear of all liens and is in the condition and repair in which it is required to be returned pursuant to Sections 4 and 7 (other than the last sentence of said Section 7(a)) of the Lease (but otherwise on an "as is" basis) and (b) interchangeable under the rules of the Association of American Railroads and other Applicable Law.

"Final Closing Date" shall mean the date, which shall be a Business Day, on which the last Closing occurs.

"Final Contribution Date" shall have the meaning assigned in Section 2.01(b) of the Participation Agreement.

"Final Determination" shall mean (i) a decision, judgment, decree or other order by any court of competent jurisdiction, which decision, judgment, decree or other order has become final (i.e., when all allowable appeals have been exhausted by either party to the action), (ii) a closing agreement entered into under Section 7121 of the Code or any other binding settlement agreement entered into by the Owner Participant in connection with an administrative or judicial proceeding (provided the Lessee has been reasonably consulted and properly informed by the Owner Participant throughout the proceeding of any such closing agreement or settlement agreement and such agreement has been entered into by the Owner Participant with the written approval of the Lessee), (iii) the expiration of the time for instituting a claim for refund, or if such a claim was filed, the expiration of the time for instituting suit with respect thereto or (iv) settlement of the contest with the Lessee's written consent or Lessee's written agreement to discontinue or concede any proceedings or claims or the termination of the Lessee's right to have the claim contested.

"First Renewal" shall have the meaning assigned in Section 4(a)(iv) of the Lease.

"First Renewal Rent" shall have the meaning assigned in Section 4(a)(iv)(D) of the Lease.

"First Renewal Term" shall have the meaning assigned in Section 4(a)(iv)(A) of the Lease.

"First Renewal Term Commencement Date" shall have the meaning assigned in Section 4(a)(iv)(A) of the Lease.

"Fixed Rate Renewal Rent" shall mean an amount equal to 50% of the quotient of (i) the aggregate amount of Basic Rent due and owing for periods from and after July 1, 1991 during the Basic Term in respect of the Railcars divided by (ii) 36.

"Guarantee" shall mean the Guarantee, dated as of September 1, 1990 of The Connell Company, substantially in the form of Exhibit D to the Participation Agreement.

"Guarantor" shall mean The Connell Company, a New Jersey corporation.

"Holder" shall mean the Person in whose name any Note is registered on the Note Register.

"Home Jurisdiction" shall mean the state and local jurisdictions in which the Owner Participant has its principal place of business.

"Hopper Car" or "Rotary Dump Hopper Car" shall mean a Rotary Dump Hopper Car as described in the statement of specifications for 100-Ton Quadruple Hopper Cars attached as Schedule 3 to the Participation Agreement.

"ICC" shall mean the Interstate Commerce Commission and any agency or instrumentality of the United States government succeeding to its functions.

"Improvement" shall mean an improvement, structural change, modification or addition to any Railcar made after the Closing Date.

"Indemnitee" shall have the meaning assigned in Section 14.02(a) of the Participation Agreement.

"Indemnified Person" shall have the meaning assigned in Section 14.01(b) of the Participation Agreement.

"Indenture" shall mean the Indenture and Security Agreement dated as of September 1, 1990 between the Owner Trustee and the Indenture Trustee and substantially in the form of Exhibit B to the Participation Agreement.

"Indenture Default" shall mean an event or condition which, with the giving of notice or lapse of time, or both, would become an Indenture Event of Default.

"Indenture Estate" shall have the meaning assigned in the Recital Clause of the Indenture.

"Indenture Event of Default" shall mean any of the events specified in Section 601 of the Indenture.

"Indenture Trustee" shall mean Wilmington Trust Company, a Delaware banking company, together with any separate trustees and co-trustees, not in its individual capacity, but solely as Indenture Trustee under the Indenture.

"Independent" shall mean, when used with respect to any specified Person, such a Person who (1) is in fact independent, (2) does not have any direct financial interest or any material indirect financial interest in Meridian, the Owner Trustee, the Owner Participant, any Loan Participant or the Lessee or in any Affiliate of any of them and (3) is not connected with any Loan Participant, the Owner Participant, the Owner Trustee or the Lessee or any such Affiliate as an officer, employee, promoter, underwriter, trustee, partner, director or person performing similar functions. Whenever it is provided that any Independent Person's opinion or certificate shall be furnished to the Indenture Trustee, such Person shall be appointed by the Lessee and approved by the Indenture Trustee in the exercise of reasonable care and such opinion or certificate shall state that the signer has read this definition and that the signer is Independent within the meaning thereof.

"Initial Closing Date" shall mean the date, which shall be a Business Day, on which the first Closing occurs.

"Initial Contribution Date" shall have the meaning assigned in Section 2.01(b) of the Participation Agreement.

"Insurance Policy" shall have the meaning assigned in Section 14.01(e) of the Participation Agreement.

"Insurers" shall have the meaning assigned in Section 14.01(e) of the Participation Agreement.

"Interest Deductions" shall mean deductions permitted under Code Section 163(a) with respect to interest accruing each year on the Notes.

"Interim Interest" shall mean the interest due on the Notes for any period during the Interim Term computed on the basis of 30 day months and a 360 day year, except that for any period of less than a month interest shall be calculated on the basis of the number of days elapsed therein divided by 360.

"Interim Rent" shall mean the rent payable, if any, during the Interim Term pursuant to, and computed in accordance with, Section 3(a) of the Lease.

"Interim Term" shall have the meaning assigned in Section 2(b) of the Lease.

"Lease" shall mean the Lease Agreement dated as of September 1, 1990, and substantially in the form of Exhibit C to the Participation Agreement, between the Lessee and the Owner Trustee, as lessor.

"Lease and Indenture Supplement No. 1" shall mean the Lease and Indenture Supplement among the Owner Trustee, the Lessee and the Indenture Trustee, substantially in the form of Exhibit A to the Lease, executed and delivered on the Initial Closing Date.

"Lease and Indenture Supplement No. 2" shall mean the Lease and Indenture Supplement among the Owner Trustee, the Lessee and the Indenture Trustee, substantially in the form of Exhibit A to the Lease, executed and delivered on the Final Closing Date.

"Lease Term" shall have the meaning assigned in Section 2(b) of Lease.

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

"Lessee Act or Omission" shall have the meaning assigned in Section 2.1(a) of the Tax Indemnification Agreement.

"Lessor's Cost" for each Railcar shall be \$44,250.

"Lien" shall mean any mortgage, pledge, charge, encumbrance, disposition of title, lease or security interest.

"Loan Participant" shall mean each of the financial institutions listed in Schedule 1 to the Participation Agreement.

"MACRS Deductions" shall mean cost recovery deductions prescribed by Section 168 of the Code using a recovery period of 7 years, a 200% declining balance method switching to the straight-line method at a time to maximize the deduction, using a half-year convention, and a zero salvage value.

"Meridian" shall mean Meridian Trust Company, a trust company organized under the laws of the Commonwealth of Pennsylvania (or any successor as trustee under the Trust Agreement) in its individual capacity.

"Net Return" shall mean the Owner Participant's nominal after-tax yield, aggregate after-tax cash flow and aggregate after-tax cash flow as a percentage of the Owner Participant's original equity investment made on each Closing Date using a multiple investment sinking fund method, with respect to the transactions contemplated by the Operative Documents, based on the assumptions utilized in determining the original schedules of Basic Rent, Stipulated Loss Values and Termination Values for each Closing.

"Nonseverable Improvement" shall mean, at any time, an Improvement that shall not be "readily removable from a Railcar without causing material damage to such Unit" within the meaning of Revenue Procedure 75-21 promulgated by the Internal Revenue Service or other similar law, regulation or procedure then in effect or any Improvement required by law.

"Non-U.S. Person" shall mean any Person other than (i) a citizen or resident of the United States, as defined in Section 7701(a)(9) of the Code (for purposes of this definition, the "United States"), (ii) a corporation, partnership or other entity created or organized under the laws of the United States or any political subdivision thereof or therein or (iii) any estate or trust that is subject to United States federal income taxation regardless of the source of its income.

"Note Register" shall have the meaning assigned in Section 204 of the Indenture.

"Notes" shall have the meaning specified in the Indenture and more particularly includes the Notes issued on the Closing Dates and any other Notes authenticated and delivered under the Indenture.

"Obligations" shall have the meaning assigned in the Recital Clause of the Indenture.

"Officer's Certificate" shall mean with respect to any Person, a certificate signed by the Chairman of the Board, the President, a Vice President or a Responsible Officer of such Person or any Authorized Person of such Person.

"Operative Documents" shall mean the Participation Agreement, the Trust Agreement, the Indenture, the Notes, the Lease, each Lease and Indenture Supplement, each Bill of Sale and the Tax Indemnification Agreement.

"Opinion of Counsel" shall mean a written opinion of counsel, who shall be reasonably acceptable to the Indenture Trustee (or such other Person to whom such opinion is to be addressed pursuant to any of the Operative Documents).

"Outstanding" when used with respect to the Notes shall mean, as of the date of determination, all the Notes theretofore authenticated and delivered under the Indenture, except:

(1) Notes theretofore cancelled by the Indenture Trustee or delivered to the Indenture Trustee for cancellation;

(2) Notes for whose payment or redemption money in the necessary amount has been theretofore deposited with the Indenture Trustee, provided, that, if such Notes are to be redeemed, notice of such redemption has been duly given pursuant to the Indenture or provision therefor satisfactory to the Indenture Trustee has been made; and

(3) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered under the Indenture;

provided, however, that in determining whether the Holders of the requisite principal amount of Notes Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under any Operative Document, Notes owned by the Owner Participant, the Owner Trustee or the Lessee, or any Affiliate of any of them, shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Indenture Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes that the Indenture Trustee knows to be so owned shall be so disregarded. Notes so owned that have been pledged in good faith may be regarded as Outstanding for such purposes if the pledgee establishes to the satisfaction of the Indenture Trustee the pledgee's right so to act with respect to such Notes and that the pledgee is not the Owner Participant, the Owner Trustee or the Lessee, or any Affiliate of any of them.

"Overdue Rate" shall mean with respect to (i) any amount required to be paid to a Holder of a Series A Note, a rate per annum equal to 11.65%, (ii) any amount required to be paid to a Holder of an Additional Note, a rate per annum equal to two percentage points over the interest rate payable in respect of such Additional Note and (iii) any amount

constituting Excepted Property or otherwise payable to the Owner Trustee or the Owner Participant, a rate per annum equal to 11.65%, in each case computed on the basis of a 360-day year of twelve 30-day months.

"Owner Encumbrances" shall mean any liens, security interests or encumbrances against the Railcars or any part of the Indenture Estate or the Trust Estate that result from acts of, or any failure to act by, or as a result of claims (including any taxes) against, Meridian, the Owner Trustee or the Owner Participant arising out of any event or condition unrelated to (x) the ownership of a Railcar, (y) the administration of the Trust Estate or (z) the transactions contemplated by the Operative Documents, excluding liens, security interests and encumbrances arising from any tax for which the Lessee is obligated to indemnify under the Tax Indemnification Agreement or the Participation Agreement, other than any such tax for which the Lessee has already made full indemnification pursuant to such agreements.

"Owner Participant" shall mean Connell Finance Company, Inc., a New Jersey corporation.

"Owner Trustee" shall mean Meridian Trust Company, a Pennsylvania trust company, in its capacity as trustee under the Trust Agreement.

"Owner Trustee Request" shall mean a written request signed in the name of the Owner Trustee by an Authorized Person, consented to by the Lessee, and delivered to the Indenture Trustee together with a form of any writing to be executed by the Indenture Trustee pursuant to such request.

"Participants" shall mean, collectively, the Loan Participants and the Owner Participant.

"Participation Agreement" shall mean the Participation Agreement dated as of September 1, 1990 among the Lessee, the Owner Participant, the Loan Participants, the Owner Trustee and the Indenture Trustee.

"Party in Interest" shall mean both a "party in interest" as defined in ERISA and a "disqualified person" as defined in the Code.

"Payment Date" shall mean each January 1 and July 1 of each year occurring during the Basic Term beginning July 1, 1991 and any Renewal Term, provided that if any such date shall not be a Business Day, then "Payment Date" shall mean the next succeeding Business Day.

"Percentage Commitment" of each Participant shall mean the percentage set forth opposite such Participant's name in Schedule 2 to the Participation Agreement.

"Permitted Encumbrances" shall mean (a) the rights of the Indenture Trustee under the Indenture, (b) the rights of the Lessee under the Lease, including, without limitation, subleases of and interchange agreements involving any Railcar in accordance with the terms of the Lease, (c) the mortgage on the Lessee's interest in the Railcars and the Operative Documents in favor of The Chase Manhattan Bank, N.A. pursuant to a Refunding Mortgage dated as of June 1, 1940, as amended to the date hereof, (d) the rights of the Owner Trustee and the Owner Participant under the Trust Agreement, which rights are subject to the liens and security interests created by the Indenture, (e) liens for taxes either not yet due or being contested by the Lessee in good faith by appropriate proceedings, diligently prosecuted or appealed and which do not involve a non-de minimis risk of a sale, forfeiture or loss of a Railcar and (f) undetermined or inchoate materialmen's, mechanic's, workmen's, repairmen's or employees' liens or other like liens arising in the ordinary course of business and security obligations which are not delinquent or which shall have been bonded or the enforcement of which shall have been suspended and which do not involve a non-de minimis risk of sale, forfeiture or loss of a Railcar and which are being contested by the Lessee in good faith by appropriate proceedings diligently prosecuted or appealed.

"Permitted Investments" shall mean (i) direct obligations of the United States of America and agencies thereof, (ii) obligations fully guaranteed by the United States of America and certificates of deposit issued by, or bankers' acceptances of, or time deposits with, any bank, trust company or national banking association incorporated or doing business under the laws of the United States of America or one of the States thereof having combined capital and surplus and retained earnings of at least \$500,000,000 (including the Indenture Trustee and the Owner Trustee if such conditions are met), (iii) commercial paper of companies, banks, trust companies, or national banking associations incorporated or doing business under the laws of the United States of America or one of the States thereof and in each case having a rating assigned to such commercial paper by Standard & Poor's Corporation or Moody's Investors Service, Inc. (or, if neither such organization shall rate such commercial paper at any time, by any nationally recognized rating organization in the United States of America) equal to the highest rating assigned by such organization, and (iv) repurchase agreements with any financial institution having a combined capital and surplus of at least

\$750,000,000 fully collateralized by obligations of the type described in clauses (i) through (iii) above. If all of the above investments are unavailable, the entire amount to be invested may be used to purchase Federal Funds from an entity described in clause (ii) of the preceding sentence.

"Person" shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Premium" shall mean, with respect to any Note, an amount equal to the excess, if any, of the present value of the payments of principal and interest which would have been due under such Note from the date of redemption thereof to the final maturity of such Note had such redemption not occurred, discounted at a rate equal to the Treasury Yield plus .75% over the principal amount of such Note, so prepaid; provided, however, that if, at the time of redemption, the Treasury Yield shall be equal to or greater than the rate applicable to the Note, no Premium shall be due.

"Prime Rate" shall mean the interest rate publicly announced by Citibank, N.A. from time to time as its base rate of interest per annum.

"Railcar" shall mean a Hopper Car.

"Reasonable Basis" for a position shall exist if tax counsel may properly advise reporting such position on a tax return in accordance with Formal Opinion 85-352 issued by the Standing Committee on Ethics and Professional Responsibility of the American Bar Association.

"Recapture" shall have the meaning assigned to it in Section 1245 of the Code.

"Redelivery Locations" shall have the meaning assigned in Section 4(b) of the Lease.

"Redemption Date" when used with respect to any Note to be redeemed shall mean the date fixed for such redemption pursuant to the Indenture.

"Refinanced Series A Notes" shall have the meaning assigned in Section 3.01 of the Participation Agreement.

"Reimbursement Amount" shall have the meaning assigned in Section 2.01(b) of the Participation Agreement.

"Renewal Term" shall mean the period of any extension of the Basic Term (or a prior Renewal Term) as provided in Section 4(a) of the Lease.

"Renewal Term Commencement Date" shall have the meaning assigned in Section 4(a) of the Lease.

"Rent" shall mean the Basic Rent and Supplemental Rent, collectively.

"Replacement Railcar" shall mean a railcar of the Type with respect to which an Event of Loss has occurred and which is being replaced pursuant to Section 12(c) of the Lease.

"Responsible Officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of any party contained in any Operative Document, the President, any Vice President, Assistant Vice President, Treasurer, Assistant Treasurer or other officer who in the normal performance of his operational responsibility would have knowledge of such matter and the requirements with respect thereto.

"Scheduled Debt Payments" shall mean all regularly scheduled principal and interest payments on the Notes.

"Securities Act" shall mean the Securities Act of 1933.

"Seller" shall mean Trinity Industries, Inc., a Texas corporation, together with its successors and permitted assigns.

"Series A Notes" shall have the meaning specified in the Indenture and more particularly includes each of the Series A Notes issued on the Closing Dates and any Series A Notes issued in substitution thereof.

"Severable Improvement" shall mean any Improvement other than a Nonseverable Improvement.

"State Tax Benefits" shall mean applicable state law tax benefits similar to the MACRS Deductions, Amortization Deductions and Interest Deductions.

"Stated Maturity" when used with respect to any Note or any installment of interest thereon shall mean the date specified in such Note as the fixed date on which the principal of such Note or such installment of interest is due and payable.

"Stipulated Loss Value" with respect to any Railcar subjected to the terms of the Lease pursuant to a given Lease and Indenture Supplement as of any Payment Date shall mean an

amount determined by multiplying Lessor's Cost for such Railcar by the percentage specified in Schedule 1 to such Lease and Indenture Supplement opposite such Payment Date; provided, however, that, notwithstanding any provision of the Lease (including but not limited to the adjustments to be made pursuant to Section 3 of the Lease), "Stipulated Loss Value" as of any Payment Date, plus the Rent, if any, in respect of such Railcar payable on such Payment Date shall in no event be less than a sum sufficient to pay a pro rata portion of the aggregate unpaid principal amount of the Notes Outstanding on such Payment Date, together with interest thereon accrued to such Payment Date and the Premium, if any, as determined pursuant to the Indenture.

"Stub Period Rent Factor" shall be the percentage set forth opposite the date July 1, 1991 in Schedule 3A or 3B of the Lease, as the case may be.

"Supplemental Rent" shall mean any and all amounts (other than Interim Rent and Basic Rent), that the Lessee assumes the obligation to pay or agrees to pay under the Lease, the Indenture, the Tax Indemnification Agreement or the Participation Agreement to the Owner Trustee, the Owner Participant or others, including amounts payable as indemnity payments, payments of Stipulated Loss Value and Termination Value under the Lease, Premium on the Notes, if any, and all amounts payable by the Lessee pursuant to Section 3(c) of the Lease.

"Tax" or "Taxes" shall have the meaning assigned in Section 14.02(a) of the Participation Agreement.

"Tax Assumptions" shall have the meaning assigned in the Tax Indemnification Agreement.

"Tax Benefits" shall mean the MACRS Deductions, Amortization Deductions, Interest Deductions and State Tax Benefits.

"Tax Indemnification Agreement" shall mean the Tax Indemnification Agreement dated as of September 1, 1990 between the Lessee and the Owner Participant.

"Tax Representations" shall have the meaning assigned in the Tax Indemnification Agreement.

"Tax Savings" shall have the meaning assigned in Section 3 of the Tax Indemnification Agreement.

"Termination Date" shall have the meaning assigned in Section 13(a) of the Lease.

"Termination Notice" shall have the meaning assigned in Section 13(a) of the Lease.

"Termination Right" shall have the meaning assigned in Section 13(a) of the Lease.

"Termination Value" with respect to any Railcar subjected to the terms of the Lease pursuant to a given Lease and Indenture Supplement as of any Payment Date shall mean an amount determined by multiplying Lessor's Cost for such Railcar by the percentage specified in Schedule 2 to such Lease and Indenture Supplement opposite such Payment Date; provided, however, that, notwithstanding any provision of the Lease (including but not limited to the adjustments to be made pursuant to Section 3 of the Lease), "Termination Value" as of any Payment Date, plus the Rent, if any, in respect of such Railcar payable on such Payment Date shall in no event be less than a sum sufficient to pay a pro rata portion of the aggregate unpaid principal amount of the Notes Outstanding on such Payment Date, together with interest thereon accrued to such Payment Date and the Premium, if any, as determined pursuant to the Indenture.

"TIA" shall mean the Trust Indenture Act of 1939.

"Transaction Costs" shall have the meaning assigned in Section 11.01 of the Participation Agreement.

"Treasury Yield" shall mean the yield to maturity equal to the Treasury Constant Maturity Series Yields reported (for the latest day for which such yields shall have been so reported as of the Business Day next preceding the Redemption Date) in Federal Statistical Release H.15 (519) (or any comparable successor publication) for U.S. Treasury obligations having a maturity approximating the remaining Average Life of the Notes.

"Trust Agreement" shall mean the Owner Trust Agreement dated as of September 1, 1990 between Meridian and the Owner Participant and substantially in the form of Exhibit A to the Participation Agreement.

"Trust Estate" shall mean all estate, right, title and interest of the Owner Trustee in and to the Railcars and the Operative Documents to which it is a party (other than the Owner Trust Agreement) or in which it otherwise has an interest, including without limitation, (i) all amounts payable

to the Owner Trustee under such Operative Documents other than Excepted Property and (ii) any and all payments or proceeds received by the Owner Trustee after the termination of the Lease with respect to all or any part of the Railcars as the result of the sale, lease or other disposition thereof, but excluding in all cases Excepted Property and Excepted Rights.

"Trustor" shall have the meaning ascribed thereto in the introductory paragraph of the Owner Trust Agreement.

"Type" shall mean rotary dump hopper cars which are substantially similar to the Rotary Dump Hopper Cars.

"Unit Selection Process" shall have the meaning assigned in Section 4(a)(iii) of the Lease.

"Verifying Accountant" shall mean an independent nationally recognized accounting firm agreed upon by the Owner Participant and the Lessee or their respective accounting firms.

"Wilmington" shall mean Wilmington Trust Company, a Delaware banking corporation (or any successor as trustee under the Indenture) in its individual capacity.

RULES OF INTERPRETATION

1. A reference to any document or agreement shall include such document or agreement as amended, modified or supplemented from time to time in accordance with its terms and the terms set forth in the Operative Documents.

2. The singular includes the plural and the plural includes the singular.

3. A reference to any law includes any amendment or modification to such law made before the relevant date.

4. A reference to any Person includes its permitted successors and permitted assigns.

5. Where the character or amount of any asset or liability or item of income or expense is required to be determined or any consolidation or other accounting computation is required to be made for the purposes hereof, such determination or computation shall be done in accordance with generally accepted accounting principles at the time in effect, to the extent applicable, except where such principles are inconsistent with the requirements hereof.

6. The words "include", "includes" and "including" are not limiting.

7. Unless otherwise stated, all references to Sections and Articles shall mean and refer to the respective Sections and Articles in the agreement or document in which such reference appears.

LEASE AND INDENTURE SUPPLEMENT NO. \_\_\_

Dated \_\_\_\_\_, 1990

Among

MERIDIAN TRUST COMPANY,  
not in its individual capacity but solely as trustee,  
Lessor/Owner Trustee,

UNION PACIFIC RAILROAD COMPANY,  
as Lessee

and

WILMINGTON TRUST COMPANY,  
not in its individual capacity but solely as trustee,  
Indenture Trustee

ROTARY DUMP HOPPER CARS

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ALL RIGHT, TITLE AND INTEREST IN AND TO THIS LEASE AND INDENTURE SUPPLEMENT NO. \_\_\_ AND TO THE RAILCARS COVERED HEREBY ON THE PART OF MERIDIAN TRUST COMPANY, AS OWNER TRUSTEE, HAS BEEN ASSIGNED TO AND IS SUBJECT TO A LIEN AND SECURITY INTEREST IN FAVOR OF WILMINGTON TRUST COMPANY, AS INDENTURE TRUSTEE, UNDER AN INDENTURE AND SECURITY AGREEMENT DATED AS OF SEPTEMBER 1, 1990. TO THE EXTENT, IF ANY, THAT THIS LEASE AND INDENTURE SUPPLEMENT NO. \_\_\_ CONSTITUTES CHATTEL PAPER (AS SUCH TERM IS DEFINED IN THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN ANY APPLICABLE JURISDICTION), NO SECURITY INTEREST IN THIS LEASE AND INDENTURE SUPPLEMENT NO. \_\_\_ MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART THAT CONTAINS THE RECEIPT THEREFOR EXECUTED BY WILMINGTON TRUST COMPANY, AS INDENTURE TRUSTEE, ON OR IMMEDIATELY FOLLOWING THE SIGNATURE PAGE THEREOF.

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FILED WITH THE INTERSTATE  
COMMERCE COMMISSION PURSUANT  
TO 49 U.S.C. §11303 AND DEPOSITED  
IN THE OFFICE OF THE REGISTRAR GENERAL  
OF CANADA PURSUANT TO SECTION 90 OF  
THE RAILWAY ACT OF CANADA

THIS LEASE AND INDENTURE SUPPLEMENT NO. \_\_\_\_\_,  
dated \_\_\_\_\_, 1990, among MERIDIAN TRUST COMPANY, a trust  
company organized under the laws of Pennsylvania, not in its  
individual capacity but solely as Owner Trustee under that  
certain Trust Agreement dated as of September 1, 1990 with  
CONNELL FINANCE COMPANY, INC., a New Jersey corporation, UNION  
PACIFIC RAILROAD COMPANY, a Utah corporation and WILMINGTON  
TRUST COMPANY, a Delaware banking corporation, not in its  
individual capacity but solely as Indenture Trustee.

W I T N E S S E T H :

WHEREAS, the Lessor, the Lessee and the Indenture Trustee have, with the other parties thereto, heretofore entered into a Participation Agreement, the Lessor and the Lessee have heretofore entered into a Lease Agreement and the Indenture Trustee and the Owner Trustee have heretofore entered into an Indenture and Security Agreement, each dated as of September 1, 1990 (capitalized terms used herein without definitions shall have the respective meanings set forth in Schedule X to the Lease);

WHEREAS, the Participation Agreement and the Lease provide that on each Closing Date Seller shall deliver to the Owner Trustee a Bill of Sale dated such Date by which Seller bargains, conveys, assigns, sets over, sells and delivers to the Owner Trustee, and the Owner Trustee purchases and accepts from the Seller, the Railcars to be conveyed on such Closing Date, and said Bill of Sale has been delivered by Seller and accepted by the Owner Trustee on such Closing Date;

WHEREAS, the Participation Agreement, the Lease and the Indenture provide for the execution of a Lease and Indenture Supplement substantially in the form hereof for the purposes of leasing the Railcars under the Lease as and when delivered by the Lessor to the Lessee in accordance with the terms thereof and subjecting such Railcars to the lien of the Indenture;

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

1. The Lessor hereby delivers and leases to the Lessee, and the Lessee hereby accepts and leases from the Lessor, under the Lease as hereby supplemented, the Railcars listed on Schedule 1 attached hereto.

2. The Lessee hereby confirms to the Lessor and the Indenture Trustee that the Lessee has accepted such Railcars for all purposes hereof and of the Lease as meeting and being in compliance in all material respects with the statement of specifications attached as Schedule 3 to the Participation Agreement for such Railcars, and in good working order and in conformance with all provisions of the Lease.

3. The aggregate Lessor's Cost of the Railcars leased hereunder is \$ \_\_\_\_\_ and the amounts comprising such Lessor's Cost and the Lessor's Cost of each Rotary Dump Hopper Car leased hereunder are set forth on Schedule 1 attached hereto. The Stipulated Loss Value percentages, Termination Value percentages and Basic Rent set forth, respectively, on Schedules 1, 2 and 3 to the Lease shall be applicable in respect of the Rotary Dump Hopper Cars leased hereunder on the date hereof.

4. The Lessee hereby confirms its agreement, in accordance with the Lease as supplemented by this Lease and Indenture Supplement No. \_\_\_ on the Basic Term Commencement Date to pay Interim Rent to the Lessor for each Railcar leased hereunder as provided for in the Lease and on each Payment Date during the Basic Term to pay Basic Rent to the Lessor for each Railcar leased hereunder as provided for in the Lease.

5. In order to secure the prompt payment of the principal of and Premium, if any, and interest on the Notes issued on the date hereof and on any other Notes Outstanding, the Lessor has granted, conveyed, pledged, sold, mortgaged, assigned, transferred and set over a security interest unto the Indenture Trustee in (i) the Railcars listed on Schedule 1 attached hereto and (ii) the Lease and this Lease and Indenture Supplement No. \_\_\_, in each case excluding Excepted Property and Excepted Rights, to have and to hold unto the Indenture Trustee and its successors and its assigns for its and their own use and benefit forever.

6. All of the provisions of the Lease and the Indenture are hereby ratified as amended and supplemented by this Lease and Indenture Supplement No. \_\_\_ to the same extent as if the Provisions of this Lease and Indenture Supplement were fully set forth therein.

7. This Lease and Indenture Supplement No. \_\_\_ may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

8. This Lease and Indenture Supplement No. \_\_\_ is being delivered in the State of New York and shall in all respects be governed by, and construed in accordance with, the law of the State of New York (excluding the laws applicable to conflicts or choice of law), including all matters of construction, validity and performance.

IN WITNESS WHEREOF, each of the parties hereto, pursuant to due corporate authority, has caused this Lease and Indenture Supplement No. 1 to be duly executed in its corporate name by its officers, thereunto duly authorized, all as of the date set forth below and each of the undersigned signatories hereto declares pursuant to 28 U.S.C. § 1746 under penalty of perjury under the laws of the United States of America that the foregoing is a true and correct document and was executed and delivered on the date indicated below its signature.

**MERIDIAN TRUST COMPANY,**  
not in its individual  
capacity but solely as Owner  
Trustee

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

Executed on \_\_\_\_\_, 1990.

**UNION PACIFIC RAILROAD  
COMPANY, as Lessee**

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

Executed on \_\_\_\_\_, 1990.

**WILMINGTON TRUST COMPANY,**  
as Indenture Trustee

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

Executed on \_\_\_\_\_, 1990.

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Receipt of this original counterpart of this Lease and Indenture Supplement No. 1 is hereby acknowledged this \_\_\_\_ day of \_\_\_\_\_, 1990.

WILMINGTON TRUST COMPANY,  
as Indenture Trustee

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

SCHEDULE 1  
to Lease and  
Indenture  
Supplement No. 1

SCHEDULE OF RAILCARS TO BE DELIVERED

Rotary Dump Hopper Cars

<u>Quantity of Units</u>	<u>Serial Numbers</u> *	<u>Lessor's Cost Per Unit</u>	<u>Aggregate Lessor's Cost</u>
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\* See table attached hereto as Exhibit A.

EXHIBIT A

EXHIBIT A

CHTT-500200	CHTT-500266	CHTT-500321	CHTT-500374
CHTT-500201	CHTT-500267	CHTT-500322	CHTT-500375
CHTT-500202	CHTT-500268	CHTT-500323	CHTT-500376
CHTT-500203	CHTT-500269	CHTT-500324	CHTT-500377
CHTT-500204	CHTT-500270	CHTT-500325	CHTT-500378
CHTT-500205	CHTT-500272	CHTT-500326	CHTT-500379
CHTT-500207	CHTT-500273	CHTT-500327	CHTT-500380
CHTT-500218	CHTT-500274	CHTT-500328	CHTT-500381
CHTT-500220	CHTT-500275	CHTT-500329	CHTT-500382
CHTT-500221	CHTT-500276	CHTT-500330	CHTT-500383
CHTT-500222	CHTT-500277	CHTT-500331	CHTT-500384
CHTT-500223	CHTT-500278	CHTT-500332	CHTT-500385
CHTT-500224	CHTT-500279	CHTT-500333	CHTT-500386
CHTT-500225	CHTT-500280	CHTT-500334	CHTT-500387
CHTT-500226	CHTT-500281	CHTT-500335	CHTT-500388
CHTT-500227	CHTT-500282	CHTT-500336	CHTT-500389
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EXHIBIT A

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