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16716

RECORDATION NO \_\_\_\_\_ FILED 1425

JAN 11 1990 -11 35 AM

INTERSTATE COMMERCE COMMISSION

TELECOPIER (202) 296-1682

HARRY J JORDAN

16716

RECORDATION NO \_\_\_\_\_ FILED 1425

JAN 11 1990 -11 35 AM

INTERSTATE COMMERCE COMMISSION

January 11, 1990

16716

RECORDATION NO \_\_\_\_\_ FILED 1425

JAN 11 1990 -11 35 AM

INTERSTATE COMMERCE COMMISSION

0-011A0 i7

Honorable Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Re: Recordation of Mortgage and  
Security Agreements, Assignment of  
Lease and Rents, and Lease Agreement

Dear Madam Secretary:

Residual Based Finance Corporation (Residual) has borrowed funds, under a Senior Secured Note Purchase Agreement, from the Aid Association for Lutherans (Association) in connection with Residual's purchase of certain 100-ton railroad hopper cars, which are being leased to the Burlington Northern Railroad Company (Burlington Northern) pursuant to a lease agreement dated December 29, 1989.

As evidence of such borrowing, Residual has executed and delivered to the Association its 9.23% Senior Secured Note or Notes (the Notes), maturing on October 15, 2004, in the aggregate principal amount of \$3,513,195, secured by, among other things, a Mortgage and Security Agreement and the Assignment of Lease and Rental payments under the lease agreement with Burlington Northern.

The Mortgage and Security Agreement and the related Assignment of Lease and Rents create a lien in favor of the Association on the railroad property and upon the right, title, and interest of Residual in and under the Lease and Rental Agreement between Residual and the Burlington Northern.

Pursuant to Section 11303 of Title 49 of the U.S.Code and the Commission's regulations as set forth in 49 CFR 1177, enclosed for filing are the original and one copy/counterpart of the following documents involved in the above-described transaction.

*Harry J. Jordan*  
*Conrad J. Jordan*

Honorable Noretta R. McGee

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January 11, 1990

(1) Documents Submitted For Recording:

(a) Mortgage and Security Agreement (Security Agreement), dated January 10, 1990, between Residual (Debtor), and Association (Secured Party);

(b) Assignment of Lease and Rents (Assignment) executed and delivered January 10, 1990, by Residual/Debtor to and for the benefit of Association/Secured Party, as Assignee; and

(c) Lease Agreement (Lease), dated December 29, 1989, between Residual (Residual/Lessor) and Burlington Northern (Lessee).

(2) Primary Or Secondary Documents:

The Security Agreement and the related Assignment and Lease Agreement are being filed simultaneously; a recording number has, therefore, not been previously assigned to the Security Agreement.

(3) Cross-Indexing:

It is requested that the Security Agreement, Assignment, and Lease be cross-indexed in the names of the parties to such documents as reflected in paragraph 5 below.

(4) Description Of Equipment Covered By Documents:

(a) 100-Ton Covered Hopper Cars

Type	Number	A.R.A. Designations
4750, Cubic Foot, (100-Ton Each) Covered, Hopper Cars	64	BN 465001 through BN 465064

Honorable Noreta R. McGee  
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(b) 100-Ton Covered Hopper Cars

Type	Number	A.R.A. Designations
4750, Cubic Foot (100-Ton Each) Covered, Hopper Cars	59	BN 465241 through BN 465266, and BN 465268 through BN 465300

(5) Names And Addresses Of Parties To The Documents:

(a) Mortgage And Security Agreement

Debtor:

Residual Based Finance Corporation  
Three First National Plaza  
Suite 1240  
Chicago, Illinois 60602

Secured Party:

Aid Association for Lutherans  
4321 North Ballard Road  
Appleton, Wisconsin 54919

(b) Assignment Of Lease And Rents

Assignor:

Residual Based Finance Corporation  
Three First National Plaza  
Suite 1240  
Chicago, Illinois 60602

Assignee:

Aid Association for Lutherans  
4321 North Ballard Road  
Appleton, Wisconsin 54919

(c) Lease Agreement

Lessor:

Residual Based Finance Corporation  
Three First National Plaza  
Suite 1240  
Chicago, Illinois 60602

Lessee:

Burlington Northern  
Railway Company  
2900 Continental Plaza  
777 Main Street,  
Fort Worth, Texas 76102

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(6) Party To Whom Original Documents Should Be Returned:

Daniel W. Gentges, Esq.  
Whyte & Hirshboeck  
Suite 2100  
111 East Wisconsin Avenue  
Milwaukee, WI 53202

With notice to:  
Harry J. Jordan Esq.  
McInerny & Jordan  
Suite 900  
900 Seventeenth Street, NW  
Washington, DC 20006

(7) Filing Fee:

The required filing fee in the amount of \$45 is enclosed.

(8) Summary Of Documents Submitted For Recording:

Primary Documents:

(a) Mortgage and Security Agreement:

Mortgage and Security Agreement, dated January 10, 1990, between Residual Based Finance Corporation (Residual/Debtor), and Aid Association for Lutherans (Association/Secured Party), creating a security interest in 123 covered hopper rail cars under lease to Burlington Northern Railroad Company.

(b) Assignment of Lease and Rents:

Assignment of Lease and Rents, dated January 10, 1990, by which Residual Based Finance Corporation (Assignor), has assigned to Aid for Lutherans Association (Assignee) all rents, reserved rents and proceeds payable by the Burlington Northern Railroad Company under its lease of the 123 covered hopper rail cars.

(c) Lease Agreement:

Agreement of Lease, dated December 29, 1989, by which Residual Based Finance Corporation has leased the 123 covered hopper rail cars to the Burlington Northern Railroad Company, and which has been assigned by Residual to Aid for Lutherans Association.

Please stamp all counterparts of the enclosed documents with your official recording stamp. One copy of each instrument and this transmittal letter is for the Commission's files. It is

Honorable Noreta R. McGee  
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January 11, 1990

requested that the remaining counterparts of the document be delivered to the bearer of this letter.

Very truly yours,



Harry J. Jordan  
McInerny & Jordan  
Ninth Floor  
900 Seventeenth Street, NW  
Washington, DC 20006  
(202) 783-8131

Enclosures

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

1/11/90

OFFICE OF THE SECRETARY

Harry J. Jordan  
McInerny Jordan  
900 17th St N.W.  
Washington, D.C. 20006

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/11/90 at 11:35am, and assigned recordation number(s). 16716 16716-A & 16716-B

Sincerely yours,



Noreta R. McGee  
Secretary

Enclosure(s)

RECORDATION NO 16716 FILED 1425

JAN 11 1990 - 11 35 AM

INTERSTATE COMMERCE COMMISSION

MORTGAGE AND SECURITY AGREEMENT

MORTGAGE AND SECURITY AGREEMENT ("Agreement"), dated January 10, 1990 between RESIDUAL BASED FINANCE CORPORATION, an Illinois corporation, ("Debtor"), having its principal place of business and mailing address at Three First National Plaza, Suite 1240, Chicago, Illinois 60602, and AID ASSOCIATION FOR LUTHERANS, its successors and assigns (the "Secured Party") having its principal place of business at 4321 North Ballard Road, Appleton, Wisconsin 54919.

WHEREAS, Debtor has agreed to deliver this Agreement to Secured Party pursuant to that certain Senior Secured Note Purchase Agreement between Debtor and Secured Party, dated as of January 10, 1990, (the "Note Purchase Agreement") and the Senior Secured Promissory Note(s) issued pursuant thereto (the "Notes") as a condition precedent to Secured Party's extending credit to Debtor pursuant to that Note Purchase Agreement;

NOW, THEREFORE, to induce the Secured Party to extend credit to Debtor, Debtor agrees as follows:

Article I  
Creation of Security Interest

1. Debtor hereby grants to Secured Party a security interest in the railroad cars described in Exhibit A hereto attached and any and all substitutions, replacements, and accessions thereto or therefor to which Debtor acquires title and the proceeds thereof, including without limitation insurance proceeds (the "Cars").

2. In addition, Debtor hereby grants to Secured Party an assignment of and security interest in all of Debtor's rights in and to the Lease Agreement (the "Lease") dated as of December 29, 1989 between RESIDUAL BASED FINANCE CORPORATION, as Lessor, and BURLINGTON NORTHERN RAILROAD COMPANY, as Lessee, and attached hereto as Exhibit B, including without limitation any and all rents, reserved rents, proceeds of sale from sale of the Cars, amounts payable by the Lessee in lieu of rent during periods of rental abatement, and any and all other amounts due under the Lease, but subject to those matters set forth on Exhibit C attached hereto. All sums received shall be held by Secured Party under that certain Assignment of Lease and Rents made as of January 10, 1990 between the Debtor and the Secured Party (the "Assignment"), and shall be paid and applied as provided

in the Notes and the Note Purchase Agreement. The Cars and the Lease are hereinafter collectively referred to as the "Collateral".

3. The Collateral is given to secure all of the Debtor's obligations under the Notes and the Note Purchase Agreement and all of Debtor's obligations and liabilities arising out of Debtor's covenants, warranties and representations contained herein and in the Assignment (the "Obligations").

Article II  
Debtor's Covenants, Representations and Warranties

The Debtor covenants, represents and warrants that:

1. The Cars are leased to BURLINGTON NORTHERN RAILROAD COMPANY ("Lessee") pursuant to the Lease. Except for (i) the security interests granted hereby, and (ii) Lessee's rights under the Lease, Debtor is the sole owner of the Collateral, which is free and will remain free of any lien, security interest or encumbrance, and Debtor will defend the Collateral against all claims and demands, which Secured Party deems to be adverse to its interests, of any person at any time claiming the same or any interest therein.

2. The Cars constitute goods which are mobile and which are of a type normally used in more than one jurisdiction and the Debtor is located in Illinois. The Debtor shall not change its location without notifying the Secured Party in advance. The Cars will be maintained in accordance with the terms of the Lease and will not be or suffered to be wasted, misused, abused or to deteriorate, and will not be used in violation of any law, ordinance or regulation of any governmental authority insofar as it adversely affects the value of the Lease, the Cars or the security interests granted hereunder.

3. The Cars shall be insured with such carriers and in such amounts and against such risks as provided for in the Lease. Debtor hereby appoints Secured Party the attorney for the Debtor in endorsing settlement drafts payable to the Debtor and hereby assigns to Secured Party all sums which may become payable to the Debtor under any insurance, including return premiums and dividends, as additional security for the Obligations.

4. Debtor will pay or cause to be paid as provided in the Lease, when due, all taxes and assessments upon the Collateral or its operation or use.

5. At its option, and without any obligation to do so, Secured Party may discharge or pay any taxes, liens, security interests, or other encumbrances at any time levied or placed on or against the Collateral or Debtor in breach of this Agreement, and may pay for insurance on the Collateral and may pay for its maintenance and preservation if Lessee fails to do so, and may have all of Debtor's rights against the Lessee in respect of such obligations.

6. The Collateral will not be sold, transferred, substantially modified (except to the extent permitted in the Lease) or disposed of, without the prior written consent of the Secured Party. Notwithstanding the foregoing prohibition on sale or transfer of the Cars by Debtor, Debtor may, upon written notice to the Secured Party and compliance with the other provisions hereof, sell or otherwise transfer (but not encumber) all, but not less than all, the Cars to any "affiliate" (defined below), and any "institutional investor" (defined below) or, with the consent of Secured Party, which shall not be unreasonably withheld, any other entity. Any transferee shall execute and deliver an agreement in form and content satisfactory to Secured Party to assume all the executory obligations of Debtor under this Agreement and all related documents. Upon any such transfer, except a transfer to an affiliate, the Debtor shall have no further obligation under this Agreement or any related document, except any obligation or liability which may arise out of breach by Debtor of any representation, warranty or covenant or any liability based on a finding of fraud. The term "affiliate" means any company which owns 80% or more of the voting stock of Debtor, any company 80% or more of whose stock is owned by Debtor, any successor to Debtor by merger and any company which acquires all or substantially all the assets of Debtor. The term "institutional investor" means any of the following entities with net worth of at least \$10,000,000: any bank, bank holding company, savings institution, trust company, insurance company, finance company or leasing company, or any parent or subsidiary of any of the foregoing entities whose obligations to Secured Party are guaranteed by such entity.

7. Debtor shall execute from time to time, alone or with Secured Party, any Security Agreements, UCC Financing Statements, UCC Continuation Statements or other documents and do such other acts considered by Secured Party to be reasonably necessary or desirable to perfect or protect the security interests hereby created, and pay all cost and expenses (including without limitation reasonable fees and expenses of counsel and filing fees) related to the

preparation and filing of any Security Agreements, UCC Financing Statements, UCC Continuation Statements or other documents related to the perfection or protection of the security interests hereby created. Debtor hereby authorizes Secured Party as Debtor's agent and attorney in fact to execute and file in any appropriate office Security Agreements, UCC Financing Statements, UCC Continuation Statements and similar instruments signed by Secured Party alone. A carbon, photographic or other reproduction of a financing statement or this or any other security agreement shall be sufficient as a financing statement.

8. If an Event of Default occurs and is continuing, Debtor hereby appoints the Secured Party as Debtor's true and lawful attorney, with full power of substitution, to enforce Debtor's rights as Lessor under the Lease, and to take any action which the Secured Party may deem necessary or appropriate to create, perfect, protect and preserve the secured interests of the Secured Party in the Collateral. Notwithstanding the foregoing, Debtor will, upon written direction from the Secured Party and at Debtor's expense (but at all times subject to the non-recourse provisions of Article V-7 hereof) take all actions necessary or desirable, including without limitation, litigation, to enforce Debtor's rights in or under the Lease and in such event will pay over to the Secured Party all proceeds and profits received from any such action.

9. The Debtor has delivered to Secured Party the original Lease assigned hereunder. All other copies of the Lease in existence are marked on their faces and signature pages to indicate their status as non-original copies only.

### Article III Events of Default

Debtor shall be in default under this Agreement upon the happening of any default or Event of Default as set forth in the Note Purchase Agreement.

### Article IV Secured Party's Remedies

Upon an Event of Default hereunder, Secured Party shall have the rights and remedies of a Secured Party under the Uniform Commercial Code as in effect in the

State of Wisconsin, under the Interstate Commerce Act, and all other applicable laws. Without limiting the generality of the foregoing, Secured Party may, upon default, exercise the following rights and remedies:

1. Secured Party may peaceably by its own means or with judicial assistance enter the premises where any Collateral is located and take possession of the Collateral, or render it unusable, or dispose of the Collateral on such premises, and Debtor will not resist or interfere with such action.

2. Secured Party may require Debtor to assemble all or any part of the Collateral and make it available to Secured Party at any place within the continental limits of the United States reasonable under the circumstances as designated in a notice sent to Debtor.

3. Debtor hereby agrees that a notice sent to him at least thirty (30) days before the time of any intended public sale or of the time after which any private sale or other disposition of the Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition.

4. Secured Party may incur attorneys' fees and expenses in exercising any of its rights and remedies upon default, which fees and expenses shall become part of Secured Party's reasonable expenses of retaking, holding, preparing for sale and the like. Debtor will reimburse Secured Party on demand for all such expenses.

5. Debtor agrees that if any warranty or representation contained herein should prove to be untrue or incorrect in any material respect when made, notwithstanding any other provisions contained herein or in any other agreement between the Debtor and Secured Party, the Secured Party may at its option terminate this Agreement and rescind the loan made in connection with this Agreement, and Debtor shall pay to Secured Party the principal amount due on the Note(s) together with accrued interest, plus costs and expenses incurred by the Secured Party arising out of enforcement of this provision.

#### Article V Miscellaneous

1. The remedies contained herein are in addition to those granted by Debtor to Secured Party in the Note Purchase Agreement as to the Collateral which is the

subject of this Agreement. No delay or omission of the Secured Party to exercise any remedy shall exhaust or impair any remedy of the Secured Party, nor shall any waiver by the Secured Party extend to or be taken to affect any subsequent default. No remedy hereunder is intended to be exclusive of any other remedy, but shall be cumulative to any and every other remedy to which the Secured Party is entitled. The Secured Party shall not be required first to look to, enforce or exhaust any other security, collateral or guarantees.

2. This Agreement shall be deemed delivered in the State of Wisconsin and the rights and obligations of the parties hereunder shall be construed and interpreted in accordance with the laws of the State of Wisconsin.

3. Any notice or notification required to be given or may be given by mailing such notice, postage prepaid, to Debtor's address as it appears at the beginning of this Agreement.

4. All the terms, conditions and covenants of this Agreement shall inure to the benefit of and bind the successors and assigns of the respective parties hereto.

5. This Agreement may not be changed orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

6. This Agreement shall be subject to the right of the Lessee under the Lease to use and possess the Cars so long as Lessee is not in default under the Lease.

7. Notwithstanding anything herein to the contrary (except as provided in the next succeeding sentence), no recourse shall be had against the Debtor or against any incorporator, shareholder, officer or director of the Debtor for any obligation to make payments hereunder, it being understood that all such obligations are payable solely from payments under the Lease and from the other Collateral. Liabilities which may be based upon a finding of fraud, or which may arise out of any of the Debtor's representations and warranties (or obligations relating to such representations and warranties), are recourse obligations of the Debtor but (except for liabilities which may be based upon a finding of fraud) shall be without recourse to any incorporator, shareholder, officer or director of the Debtor.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first above written.

DEBTOR:

SECURED PARTY:

RESIDUAL BASED FINANCE CORPORATION

AID ASSOCIATION FOR LUTHERANS

By *Vincent Kolber*

By *R. Jerry Scheel*

Title *President*

Title *Assistant Vice President - Securities*

Attest *Vincent Kolber*  
Title *Secretary*

Date: January *9*, 1990

Date: January *10*, 1990

State of Illinois )  
County of *Cook* ) SS

On this *10<sup>th</sup>* day of *January*, 1990, before me personally appeared, *Vincent G. Kolber*, to me personally known, who being by me duly sworn, says that he is the *President* of Residual Based Finance Corporation, that the seal affixed to the foregoing instrument is the corporate seal of the corporation, that the instrument was signed and sealed on behalf of the corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of the corporation.

[SEAL] OFFICIAL SEAL  
M ANN CORRIGAN  
NOTARY PUBLIC STATE OF ILLINOIS  
MY COMMISSION EXP MAY 25, 1992

*M. Ann Corrigan*  
Notary Public

My commission expires *May 25, 1992*



EXHIBIT A

EQUIPMENT:

- (i) Fifty-nine (59), 1980 built, approximately 4,750 cubic foot capacity, 100-ton covered hopper cars bearing the following Association of American Railroads ("A.A.R.") reporting marks:

BN 465241 through BN 465266  
BN 465268 through BN 465300

The above-referenced hopper cars were formerly registered with the A.A.R. under the following reporting marks:

FTCX 80039 through 80065, except 80058  
FTCX 80067 through 80100, except 80094

- (ii) Sixty-four (64), 1980 built, 4,750 cubic foot capacity, 100-ton covered hopper cars bearing the following, A.A.R. reporting marks:

BN 465001 through BN 465064

The above-referenced hopper cars were formerly registered with the A.A.R. under the following reporting marks:

OFCX 102250 through 102299  
OFCX 260391  
OFCX 260393 through 260396  
OFCX 260398 through 260401  
OFCX 260403  
OFCX 260406 through 260409

EXHIBIT B

**LEASE AGREEMENT**

This Agreement dated as of the 29th day of December, 1989 between **RESIDUAL BASED FINANCE CORPORATION**, an Illinois corporation, Three First National Plaza, Chicago, Illinois 60603 (hereinafter called "Lessor"), and **BURLINGTON NORTHERN RAILROAD COMPANY**, a Delaware corporation, with its principal office at 2900 Continental Plaza, 777 Main Street, Ft. Worth, Texas 76102 (hereinafter called "Lessee"), **WITNESSETH THAT:**

In consideration of the mutual terms and conditions hereinafter set forth, Lessor and Lessee hereto agree as follows:

**ARTICLE 1: LEASE**

Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, the cars shown on each Rider hereto and such additional Riders as may be added from time to time by agreement of the parties (all such cars being hereinafter individually referred to as a "Car" and collectively referred to as the "Cars"). Each Rider shall set forth a description of the Cars covered thereby, including such facts as the number of Cars of each type, the Association of American Railroads ("AAR") or United States Department of Transportation ("DOT") specifications, rental charges, term throughout which the Car or Cars shall remain in Lessee's service, any renewal options, the delivery location and such other information as may be desired by both parties, including any variation from the terms of this Agreement. In the event of any conflict between this Agreement and any Rider, the Rider shall control with respect to the Cars subject to such Rider. It is the intent of all parties to this Agreement to characterize this Agreement as a true lease.

**ARTICLE 2: TERM**

The term of this Agreement with respect to each Car shall commence on the date of delivery to and acceptance of such Car by Lessee in the manner set forth in Article 3 and shall terminate, unless otherwise terminated by any other provision hereof, on the date specified in the applicable Rider attached hereto (hereinafter referred to as the "Lease Term").

**ARTICLE 3: DELIVERY AND ACCEPTANCE**

Lessor will, at its expense, deliver the Cars to the Lessee at the interchange point(s) on Lessee's lines specified in the applicable Rider. Lessor's obligation as to such delivery shall be subject to all delays resulting from causes beyond its control. Upon delivery, Lessee will have the right to inspect each Car and will accept such Car if it: (a) complies with the description set forth in the Rider, (b) is acceptable for interchange service in conformity with AAR Interchange Rules and (c) is structurally sound and suitable for loading the commodity for which it is to be used. Lessee retains the right to reject any Car and will notify Lessor, in writing, within ten (10) business days after delivery, of Lessee's rejection of the Car and the specific reason

why the Car does not meet Lessee's standards or requirements as set forth in the preceding sentence. Failure to notify Lessor within such ten (10) days as to the rejection of a Car or the loading of any Car by Lessee or at its direction will constitute acceptance of the Car by Lessee. Upon delivery and acceptance of all of the Cars set forth in a Rider (except any Cars rejected within such ten (10) days), if Lessor so desires and so notifies Lessee, Lessee shall execute and deliver to Lessor a Certificate of Acceptance in the form attached hereto as Exhibit A.

#### ARTICLE 4: MARKINGS

At the time of delivery of the Cars by Lessor to Lessee, Lessor will have the Cars plainly marked on each side with the identification marks of Lessee. In addition, Lessee will have (and Lessor will pay Lessee's costs thereof), or will grant Lessor or its agent, at their sole cost, expense and risk, access to the Cars to have, each Car plainly marked on each side with a stencil stating "Leased and Subject to a Security Interest Recorded with the I.C.C." or such other marking as Lessor approves. If such marking shall at any time be removed or become illegible, wholly or in part, Lessee shall immediately cause such markings to be restored or replaced, at its expense. Lessee shall not otherwise place, or permit to be placed, any lettering or marking of any kind upon the Cars without Lessor's prior written consent, which shall not be unreasonably withheld.

#### ARTICLE 5: PAYMENT OF RENTALS

A. Lessee agrees to pay Lessor the rent specified in the Rider for each Car. The rent for each Car shall be paid in quarterly installments, payable for each quarter on the fifteenth day of the second month of such quarter or, in the case of a partial quarter, at the end of such partial quarter. Interim rent, if any, shall be paid at the same time as the first quarterly payment. If any of the rent payment dates falls on a Saturday, Sunday or legal holiday, the rent shall be due on the next succeeding business day. In the event Lessor notifies Lessee in writing that the right to receive rents has been assigned in accordance with Article 16 C hereof, Lessee shall make payment in the manner designated in such notice or as otherwise designated in writing by such assignee.

B. Lessee will, on demand, pay to Lessor interest at the higher of (i) 12% per annum, or (ii) the prime rate, as published in the Wall Street Journal, plus 2% (or the maximum rate permitted by applicable law, whichever is less) on any payment of rent not paid when due for any period during which such rent is overdue.

C. This Lease is a net lease and Lessee's obligation to pay rent and other amounts payable hereunder shall be absolute and unconditional, and, except as herein specifically provided, Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due to any existing or future claims of the Lessee against Lessor under this Lease or otherwise; nor, except as otherwise expressly provided herein, shall this lease terminate, or the respective obligations of Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss or destruction of all or any of the Cars from whatsoever cause, it being the intention of the parties hereto that the rents and other amounts payable by Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

#### **ARTICLE 6: TITLE**

Lessee acknowledges and agrees that by the execution of this Agreement it does not obtain, and by payments and performance hereunder it does not, and will not, have or obtain any title to the Cars or any property right or interest therein, legal or equitable, except solely as Lessee hereunder and subject to all of the terms hereof.

#### **ARTICLE 7: POSSESSION AND USE**

So long as Lessee is not in default under this Agreement, Lessee will be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner customarily used in the railroad business, in the use, service and manner for which the Cars were designed, for transporting the commodities shown in the applicable Rider.

#### **ARTICLE 8: MAINTENANCE**

The Lessee shall, at its own cost and expense, maintain the Cars in good condition and repair, ordinary wear and tear resulting only from proper use thereof excepted, and acceptable for use in interchange in conformity with AAR Interchange Rules and each Car shall be delivered to Lessor in such condition at the termination of the Lease Term with respect to such Car. Any parts installed or replacements made by Lessee upon any Car shall be considered accessions to such Car and title thereto shall be immediately vested in Lessor, without cost or expense to Lessor.

#### **ARTICLE 9: MODIFICATIONS**

In the event the AAR, DOT or any other governmental agency having jurisdiction over the operation, safety or use of railroad equipment requires that the Cars be added to, modified, or in any manner adjusted in order to qualify them for operation in railroad interchange, Lessee will cause such addition, modification or adjustment to be made at its own expense; provided, however, that the Lessee may, in good faith and by appropriate legal proceedings, contest the validity or application of any such requirement in any reasonable manner which does not adversely affect the rights or interests of the Lessor in the Cars or hereunder. Except for alterations or changes required by law, Lessee shall not, without the prior written consent of Lessor, effect any change in the design, construction or body of the Cars. Lessor's consent to modifications or additions to the Cars which do not impair the value or utility of the Cars shall not be unreasonably withheld, as long as such modifications or additions which are not readily removable without material damage to or diminution of the Cars are considered accessions to the Cars.

#### **ARTICLE 10: COMPLIANCE WITH REGULATIONS**

Lessee shall, at its own expense, comply with all governmental laws, regulations and requirements, with the AAR Interchange Rules and with the rules and regulations of the Federal Railway Administration with respect to the use, maintenance, and operation of the Cars. Lessee shall be responsible for obtaining all necessary railroad permissions, approvals and consents for use of the Cars and shall

bear all risk of failure to obtain such permissions, approval and consent, or of cancellation thereof. Lessor shall take all actions reasonably requested by Lessee in order to assist Lessee in obtaining such permissions, approvals or consents.

#### **ARTICLE 11: CASUALTY OCCURRENCE**

A. In the event that any Car shall be or become lost, stolen, confiscated, worn out, or, in Lessee's good faith opinion, irreparably damaged or destroyed (any such occurrence or determination being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence, but in no event later than 20 days after the date of such occurrence) inform Lessor in regard thereto.

B. Following the occurrence of a Casualty Occurrence with respect to any Car, the Lessee shall, on the first rental payment date after its notice of a Casualty Occurrence with respect to such Car, pay to Lessor the casualty value for such rental payment date as set forth in the casualty schedule of the applicable Rider (hereinafter called a "Casualty Payment") plus any other sums due on or prior to such date in respect of such Car then remaining unpaid. If no casualty schedule is contained in the applicable Rider, the Lessee shall pay to the Lessor the amount prescribed by the AAR Interchange Rules for the loss or destruction of such Car.

C. Upon payment of all sums required to be paid pursuant to Article 11 B hereof in respect of any Car, the obligation to pay rent for such Car accruing subsequent to the Casualty Payment date will terminate and the Car will be deleted from this Agreement but the Lessee shall continue to pay rent for all other Cars.

D. Upon payment of the applicable amounts following a Casualty Occurrence, title to the Car which has suffered such Casualty Occurrence shall immediately vest in Lessee and Lessor will take such steps as necessary to transfer such title to Lessee.

#### **ARTICLE 12: PROHIBITION OF LIENS BY LESSEE**

Lessee, at its own expense, will promptly pay or cause to be paid, or otherwise satisfy and discharge, any and all sums claimed by any party by, through or under Lessee or its successors or assigns which, if unpaid, might become a lien upon any Car, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not adversely affect the title, property or rights of Lessor created or purported to be created hereunder or the security interest of any Lease Assignee (defined in Article 16).

#### **ARTICLE 13: TAXES**

Lessee agrees to assume responsibility for the filing and payment of all taxes, assessments and other governmental charges levied or assessed upon or in respect of the Cars or the use of the Cars under the terms hereof (exclusive, however,

of any tax based on the net income of Lessor), including but not limited to any ad valorem or property taxes, all licence, franchise or registration fees, assessments, fines, levies, tariffs, switching, demurrage and any sales, use or similar taxes payable on account of the leasing of the Cars; provided, Lessee will be under no obligation to pay any such taxes or other charges so long as Lessee in good faith and by appropriate legal or administrative proceedings contests the validity or amount thereof and the nonpayment thereof does not adversely affect the title, property or rights of Lessor, or the security interest of any Lease Assignee, in or to any Car.

Notwithstanding the foregoing, Lessee shall not be responsible for any tax imposed by the United States or any state or governmental subdivision thereof which is measured solely by Lessor's net income.

In order to avoid recapture of any tax benefit claimed by Lessor with respect to the Cars, including, but not limited to, any deduction allowable under Section 168 and related Sections of the Internal Revenue Code of 1986, as amended (the "Code"), Lessee shall: (i) use the Cars predominantly within the continental United States, in accordance with the Code; (ii) shall cause third parties having control over their use to use the Cars predominantly within the continental United States, in accordance with the Code; and (iii) shall not take any action that will cause the Cars to be considered tax-exempt use property within the meaning of the Code.

If Lessor (or any owner of a partnership or beneficial interest of Lessor) shall lose by disallowance, recapture or otherwise, any portion of said tax benefits as a result of Lessee's breach of this Agreement (including but not limited to this Article 13), Lessee agrees to pay Lessor or such owner a sum which, after deduction of all taxes required to be paid by Lessor or such owner in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to the amount of tax benefits so lost by Lessor or such owner, which sum shall be payable on written demand made at any time after payment of the tax attributable to the portion of the tax benefit lost; provided, however, that Lessee shall be under no obligation to indemnify Lessor for the amount of any tax benefits lost with respect to any Car for which Lessee has paid to Lessor the casualty value set forth in Article 11 hereof.

#### **ARTICLE 14: INSURANCE**

Lessee will, at all times prior to the return of the Cars to Lessor, at its own expense, cause to be carried and maintained (i) property insurance in respect of the Cars and (ii) public liability insurance with respect to third party personal injury and property damage, against such risks and in such amounts as is consistent with prudent industry practice, but in any event, against such risks and in such amounts customarily insured against by Lessee in respect to similar equipment owned or leased by it. Lessee will provide to Lessor and each Lease Assignee, upon request, a statement of the insurance maintained pursuant to this Article, including any self-insurance.

#### **ARTICLE 15: INDEMNITIES**

A. Lessee agrees to indemnify and hold Lessor harmless from any loss, damage, liability, claim and expense, including reasonable attorney fees, arising out of the use or operation of the Cars during the term of this Agreement, excepting,

however, any loss, damage, liability, claim or expense which is attributable to the negligence or willful misconduct of Lessor, its agents or employees.

B. Lessor shall not be liable for any loss or damage to any commodities loaded or shipped in the Cars. Lessee agrees to assume responsibility for, to indemnify Lessor against, and to hold Lessor harmless from, any claim in respect of such loss or damage.

#### ARTICLE 16: ASSIGNMENT; SUBLEASE; SECURITY INTEREST

A. So long as Lessee shall not be in default under this Agreement, Lessee may sublease the Cars to others, provided, however, that the rights of any such sublessee shall be subject and subordinate to, and any such sublease shall be made expressly subject and subordinate to, all of the terms of this Lease. In addition, before Lessee enters into any such sublease, Lessee must obtain Lessor's prior approval, and Lessor agrees that such approval shall not be unreasonably withheld and that such determination is to be given within 5 business days from the date of such request. No sublease of any Car shall in any way discharge or diminish any of Lessee's obligations to Lessor hereunder including, but not limited to, the payments due to Lessor pursuant to Article 5 of this Agreement.

B. This Agreement and the applicable Rider(s) shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. It is understood and agreed that Lessor or any Lease Assignee may assign this Agreement with respect to some or all of the Cars to any security trustee, secured party or owner of such Cars (each herein a "Lease Assignee"). Upon delivery of a notice of assignment to Lessee, Lessor as used herein shall mean such Lease Assignee. Lessee shall consent to and acknowledge in writing, upon receipt of notice of assignment, such assignment of this Agreement by Lessor or any Lease Assignee; provided, that any such consent and/or acknowledgement shall not in any manner increase or change the rights, obligations, duties or legal position of the Lessee. Lessor agrees that the rights of any Lease Assignee shall be subject to all the terms and conditions of this Agreement. Each Lease Assignee shall agree that the rights of any subsequent Lease Assignee shall also be subject to all the terms and conditions of this Agreement.

C. Upon notice to Lessee from any security trustee, secured party or owner that an event of default has occurred under such lease or financing agreement, such party may require that all rent shall be paid directly to such party and/or that the Cars be returned to such party, but only upon completion or termination of this Lease, including any optional renewal term pursuant to Article 22 hereof. Any assignment of this Agreement by Lessor or any Lease Assignee to any security trustee or secured party shall not subject that security trustee or secured party to any of Lessor's or such Lease Assignee's obligations hereunder. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of any Lease Assignee in and to the sums payable by the Lessee under any provision of this Agreement shall not be subject to any abatement whatsoever and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever by reason of (except as provided below) any interruption from whatsoever cause in the use, operation or possession of the Cars or any part thereof, or any damage to or loss or destruction of the Cars or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause

whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of the Lease Assignee, the Lessee shall be unconditionally and absolutely obligated to pay the Lease Assignee all of the rents and other sums which are the subject matter of the assignment, (ii) the Lease Assignee shall, if an Event of Default shall have occurred and be continuing, have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of Lease Assignee) which by the terms of this Agreement are permitted or provided to be exercised by the Lessor (except those rights, privileges and remedies related to amounts payable to the Lessor pursuant to Articles 13 and 15 hereof which shall remain enforceable by the Lessor, but subordinate to all amounts payable to any Lease Assignee), but if no Event of Default shall have occurred and be continuing, the Lease Assignee and the Lessor may each exercise their respective rights, privileges and remedies stated in this Agreement to be provided for their respective benefits, and (iii) all obligations of the Lessor to the Lessee under this Agreement shall be and remain enforceable by the Lessee against, and only against, the Lessor.

Notwithstanding the foregoing, it is understood and agreed that the right, title and interest of any Lease Assignee in, to and under this Agreement and the rents and other sums due and to become due hereunder shall by the express terms granting and conveying the same be subject to the interest of the Lessee in and to the Cars and the right of Lessee to possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement so long as no Event of Default has occurred and is continuing under this Agreement.

#### ARTICLE 17: RETURN OF CARS

Upon the expiration or earlier termination of this Agreement with respect to any Car, including any optional renewal term pursuant to Article 22 hereof, Lessee will, at its own cost and expense, at the request of Lessor, deliver possession of such Car to Lessor upon such tracks of the Lessee as Lessor may reasonably designate taking into account, among other things, Lessee's storage capacity, security and access, or, in the absence of such designation, as the Lessee may select and permit Lessor to store such Car on such tracks for a period not exceeding 60 days. The Lessee will transport each Car once at any time within such 60 day period from such storage location to any reasonable destination or interchange point within the continental United States on railroad lines operated by Lessee, f.o.b., all as directed by Lessor upon not less than 15 days prior written notice to Lessee. Lessee shall not be obligated to transport any Car more than once at the request of Lessor, after which Lessee will have no further obligation with respect to any Car so moved and such Car will be deleted from this Agreement. During any such storage period Lessee will permit Lessor or any person designated by Lessor, at their own risk, to inspect the Cars; provided, however, that Lessee will not be liable, except in the case of gross negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising the rights of inspection granted under this sentence. Lessee shall be responsible for the Cars in accordance with the terms of this Agreement until such time as each Car is delivered pursuant to Lessor's disposition instructions but in no event shall such responsibility extend beyond the storage period. The Cars shall be delivered free from all charges and liens except those which may result from an act or omission of Lessor, free from all accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee, in the condition specified in Article 8 and free from AAR Rule 95-B defects.

In the event that any Car is not delivered and stored as hereinabove provided within 15 days after the expiration of this Agreement, Lessee will pay to Lessor an amount equal to the daily equivalent of the rental then in effect for such Car for each day after the expiration date of this Agreement until such Car is delivered and stored as instructed by Lessor.

#### ARTICLE 18: INSPECTION

Lessor shall, at its sole cost and expense, at any reasonable time during normal business hours and without interfering with Lessee's operations, have the right to enter the premises of Lessee for the purpose of inspecting the Cars to ensure Lessee's compliance with its obligations hereunder. Lessor shall enter and occupy Lessee's property at its sole risk and shall be subject at all times to Lessee's operating and safety requirements. Any injury, death or property damage arising out of such entry, occupancy and inspection, even if caused or contributed to by Lessee's negligence, gross or otherwise, shall be the entire responsibility of Lessor, and Lessor will indemnify and hold harmless Lessee from any and all such liabilities. Lessor will obtain permission from a local Lessee operations officer 48 hours before entry and such permission shall be granted subject to the above.

#### ARTICLE 19: DISCLAIMER

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR ANY OTHER MATTER RELATING TO THE CARS. LESSEE CONFIRMS THAT IT HAS SELECTED THE CARS ON THE BASIS OF ITS OWN JUDGMENT AND EXPRESSLY DISCLAIMS RELIANCE UPON ANY STATEMENTS, REPRESENTATIONS OR WARRANTIES MADE BY LESSOR, AND LESSEE ACKNOWLEDGES THAT LESSOR IS NOT A MANUFACTURER OR VENDOR OF ANY OF THE CARS.

#### ARTICLE 20: REPRESENTATIONS AND WARRANTIES

Lessee represents and warrants that (a) Lessee is a duly organized, validly existing corporation in good standing under the laws of the state of its incorporation and is duly qualified to do business in all jurisdictions in which qualification is required in order for it to carry out the transactions contemplated by this Agreement; (b) Lessee has full corporate power, authority and legal right to execute, deliver and perform this Lease, and the execution, delivery and performance hereof has been duly authorized by all necessary corporate action of Lessee; and (c) there is no action, suit, investigation or proceeding by or before any court, arbitrator, administrative agency or other governmental authority pending or threatened against Lessee which involves the Cars or the transactions contemplated by this Agreement.

#### ARTICLE 21: DEFAULT

A. The occurrence of any of the following events shall be an Event of Default by Lessee:

(i) The nonpayment by Lessee of any sum required herein to be paid to Lessor by Lessee and such nonpayment shall continue for ten (10) days after Lessee's receipt of written notice from Lessor;

(ii) Lessee shall fail to maintain the insurance required by Article 14;

(iii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within thirty (30) days of Lessee's receipt of written notice from Lessor;

(iv) The Lessee becomes insolvent or fails generally to pay its debts as such debts become due, or causes or suffers an order for relief to be entered against it under applicable federal or state bankruptcy law, or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a custodian, trustee or receiver for the Lessee or for the major part of its property; or

(v) Any representation or warranty made by Lessee herein or in any other document delivered to Lessor by Lessee related to this Agreement shall have been false or incorrect in any material respect on the date when made and such breach or default shall continue for a period of thirty (30) days after Lessee's receipt of written notice from Lessor of such breach or default.

B. Upon the occurrence of any Event of Default, Lessor or any Lease Assignee may:

(i) By notice in writing to Lessee, terminate this Agreement whereupon all rights of Lessee to use the Cars shall terminate as though this Agreement had never been entered into, but Lessee shall remain liable as hereinafter provided; upon thirty (30) days written notice to Lessee, sell the Cars in a commercially reasonable manner and recover from Lessee, as damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the stipulated loss value of such Cars as of the rental payment date immediately preceding the date of such sale, as shown in the applicable Rider, over the net proceeds of such sale, plus interest on such amount from the date of termination until payment at the rate specified in Article 5B. A sale will be considered commercially reasonable for purposes of this provision if (1) notice of the sale is published at least ten (10) days prior to the date of such sale in the Wall Street Journal and in one other publication designated by Lessee within five days after Lessee receives notice of such sale as provided above, (2) interested persons are permitted to inspect the Cars to the extent Lessee makes them available for inspection, and (3) the sale is conducted by public auction; or

(ii) Terminate Lessee's right to possession and use of the Cars, whereupon all rights and interest of Lessee in the Cars shall terminate and thereupon Lessor or any Lease Assignee may enter upon any premises where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee, and Lessor or any Lease Assignee shall nevertheless have the right to recover from Lessee any and all rent and other amounts which are then due; or

(iii) Proceed by any lawful means to enforce performance by Lessee of this Agreement.

Lessee shall bear the costs and expenses, including without limitation reasonable attorney fees, incurred by Lessor or any Lease Assignee in connection with the exercise of its remedies pursuant to this Article 21 B. No remedy referred to in this Article 21 B is intended to be exclusive but each shall be cumulative and in addition to any other remedy otherwise available to Lessor or any Lease Assignee at law or in equity.

#### **ARTICLE 22: RENEWAL OPTION**

Provided that no Event of Default, or any event which with lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall have the right at the expiration of the Lease Term of any Rider to renew and extend this Lease according to the renewal terms (if any) specified in such Rider. The renewal term with respect to the Cars shall be subject to all the terms of this Lease including those contained in the applicable Rider. The Lessee shall give Lessor written notice not less than 180 days (but not more than 360 days) prior to the end of the Lease Term of any Rider of its election to exercise the renewal option provided for in such Rider.

#### **ARTICLE 23: RECORDS**

Lessee will perform all record keeping functions related to the use of the Cars by Lessee and other railroads in accordance with the AAR Interchange Rules and the AAR Code of Car Service and Code of Car Hire Rules-Freight. Lessee agrees to furnish this information to Lessor from time to time as Lessor may reasonably request.

#### **ARTICLE 24: GOVERNING LAWS**

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois. This Agreement, together with any Rider(s) attached hereto, contains all of the terms and conditions agreed to between the parties, and no other prior agreements, oral or otherwise, concerning the subject matter of this Agreement, shall be deemed to exist or bind either party hereto. The terms of this Agreement and the rights and obligations of the parties may be changed only by writing executed by both parties.

#### **ARTICLE 25: SEVERABILITY**

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

#### **ARTICLE 26: FURTHER ASSURANCES; FINANCIAL INFORMATION**

A. Lessee will, at its expense, promptly and duly execute and deliver to Lessor such further documents and assurances and take such further action as Lessor may from time to time reasonably request in order to more effectively carry out the

intent and purpose of this Agreement and to establish and protect the rights, interests and remedies created or intended to be created in favor of Lessor hereunder, including, without limitation, the execution, delivery, recordation and filing of documents with the Interstate Commerce Commission, and the execution and filing of Uniform Commercial Code financing statements in the appropriate jurisdictions.

B. Lessor may, at Lessor's expense, cause each security agreement (or notice thereof) entered into as permitted by Article 16 to be duly filed, recorded or deposited in such public offices within or without the United States as the Lessor or any Lease Assignee may determine to be advisable for the protection of Lease Assignee's security interest. Lessee agrees to execute, acknowledge and deliver any instruments required by law or reasonably requested by Lessor in connection therewith.

C. Obligations of Lessee which by their terms are to be performed after termination of this Agreement shall survive termination of this Agreement.

#### **ARTICLE 27: ANNUAL REPORTS**

A. Within 90 days after written request by Lessor or any Lease Assignee, which request may not be made within 12 months after the most recent such request, if any, Lessee will furnish to Lessor or any Lease Assignee a statement, certified by an office of Lessee (a) showing the number, description and car number of each of the Cars then leased hereunder, (b) showing the number, description and car number of each of the Cars that suffered a Casualty Occurrence since the end of the period covered by the most recent such statement (or, if applicable, the date of this Agreement), (c) stating that Lessee has procedures in effect to ensure that the markings required by Article 4 are preserved or replaced if any Car is repainted and (d) stating that Lessee knows of no breach of such procedures which has not been cured.

B. Lessee will furnish to Lessor and any Lease Assignee not later than 120 days after the end of each fiscal year of Lessee, a consolidated balance sheet of Lessee as at the end of such fiscal year, and the consolidated statements of income and changes in financial position of Lessee for such fiscal year, together with equivalent information for the prior fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved and audited by a nationally recognized firm of independent certified public accountants. Lessee will also furnish to Lessor and any Lease Assignee not later than 60 days after the end of each fiscal quarter of Lessee, an unaudited consolidated balance sheet of Lessee as at the end of such fiscal quarter, and an unaudited consolidated statement of income of Lessee for such fiscal quarter, together with equivalent information for the corresponding fiscal quarter of the prior fiscal year.

#### **ARTICLE 28: FINANCING ARRANGEMENTS**

Lessee acknowledges that Lessor intends to seek long-term financing for the Cars and to grant to the Lease Assignee providing such financing both an assignment of this Agreement in connection with the applicable Rider(s) and a security interest

in the Cars. In connection with such financing, Lessee agrees to provide, on written request, a Certificate in the form attached as Exhibit B and a legal opinion in the form attached as Exhibit C, both addressed to the Lease Assignee.

**ARTICLE 29: NOTICES**

All notices and requests required or permitted under this Agreement shall be in writing and shall be delivered by certified mail, overnight courier or personal delivery, addressed as follows:

If to Lessor:

Residual Based Finance Corporation  
Three First National Plaza  
Chicago, Illinois 60603

If to Lessee:

Burlington Northern Railroad Company  
2900 Continental Plaza  
Ft. Worth, Texas 76102  
Attention: Freight Equipment

If to Lease Assignee, to such address as may be provided by Lease Assignee, or to such other address as may be specified by notice given as provided hereby. Each notice shall be effective upon its delivery to the address specified.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 29th day of December, 1989.

**RESIDUAL BASED FINANCE CORPORATION**

**BURLINGTON NORTHERN RAILROAD COMPANY**

By \_\_\_\_\_

By [Signature]

Title \_\_\_\_\_

Title Gen. Mgr. - Plant Services

STATE OF TEXAS }  
COUNTY OF TARRANT } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 1989, before me personally appeared \_\_\_\_\_, to me personally known, who being duly sworn; did depose and say that such person is \_\_\_\_\_ of the Burlington Northern Railroad company and that the foregoing Lease Agreement and Equipment Rider No. 1 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments was the free act and deed of such corporation.

[seal]

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS }  
COUNTY OF COOK } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 1989, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn says that such person is \_\_\_\_\_ of Residual Based Finance Corporation, and that the foregoing Lease Agreement and Equipment Rider No. 1 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments was the free act and deed of such corporation.

[seal]

\_\_\_\_\_  
Notary Public

EXHIBIT A

**CERTIFICATE OF ACCEPTANCE**

I, the duly authorized representative for Burlington Northern Railroad Company (Lessee), do hereby certify that I have inspected each of the units of equipment identified below and Lessee has accepted each such unit under the Lease referenced below on the date and at the time and place set forth below:

**Number of Cars:**

**Description of Cars:**

**Car Numbers:**

**Delivered at:**

The equipment is subject to all the terms and conditions of the Lease Agreement between Residual Based Finance Corporation, Lessor, and Burlington Northern Railroad Company, Lessee, dated December 29, 1989 and Rider Number One (1).

**Date:** \_\_\_\_\_

**Time:** \_\_\_\_\_

\_\_\_\_\_  
**Authorized Representative of Lessee**

**BURLINGTON NORTHERN RAILROAD COMPANY  
CERTIFICATE AND AGREEMENT**

Aid Association for Lutherans  
4321 North Ballard Road  
Appleton, WI 54919

Ladies and Gentlemen:

Reference is made to the Lease Agreement (the "Lease") dated as of December 29, 1989 entered into by the undersigned BURLINGTON NORTHERN RAILROAD COMPANY (the "Lessee") and RESIDUAL BASED FINANCE CORPORATION (the "Lessor"), a true, correct and complete copy of which is attached hereto as Exhibit A. The capitalized terms used herein shall have the respective meanings set forth therefor in the Lease unless the context hereof otherwise requires.

As an inducement to and as part of the consideration for the lease financing provided by you (the "Secured Party") to Lessor with respect to the Lease, the Lessee represents and warrants to you as of the date hereof, and agrees with you as follows:

1. Corporate Organization and Authority. The Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware; has all requisite power and authority and all necessary licenses and permits to own and operate its respective properties and to carry on its business as now conducted; and is duly licensed or qualified and is in good standing as a foreign corporation in each jurisdiction in which such qualification is necessary to carry out the terms of the Lease.

2. Financial Statements. (i) The consolidated balance sheet of the Lessee and its subsidiaries as of December 31, 1988 and the consolidated statements of income and changes in financial position for the fiscal year ended on said date have been prepared in accordance with generally accepted accounting principles consistently applied, and present fairly the financial position of the Lessee and its subsidiaries on a consolidated basis as of such date and the results of operations of the Lessee and its subsidiaries on a consolidated basis for such period.

(ii) Since December 31, 1988, there has been no material adverse change in the condition, financial or otherwise, of the Lessee and its subsidiaries as shown on the balance sheet as of such date except changes in the ordinary course of business and changes disclosed in writing to you.

3. Disclosure Materials. The statements in the current filings of the Lessee with the Securities and Exchange Commission ("SEC") do not, together with any written statements furnished by the Lessee to you in connection with the negotiation of the Lease, contain as of the date thereof any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, taken as a whole, not misleading.

4. Pending Litigation. Except as has been disclosed to you in writing or in the Lessee's Annual Report on Form 10-K or quarterly report on Form 10-Q, as filed with the SEC, there are no proceedings pending or, to the knowledge of the Lessee threatened, against or affecting the Lessee or any subsidiary in any court or before any governmental authority or arbitration board or tribunal which if adversely determined would materially adversely affect the Lessee's ability to perform its obligations under the Lease. Except as has been disclosed to you in writing, neither the Lessee nor any subsidiary is in default with respect to any order of any court or governmental authority or arbitration board or tribunal, which default would materially and adversely affect the Lessee's ability to perform its obligations under the Lease.

5. Corporate Authority; No Conflict with Certificate of Incorporation, etc. The execution and delivery by the Lessee of the Lease and compliance by the Lessee with all of the provisions of the Lease (i) are within the corporate powers of the Lessee and (ii) will not violate any provisions of any law or regulation or any order of any court or governmental authority or agency and will not conflict with or result in any breach of any of the terms, conditions, or provisions of, or constitute a default under the Certificate of Incorporation or By-Laws of the Lessee or any indenture, mortgage, conditional sale, loan or credit agreement or other instrument to which the Lessee is a party or by which it may be bound or result in the imposition of any liens or encumbrances on any property of the Lessee. The Lease has been duly authorized, executed and delivered, is in full force and effect and constitutes the legal, valid and binding obligation of the Lessee, enforceable in accordance with its terms.

6. No Existing Defaults under the Lease. No Event of Default as defined in the Lease has occurred and is continuing and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute an Event of Default. To the best of Lessee's knowledge, the Lessor is not in default in its obligations under the Lease.

7. Governmental Approvals. No approval, consent or withholding of objection on the part of any regulatory body, state, Federal or local, is necessary in connection with the execution and delivery by the Lessee of the Lease or compliance by the Lessee with any of the provisions of the Lease.

8. Insurance. The insurance required by Article 14 of the Lease is in full force and effect.

9. Interest of Lessee. Lessee is the holder of all right, title and interest in the Cars as Lessee created by and pursuant to the Lease, and has no knowledge of any assignment of Lessor's interest in and to the Lease or any claim against the Lease or the Cars except the assignment to, and claim of, the Secured Party.

10. Payment of Rent. Lessee has made no payment of any rent, or other sums payable or to become payable by the Lessee under the Lease other than interim rent to the extent that the average date of delivery of the Cars was prior to December 1, 1989.

11. Obligations of Lessor. Lessor does not have any unsatisfied obligations to the Lessee arising out of or incurred in connection with the leasing of the Cars to the Lessee and no off-set exists with respect to any rent or other sums payable by the Lessee under the Lease.

12. Permits. All permits, and certificates required for the operation of the Cars by Lessee have been obtained.

13. Indemnification. The Indemnification provisions set forth in Article 15 of the Lease shall extend to and be applicable to the Secured Party, with no exception or exclusion based on any act or omission of Lessor.

14. Receipt of Assignment; Payment to Secured Party. The Lessee hereby acknowledges receipt of a copy of that certain Assignment of Lease and Rents dated \_\_\_\_\_, 19\_\_\_\_ from the Lessor to the Secured Party (the "Assignment of Lease and Rents"), and agrees to make all payments due to the Lessor under the Lease directly to the Secured Party as provided therein and in immediately available funds on or before the dates such payments are due and will not, for any reason whatsoever, seek to recover from Secured Party any monies paid to the Secured Party by virtue of the Lease. The nature of Lessee's obligation to make such payments is as set forth in Article 16 of the Lease. Lessee acknowledges that no such payment made by Lessee shall be of any force or effect unless made to the Secured Party as provided in this Section 14.

15. Approvals of Secured Party. Lessee acknowledges the right of the Secured Party to give waivers, notices, consents, approvals and releases, and to make inspections, requests, demands, agreements and elections, as provided in the Assignment of Lease and Rents, except to the extent expressly provided therein.

16. Subleases. All permitted subleases or the granting of rights to others shall never be deemed to excuse or relieve the Lessee from any of its obligations to the Lessor or the Secured Party under the Lease or this Certificate and Agreement, and shall always be made subject and subordinate to the rights of the Secured Party to the same extent the Lease is so subject.

17. Duplicate Notices. Lessee agrees to deliver to the Secured Party duplicate copies of all notices, undertakings, demands, statements, documents or other communications which it may deliver to the Lessor pursuant to or relating to the Lease or the Cars at the following address, or such other address as the Secured Party may, from time to time, specify to the Lessee in writing:

Aid Association for Lutherans  
4321 North Ballard Road  
Appleton, WI 54919  
Attn: Investment Department

18. Agreements Relating to Lease. Without the prior written consent of the Secured Party, Lessee agrees not to enter into any agreement subordinating or terminating the Lease nor enter into any agreement amending, modifying or supplementing the Lease, and any attempted subordination, termination, amendment, modification or supplement without such consent shall be null and void. In the event that the Lease shall be

amended, modified or supplemented with the written consent of the Secured Party, the Lease as so amended, modified or supplemented shall continue to be subject to the Assignment of Lease and Rents. Notwithstanding the foregoing, additional Riders to the Lease may amend the Lease as it applies to the additional Riders and the Cars that are the subject of the additional Riders so long as the rights of Secured Party are not affected thereby.

19. Continued Obligation. Subject only to Lessee's rights to possession, use and quiet enjoyment of the Cars, as provided in Article 16C of the Lease, (i) Lessee shall remain obligated under the Lease in accordance with its terms and this Certificate and Agreement, and (ii) Lessee will not take any action to terminate, rescind or void the Lease, notwithstanding the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding up, or other proceeding affecting the Lessor or any assignee of the Lessor, and notwithstanding any action with respect to the Lease which may be taken by an assignee or receiver of the Lessor or of any such assignee or by any court in any such proceeding.

20. Financial and Other Information. Lessee agrees to provide Secured Party with the information specified in Article 27 of the Lease.

21. Location of Chief Executive Offices. The chief executive office or chief place of business (as either of such terms is used in Article 9 of the Uniform Commercial Code) of Lessee is located at the address set forth in the "Notice to Lessee" Section of this Certificate and Agreement, and will not be changed unless written notice thereof is given promptly to the Secured Party.

22. Rights of Lessor and Lessee Under Lease. As between Lessor and Lessee, the execution and delivery of this Certificate and Agreement shall in no way expand their respective rights and obligations under the Lease.

23. Obligations of Secured Party and Lessee. Lessee acknowledges and confirms that nothing in this Certificate and Agreement or in the Assignment of Lease and Rents or in any other documents, obligates the Secured Party to perform any of the obligations or agreements of the Lessor or any other person or entity, unless specifically so stated. Lessee further acknowledges and confirms, to and for the benefit of the Secured Party, all of the obligations of the Lessee as set forth in the Lease.

24. Costs and Expenses. The obligation of the Lessee to pay certain costs, charges, expenses, fees and disbursements as set forth in Article 21 (Default) of the Lease, shall extend to and include the same costs, charges, expenses, fees and disbursements incurred by the Secured Party in connection with the matters referred to therein, and in connection with the enforcement by the Secured Party of its rights under this Certificate and Agreement.

25. Breach by Lessee. The breach of any warranty, representation, term, covenant or condition herein contained by the Lessee shall be deemed to be a breach of a warranty, representation, term, covenant or condition under the Lease.

26. Notice to Lessee. Notices to the Lessee hereunder shall be personally delivered or mailed to the Lessee at 2900 Continental Plaza, Fort Worth, Texas, 76102, Attention: Freight Equipment, or at such other address as the Lessee may from time to time designate in writing to the Secured Party.

27. Successor and Assigns. This Certificate and Agreement shall extend to, and be for the benefit of, the successors and assigns of the Secured Party and the Lessee.

IN WITNESS WHEREOF, each of the Lessee and Secured Party has caused this Certificate and Agreement to be executed on its behalf by its duly authorized officers and its corporate seal to be affixed hereto this \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

**BURLINGTON NORTHERN RAILROAD COMPANY**

Attest: \_\_\_\_\_

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

(Corporate Seal)

**AID ASSOCIATION FOR LUTHERANS**

Attest: \_\_\_\_\_

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

EXHIBIT B

COUNTY OF TARRANT }  
STATE OF TEXAS } ss.

On \_\_\_\_\_, 19\_\_\_\_ before me, the undersigned, a Notary Public, in and for said State, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of Burlington Northern Railroad Company, that executed the within instrument, known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors, for the purposes and consideration therein expressed.

WITNESS my hand and official seal

Notary Public, \_\_\_\_\_ County  
State of \_\_\_\_\_  
My Commission: \_\_\_\_\_

COUNTY OF \_\_\_\_\_ }  
STATE OF \_\_\_\_\_ } ss.

On \_\_\_\_\_, 19\_\_\_\_ before me, the undersigned, a Notary Public, in and for said State, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of Aid Association for Lutherans, that executed the within instrument, known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors, for the purposes and consideration therein expressed.

WITNESS my hand and official seal

Notary Public, \_\_\_\_\_ County  
State of \_\_\_\_\_  
My Commission: \_\_\_\_\_

CONSENT AND ACKNOWLEDGMENT

Residual Based Finance Corporation hereby consents to and acknowledges the foregoing Certificate and Agreement.

Residual Based Finance Corporation

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

Title: \_\_\_\_\_

**DESCRIPTION OF OPINION OF COUNSEL FOR THE LESSEE**

The opinion of Frank Kelly, Esq., counsel for the Lessee, which is called for by Article 28 of the Lease Agreement, shall be dated the date of funding and addressed to the Lender financing the Lease and shall be satisfactory in form and substance to such Lender and shall be to the effect that:

1. The Lessee is a corporation duly organized, legally existing and in good standing under the laws of the State of Delaware and has full right, power and authority to carry on its business and own its property, to enter into, execute and deliver the Lease and the Certificate and Agreement in the form of Exhibit B (the "Certificate") and to perform each and all of the matters and things required to be observed or performed by the Lessee thereunder.

2. The Lease and the Certificate have been duly authorized by all necessary corporate action on the part of the Lessee and have been duly executed and delivered by the Lessee. Assuming due authorization, execution and delivery by the other party thereto, each of the Lease and the Certificate constitutes the legal, valid and binding obligation of the Lessee enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally.

3. No approval, consent or withholding of objection on the part of any regulatory body, state, Federal or local is necessary in connection with the execution and delivery by the Lessee of the Lease and the Certificate or compliance by the Lessee with any of the provisions of the Lease or the Certificate.

4. The Lessee is duly authorized to conduct its business in each jurisdiction in which it operates and is duly qualified and is in good standing as a foreign corporation in each jurisdiction where the character of its properties or the nature of its activities makes such qualification necessary and where the failure to so qualify would materially adversely affect the business, operations or financial condition of the Lessee.

5. The execution and delivery by the Lessee of the Lease and the Certificate do not violate any provision of any law, any order of any court or governmental agency, the charter or by-laws of the Lessee, or any indenture, agreement or other instrument to which the Lessee is a party or by which it, or any of its property is bound, and will not be in conflict with, result in the breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Lessee, except upon the leasehold estate of the Lessee under the Lease.

**RIDER ONE (1) TO LEASE AGREEMENT**

Effective this 29th day of December, 1989, this Rider shall become a part of the Lease Agreement between Residual Based Finance Corporation, Lessor, and Burlington Northern Railroad Company, Lessee, dated December 29, 1989 (the "Lease"). The Cars described herein shall be leased to Lessee, subject to the terms and conditions in said Lease and this Rider as shown below:

- I. NUMBER OF CARS: Sixty four (64).
- II. DESCRIPTION OF CARS: 4750 cubic foot capacity, 100 ton, 1980 built covered hopper car, unlined, equipped with gravity gates and trough hatches, for shipment of grain and other noncorrosive commodities.
- III. LEASE TERM: December 1, 1989 through November 30, 2004.
- IV. RENTAL RATE: \$864.72 per Car per quarter or the daily equivalent for partial quarters.
- V. INTERIM RENT: Interim rent, based on the daily equivalent of the Rental Rate, shall be paid from the average date of delivery through November 30, 1989.
- VI. PAYMENT DATES: January 15; April 15; July 15; October 15.
- VII. RENEWAL OPTIONS: Lessee has the right to extend the term of this Agreement in respect of all but not less than all of the Cars remaining at the end of the Lease Term for a period of up to five (5) years ("First Renewal Term"). Lessee has the right to extend the term of this Agreement in respect of all but not less than all of the Cars remaining at the end of the First Renewal Term for a period of up to four (4) years ("Second Renewal Term"). Rental for the Cars during the First Renewal Term and the Second Renewal Term will be at the lower of the Cars' then Fair Market Rental Value, as determined in arms length negotiations between Lessor and Lessee not later than 120 days prior to the expiration of the previous term, or fifty percent (50%) of the Rental Rate specified in item IV above.
- VIII. PLACE OF DELIVERY: Lessee's lines in Springfield, Missouri, or such other locations as may be mutually agreed upon between Lessor and Lessee.
- IX. COST OF DELIVERY: At Lessor's expense.
- X. CAR INITIALS AND NUMBERS:

BN 465001 through BN 465064

RIDER ONE (1) TO LEASE AGREEMENT

XI. AMENDMENTS:

Article 9 of the Lease Agreement is hereby amended by adding the following after the first sentence:

"Notwithstanding anything herein to the contrary, if Lessee determines in good faith that any required addition, modification or adjustment to the Cars would be economically impractical, Lessee may treat such requirement as a Casualty Occurrence with respect to all (but not less than all) the Cars under the provisions of Article 11 hereof, provided Lessee similarly treats such requirement as a Casualty Occurrence with respect to all Cars under Rider Two to this Lease Agreement. In such event Lessee shall provide to Lessor and any applicable Lease Assignee a certificate, signed by an officer of Lessee, describing the required addition, modification or adjustment and the reason(s) that Lessee determines that the same is economically impractical. Furthermore, Lessee shall pay, in addition to the Casualty Payment, the amount by which the Market Make Whole Prepayment as defined in Section XIV of this Rider exceeds the principal amount of Lessor's loan from Lease Assignee."

Article 11 D of the Lease Agreement is hereby amended by adding the following at the end:

"In the event that the Casualty Occurrence is determined to have occurred from a Car being worn out, Lessor shall have the option, exercisable at any time within 30 days after receipt of the notice of Casualty Occurrence, to purchase that Car from Lessee at a price of \$0.04 per pound, calculated on the lightweight of such Car. If, however, Lessor subsequently sells such Car for scrap or parts rather than repairing and returning such Car to interchange service, the Lessor shall pay to the Lessee the excess, if any, of the net sale proceeds over the price paid by Lessor to Lessee for such Car up to the Casualty Payment of such Car paid by Lessee."

**RIDER ONE (1) TO LEASE AGREEMENT****XII. CASUALTY SCHEDULE:****BASE CAR AMOUNT \$27,744**

<u>Payment Number</u>	<u>Casualty Value %</u>	<u>Payment Number</u>	<u>Casualty Value %</u>	<u>Payment Number</u>	<u>Casualty Value %</u>
1	106.05%	21	88.17%	41	64.37%
2	105.90%	22	87.21%	42	62.41%
3	105.45%	23	86.25%	43	60.45%
4	104.49%	24	85.29%	44	58.49%
5	103.53%	25	84.33%	45	56.53%
6	102.57%	26	83.37%	46	54.57%
7	101.61%	27	82.41%	47	52.61%
8	100.65%	28	81.45%	48	50.65%
9	99.69%	29	80.49%	49	48.69%
10	98.73%	30	79.53%	50	46.73%
11	97.77%	31	78.21%	51	44.24%
12	96.81%	32	76.89%	52	41.75%
13	95.85%	33	75.57%	53	39.26%
14	94.89%	34	74.25%	54	36.77%
15	93.93%	35	72.93%	55	34.28%
16	92.97%	36	71.61%	56	31.79%
17	92.01%	37	70.29%	57	29.30%
18	91.05%	38	68.97%	58	26.81%
19	90.09%	39	67.65%	59	24.32%
20	89.13%	40	66.33%	60	21.83%

RIDER ONE (1) TO LEASE AGREEMENT

## XIII. STIPULATED LOSS SCHEDULE:

BASE CAR AMOUNT     \$27,744

<u>Payment Number</u>	<u>Stipulated Loss Value %</u>	<u>Payment Number</u>	<u>Stipulated Loss Value %</u>	<u>Payment Number</u>	<u>Stipulated Loss Value %</u>
1	100.55%	21	87.26%	41	62.32%
2	100.23%	22	86.33%	42	60.67%
3	99.74%	23	85.37%	43	58.97%
4	99.23%	24	84.38%	44	57.22%
5	98.71%	25	83.36%	45	55.43%
6	98.16%	26	82.31%	46	53.59%
7	97.59%	27	81.23%	47	51.69%
8	97.00%	28	80.11%	48	49.75%
9	96.39%	29	78.97%	49	47.75%
10	95.76%	30	77.79%	50	45.71%
11	95.11%	31	76.57%	51	43.60%
12	94.43%	32	75.32%	52	41.44%
13	93.74%	33	74.03%	53	39.22%
14	93.01%	34	72.71%	54	36.77%
15	92.27%	35	71.35%	55	34.28%
16	91.50%	36	69.94%	56	31.79%
17	90.70%	37	68.50%	57	29.30%
18	89.88%	38	67.02%	58	26.81%
19	89.03%	39	65.50%	59	24.32%
20	88.16%	40	63.93%	60	21.83%

**RIDER ONE (1) TO LEASE AGREEMENT**

**XIV. MARKET MAKE WHOLE PREPAYMENT:**

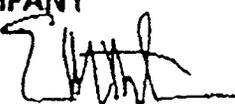
The prepayment amount in the event of an economically impractical required modification will be a price determined by discounting the remaining mandatory principal payments and interest payments of the Note(s) by the lesser of (i) 9.23% or (ii) the sum of the Specified Basis Points and the Reinvestment Yield. The Specified Basis Points as used in this Section shall be 0 through calendar year 1996; 32 during calendar year 1997; 27.5 during calendar year 1998; 23 during calendar year 1999; 18.5 during calendar year 2000; 14 during calendar year 2001; 9.5 during calendar year 2002; 5 during calendar year 2003; and 0 during calendar year 2004. The Reinvestment Yield as used in this Section shall be the average of the yields published in the weekly statistical release designated H.15(519) of the Federal Reserve System under the caption "U.S. Government Securities-Treasury Constant Maturities" (the "Statistical Release") for the maturity corresponding to the remaining weighted average life to maturity of the Note(s) as of the date of such prepayment, rounded to the nearest month, or if the Statistical Release is not published, of such reasonably comparable index as may be designated by the holders of 66 2/3% in aggregate principal amount of the outstanding Note(s). If no maturity exactly corresponds to such rounded weighted average life to maturity, the yields for the two most closely corresponding published maturities shall be calculated pursuant to the immediately preceding sentence and the Reinvestment Yield shall be interpolated from such yields on a straight-line basis, rounding in each of such relevant periods to the nearest month. For purposes of calculating the Reinvestment Yield, the most recent Statistical Release published prior to the date of determination of the premium to be paid hereunder shall be used.

IN WITNESS WHEREOF, the parties have executed this Rider as of the 29th day of December, 1989.

RESIDUAL BASED FINANCE CORPORATION

BURLINGTON NORTHERN RAILROAD COMPANY

By \_\_\_\_\_

By  \_\_\_\_\_

Title \_\_\_\_\_

Title Gen Mgr - Planting Service

**RIDER TWO (2) TO LEASE AGREEMENT**

Effective this 29th day of December, 1989, this Rider shall become a part of the Lease Agreement between Residual Based Finance Corporation, Lessor, and Burlington Northern Railroad Company, Lessee, dated December 29, 1989 (the "Lease"). The Cars described herein shall be leased to Lessee, subject to the terms and conditions in said Lease and this Rider as shown below:

- I. NUMBER OF CARS: Fifty nine (59).
- II. DESCRIPTION OF CARS: 4750 cubic foot capacity, 100 ton, 1980 built covered hopper car, unlined, equipped with gravity gates and trough hatches, for shipment of grain and other noncorrosive commodities.
- III. LEASE TERM: December 1, 1989 through November 30, 2004.
- IV. RENTAL RATE: \$864.72 per Car per quarter or the daily equivalent for partial quarters.
- V. INTERIM RENT: Interim rent, based on the daily equivalent of the Rental Rate, shall be paid from the average date of delivery through November 30, 1989.
- VI. PAYMENT DATES: January 15; April 15; July 15; October 15.
- VII. RENEWAL OPTIONS: Lessee has the right to extend the term of this Agreement in respect of all but not less than all of the Cars remaining at the end of the Lease Term for a period of up to five (5) years ("Renewal Term"). Rental for the Cars during the Renewal Term will be at the lower of the Cars' then Fair Market Rental Value, as determined in arms length negotiations between Lessor and Lessee not later than 120 days prior to the expiration of the previous term, or fifty percent (50%) of the Rental Rate specified in item IV above.
- VIII. PLACE OF DELIVERY: Lessee's lines in Huntsman, Nebraska, or such other locations as may be mutually agreed upon between Lessor and Lessee.
- IX. COST OF DELIVERY: At Lessor's expense.
- X. CAR INITIAL AND NUMBERS:  
BN 465241 through BN 465266, and  
BN 465268 through BN 465300

RIDER TWO (2) TO LEASE AGREEMENT

XI. AMENDMENTS:

Article 9 of the Lease Agreement is hereby amended by adding the following after the first sentence:

"Notwithstanding anything herein to the contrary, if Lessee determines in good faith that any required addition, modification or adjustment to the Cars would be economically impractical, Lessee may treat such requirement as a Casualty Occurrence with respect to all (but not less than all) the Cars under the provisions of Article 11 hereof, provided Lessee similarly treats such requirement as a Casualty Occurrence with respect to all Cars under Rider One to this Lease Agreement. In such event Lessee shall provide to Lessor and any applicable Lease Assignee a certificate, signed by an officer of Lessee, describing the required addition, modification or adjustment and the reason(s) that Lessee determines that the same is economically impractical. Furthermore, Lessee shall pay, in addition to the Casualty Payment, the amount by which the Market Make Whole Prepayment as defined in Section XIV of this Rider exceeds the principal amount of Lessor's loan from Lease Assignee."

Article 11 D of the Lease Agreement is hereby amended by adding the following at the end:

"In the event that the Casualty Occurrence is determined to have occurred from a Car being worn out, Lessor shall have the option, exercisable at any time within 30 days after receipt of the notice of Casualty Occurrence, to purchase that Car from Lessee at a price of \$0.04 per pound, calculated on the lightweight of such Car. If, however, Lessor subsequently sells such Car for scrap or parts rather than repairing and returning such Car to interchange service, the Lessor shall pay to the Lessee the excess, if any, of the net sale proceeds over the price paid by Lessor to Lessee for such Car up to the Casualty Payment of such Car paid by Lessee."

**RIDER ONE (2) TO LEASE AGREEMENT****XII. CASUALTY SCHEDULE:****BASE CAR AMOUNT \$27,744**

<u>Payment Number</u>	<u>Casualty Value %</u>	<u>Payment Number</u>	<u>Casualty Value %</u>	<u>Payment Number</u>	<u>Casualty Value %</u>
1	106.05%	21	88.17%	41	64.37%
2	105.90%	22	87.21%	42	62.41%
3	105.45%	23	86.25%	43	60.45%
4	104.49%	24	85.29%	44	58.49%
5	103.53%	25	84.33%	45	56.53%
6	102.57%	26	83.37%	46	54.57%
7	101.61%	27	82.41%	47	52.61%
8	100.65%	28	81.45%	48	50.65%
9	99.69%	29	80.49%	49	48.69%
10	98.73%	30	79.53%	50	46.73%
11	97.77%	31	78.21%	51	44.24%
12	96.81%	32	76.89%	52	41.75%
13	95.85%	33	75.57%	53	39.26%
14	94.89%	34	74.25%	54	36.77%
15	93.93%	35	72.93%	55	34.28%
16	92.97%	36	71.61%	56	31.79%
17	92.01%	37	70.29%	57	29.30%
18	91.05%	38	68.97%	58	26.81%
19	90.09%	39	67.65%	59	24.32%
20	89.13%	40	66.33%	60	21.83%

**RIDER ONE (2) TO LEASE AGREEMENT****XIII. STIPULATED LOSS SCHEDULE:****BASE CAR AMOUNT     \$27,744**

<u>Payment Number</u>	<u>Stipulated Loss Value %</u>	<u>Payment Number</u>	<u>Stipulated Loss Value %</u>	<u>Payment Number</u>	<u>Stipulated Loss Value %</u>
1	100.55%	21	87.26%	41	62.32%
2	100.23%	22	86.33%	42	60.67%
3	99.74%	23	85.37%	43	58.97%
4	99.23%	24	84.38%	44	57.22%
5	98.71%	25	83.36%	45	55.43%
6	98.16%	26	82.31%	46	53.59%
7	97.59%	27	81.23%	47	51.69%
8	97.00%	28	80.11%	48	49.75%
9	96.39%	29	78.97%	49	47.75%
10	95.76%	30	77.79%	50	45.71%
11	95.11%	31	76.57%	51	43.60%
12	94.43%	32	75.32%	52	41.44%
13	93.74%	33	74.03%	53	39.22%
14	93.01%	34	72.71%	54	36.77%
15	92.27%	35	71.35%	55	34.28%
16	91.50%	36	69.94%	56	31.79%
17	90.70%	37	68.50%	57	29.30%
18	89.88%	38	67.02%	58	26.81%
19	89.03%	39	65.50%	59	24.32%
20	88.16%	40	63.93%	60	21.83%

**RIDER ONE (2) TO LEASE AGREEMENT**

**XIV. MARKET MAKE WHOLE PREPAYMENT:**

The prepayment amount in the event of an economically impractical required modification will be a price determined by discounting the remaining mandatory principal payments and interest payments of the Note(s) by the lesser of (i) 9.23% or (ii) the sum of the Specified Basis Points and the Reinvestment Yield. The Specified Basis Points as used in this Section shall be 0 through calendar year 1996; 32 during calendar year 1997; 27.5 during calendar year 1998; 23 during calendar year 1999; 18.5 during calendar year 2000; 14 during calendar year 2001; 9.5 during calendar year 2002; 5 during calendar year 2003; and 0 during calendar year 2004. The Reinvestment Yield as used in this Section shall be the average of the yields published in the weekly statistical release designated H.15(519) of the Federal Reserve System under the caption "U.S. Government Securities-Treasury Constant Maturities" (the "Statistical Release") for the maturity corresponding to the remaining weighted average life to maturity of the Note(s) as of the date of such prepayment, rounded to the nearest month, or if the Statistical Release is not published, of such reasonably comparable index as may be designated by the holders of 66 2/3% in aggregate principal amount of the outstanding Note(s). If no maturity exactly corresponds to such rounded weighted average life to maturity, the yields for the two most closely corresponding published maturities shall be calculated pursuant to the immediately preceding sentence and the Reinvestment Yield shall be interpolated from such yields on a straight-line basis, rounding in each of such relevant periods to the nearest month. For purposes of calculating the Reinvestment Yield, the most recent Statistical Release published prior to the date of determination of the premium to be paid hereunder shall be used.

IN WITNESS WHEREOF, the parties have executed this Rider as of the 29th day of December, 1989.

**RESIDUAL BASED FINANCE CORPORATION**

**BURLINGTON NORTHERN RAILROAD COMPANY**

By \_\_\_\_\_

By [Signature]

Title \_\_\_\_\_

Title General Manager Services

EXHIBIT C

Reservation of Rights

Debtor reserves the following rights under the provisions of the Lease:

1. The right to receive or retain the interim rent already received in the amount of \$ \_\_\_\_\_, based upon the average delivery date of the Cars being prior to December 1, 1989, assuming the payment of such interim rent by the Lessee does not affect the amount of the regular fixed rental payments scheduled to commence January 15, 1990.

2. The right to purchase any Car which has suffered a Casualty Occurrence as set forth in Article 11D of the Lease (as amended pursuant to Article XI of the Riders), assuming all amounts payable to the Secured Party as a result of such Casualty Occurrence have been made and there does not then exist any Event of Default or event which, with the passage of time or the giving of a notice, would constitute an Event of Default under the Note Purchase Agreement, the Note(s), the Security Agreement, the Assignment of Lease and Rents or the Lease.

3. The right to indemnification under Articles 13 and 15A, subject to the subordination provisions of Article 16C.

4. The right to a return of the Cars pursuant to Article 17 assuming there does not then exist any Event of Default or event which, with the passage of time or the giving of a notice, would constitute an Event of Default under the Note Purchase Agreement, the Note(s), the Security Agreement, the Assignment of Lease and Rents or the Lease.

5. The right to inspect Cars under Article 18 provided such inspection does not unreasonably interfere with the corresponding right of inspection on the part of the Secured Party.

6. The right to receive information under Articles 23 and 27 provided the same does not unreasonably interfere with the corresponding right of Secured Party to receive such information.

7. The right to receive duplicate notices under Article 29.

8. The right, in conjunction with the Secured Party, to consent to markings under Article 4, to modifications under Article 9 and to subleases under Article 16A, provided that in the event of a disagreement between the Debtor and the Secured Party, the decision of the Secured Party shall control.