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16933-A

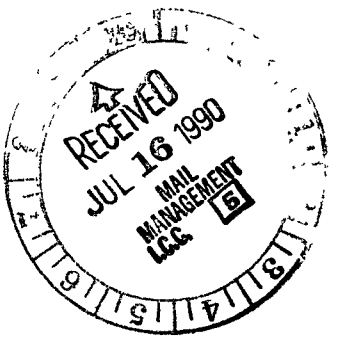
16933

RECORDATION NO _____ FILED 1425

JUL 16 1990 -11 20 AM

INTERSTATE COMMERCE COMMISSION

July 16, 1990



Re: Trailer Train Company - Lease (No. 32-A)
and Equipment Trust Agreement (No. 32-A)

RECEIVED JUL 16 1990 MAIL MANAGEMENT I.C.C. 6

Interstate Commerce Commission
12th Street and Constitution Avenue, N.W.
Washington, D.C. 20423

Attention: Noreta R. McGee, Secretary

Dear Madam Secretary:

I have enclosed two fully executed and acknowledged originals of each of the two the documents described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

The first document is a lease dated July 16, 1990, and is a "primary document" as defined in the applicable regulations.

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

Vendor and Lessee: Trailer Train Company
101 North Wacker Drive
Chicago, Illinois 60606

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JUL 16 11 24 AM '90

Lessor: Meridian Trust Company, not in its individual capacity but solely as Owner Trustee
35 North 6th Street
P.O. Box 1102
Reading, PA 19603

The second document is an equipment trust agreement dated July 16, 1990, and is a "primary document" as defined in the applicable regulations.

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

Lessor: Meridian Trust Company, not in its individual capacity but solely as Owner Trustee
35 North 6th Street
P.O. Box 1102
Reading, PA 19603

Trustee: Mercantile-Safe Deposit and Trust Company
Two Hopkins Plaza
Baltimore, MD 21201

The equipment covered by the documents consists of five-platform, articulated all-purpose spine flatcars with retractable hitches for carrying trailers or containers (TTAX) and 73-foot center-partitioned bulkhead flatcars with winch tie-down devices for carrying lumber products (TTZX), but shall not include any special devices, racks or assemblies, at any time attached or affixed to any such equipment, the title to which is in a person other than the company.

A fee of thirty dollars ($30.00) is enclosed. Please return one of the originals to me at Davis Polk & Wardwell, 1300 I Street, N.W., Washington, D.C. 20005.

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

Lease of Railroad Equipment (No. 32-A) between Trailer Train Company, 101 North Wacker Drive, Chicago, Illinois 60606 and Meridian Trust Company, 35 North 6th Street, P.O. Box 1102, Reading, PA 19603 dated July 16, 1990 covering approximately 95 five-platform, articulated all-purpose spine flatcars with retractable hitches for carrying

trailers or containers (TTAX) and approximately 104 73-foot center-partitioned bulkhead flatcars with winch tie-down devices for carrying packaged lumber products (TTZX), but not including any special devices, racks or assemblies, at any time attached or affixed to any such equipment, the title to which is in a person other than the Company.

Equipment Trust Agreement (No. 32-A) between Mercantile-Safe Deposit and Trust Company, Two Hopkins Plaza, Baltimore, MD 21201 and Meridian Trust Company, 35 North 6th Street, P.O. Box 1102, Reading, PA 19603 dated July 16, 1990 covering approximately 95 five-platform, articulated all-purpose spine flatcars with retractable hitches for carrying trailers or containers (TTAX) and approximately 104 73-foot center-partitioned bulkhead flatcars with winch tie-down devices for carrying packaged lumber products (TTZX), but not including any special devices, racks or assemblies, at any time attached or affixed to any such equipment, the title to which is in a person other than the Company; which equipment is subject to the Lease of Railroad Equipment (No. 32-A) referred to above.

Very truly yours,

Bruce K. Dallas
Representative for Trailer Train Company

Enclosures

Interstate Commerce Commission

Washington, D.C. 20423

7/16/90

OFFICE OF THE SECRETARY

Bruce K Dallas

Davis ,Polk & Wardwell
1 Chase Manhattan Plaza
New York,N.Y. 10005

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 7/16/90 at 11:30am and assigned recordation number(s). 16933 &16934

Sincerely yours,

Noreta R. McGee

Noreta R. McGee
Secretary

Enclosure(s)

16933
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JUL 16 1990 -11 30 AM
INTERSTATE COMMERCE COMMISSION

(2303)

[EXECUTION COPY]

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RECEIVED
JUL 16 1990
MAIL MANAGEMENT
I.C.C.

LEASE OF RAILROAD EQUIPMENT

(No. 32-A)

Dated as of July 16, 1990

Between

TRAILER TRAIN COMPANY,

as Lessee

and

MERIDIAN TRUST COMPANY,

not in its individual
capacity but solely as trustee,
as Lessor

THE RIGHTS OF THE LESSOR UNDER THIS LEASE AND IN ALL EQUIPMENT COVERED HEREBY HAVE BEEN ASSIGNED AND ARE SUBJECT TO A SECURITY INTEREST.

THIS LEASE HAS BEEN EXECUTED IN COUNTERPARTS. THE COUNTERPART OR COUNTERPART SET HELD BY THE ASSIGNEE HEREOF IS THE "ORIGINAL," AND ALL OTHER COUNTERPARTS ARE DUPLICATES.

==========

This lease has been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 on July 16, 1990, at __:__ _.m., recordation number _____, and deposited in the Office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada on July __, 1990, at __:__ _.m.

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SCHEDULE A -- EQUIPMENT

LEASE OF RAILROAD EQUIPMENT (No. 32-A) dated as of July 16, 1990, between TRAILER TRAIN COMPANY, a Delaware corporation (together with its successors and assigns, hereinafter called the Lessee), and MERIDIAN TRUST COMPANY, a Pennsylvania trust company, not in its individual capacity but solely as trustee (in such capacity hereinafter called the Lessor) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with BNY LEASING CORPORATION (hereinafter called the Beneficial Owner).

WHEREAS, all capitalized terms used herein shall have the respective meanings set forth after these recitals;

WHEREAS the Lessee desires to enter into a sale and leaseback transaction in respect of certain railroad equipment and pursuant to due corporate authority agrees to sell to and lease from the Lessor such equipment at the purchase price and the rentals and upon the terms and conditions hereinafter provided;

WHEREAS the Lessor will pursuant to the Participation Agreement purchase from the Lessee the equipment described in Schedule A hereto or in a Lease Supplement (such equipment as shall be delivered and accepted hereunder or thereunder being hereinafter called the Equipment) for lease to the Lessee;

WHEREAS the Lessor will finance a portion of the purchase price of the Equipment by issuing equipment trust certificates (the "Equipment Trust Certificates") and the obligations of the Lessor under such Certificates will be secured by a security interest in the Equipment and an assignment of this Lease, all pursuant to the Equipment Trust Agreement dated as of the date hereof (hereinafter called the Equipment Trust Agreement) between the Lessor and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland banking corporation (hereinafter called the Security Trustee); and

WHEREAS the Lessee, the Lessor, the Beneficial Owner, and the purchasers of the Equipment Trust Certificates are entering into a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement),

setting forth the conditions of the purchase of the Equipment by the Lessor and the purchase of the Equipment Trust Certificates.

NOW THEREFORE, in consideration of the rents to be paid and the covenants herein contained, the Lessor hereby leases the Equipment to the Lessee upon the following terms and conditions:

DEFINITIONS

The following terms, as used herein, have the following respective meanings:

"Additions" is defined in Section 4.5.

"Applicable Laws" is defined in Section 4.3.

"Basic Rent" is defined in Section 2.2(b).

"Basic Term" is defined in Section 2.1(b).

"Basic Term Commencement Date" means January 29, 1991.

"Basic Term Purchase Option" means Lessee's option to purchase Equipment pursuant to Section 10.2(a) hereof

"Basic Term Termination Date" means January 28, 2011.

"Beneficial Owner" is defined in the recitals above.

"Bill of Sale" means a bill of sale covering a Unit or Units, executed by the Lessee in favor of the Lessor, dated the appropriate Settlement Date, warranting to the Lessor the title to such Unit or Units, free and clear of all liens, charges and encumbrances, and covenanting to defend the same.

"Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in New York City, Reading, Pennsylvania or Baltimore, Maryland, are authorized to close.

"Car Type" means either of: (1) five-platform articulated all-purpose spine cars with retractable hitches for carrying cargo containers and highway trailers; or (2)

73-foot center-partition bulkhead flatcars equipped with winch tie-down devices for carrying packaged lumber products.

"Casualty Occurrence" is defined in Section 6.3.

"Casualty Value" with respect to any Unit of Equipment on any Rent Payment Date means the amount determined by multiplying Original Cost of such Unit of Equipment by the Casualty Value percentage set forth opposite such Rent Payment Date in Schedule B to the Rent Agreement.

"Certificate of Acceptance" means a certificate of acceptance covering a Unit or Units in the form of Annex B to the Participation Agreement.

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

"Equipment" is defined in the recitals above.

"Equipment Trust Agreement" means the Equipment Trust Agreement dated the date hereof between the Lessor and Mercantile-Safe Deposit and Trust Company.

"Equipment Trust Certificates" means the equipment trust certificates issued pursuant to the Equipment Trust Agreement.

"Equity Contribution" means the sum of (i) the total equity investment made by the Beneficial Owner in the beneficial ownership of the Equipment on all Settlement Dates pursuant to the Participation Agreement; (ii) the interest payable on the Equipment Trust Certificates on January 29, 1991; and (iii) the Transaction Expenses.

"Event of Default" is defined in Section 8.1.

"Excluded Interests" is defined in Section 1.1 of the Equipment Trust Agreement.

"Expected Average Life" means 12.5 years.

"Expected Settlement Dates" is defined in Section 1.3 of the Participation Agreement.

"Fair Market Renewal Rent" is defined in Section 2.2(d).

"Fair Market Renewal Term" is defined in Section 2.1(d).

"Fair Market Rent" and "Fair Market Value" shall mean the rent or value of the Equipment as determined pursuant to Section 10.2(c).

"Fixed Rate Renewal Rent" is defined in Section 2.2(c).

"Fixed Rate Renewal Term" is defined in Section 2.1(c).

"Guaranty" means the Guaranty dated the date hereof from The Bank of New York or, if amended as therein provided, as so amended.

"Indemnified Party" is defined in Section 7.1.

"Interim Term" is defined in Section 2.1(a).

"Lease" means this Lease of Railroad Equipment as originally executed and delivered or, if amended or supplemented as herein provided, as so amended or supplemented.

"Lease Supplement" is defined in Section 11.1.

"Lessee" is defined in the recitals above.

"Lessor" is defined in the recitals above.

"Officer's Certificate" shall mean a certificate signed by the President, any Vice President, the Controller, the Secretary, any Assistant Secretary, the Treasurer or any Assistant Treasurer of the Lessee.

"Operative Documents" means each of this Lease, the Rent Agreement, the Participation Agreement, the Bills of Sale, the Equipment Trust Agreement, the Tax Indemnity Agreement, the Guaranty and the Trust Agreement.

"Original Cost," when used with respect to Equipment, shall mean the actual cost thereof (including freight charges, if any, from the manufacturer's plant to a point of delivery to the Lessee and applicable local or state sales taxes, if any), as evidenced by the manufacturer's invoice with respect to such Equipment (less any known deduction therefrom due to a quantity discount, refund or other

allowance) all "as set forth in the invoice of the Lessee to the Owner Trustee.

"Participation Agreement" means the Participation Agreement dated the date hereof among the Lessee, the Beneficial Owner, the Lessor and the purchasers of Equipment Trust Certificates listed therein or, if amended as therein provided, as so amended.

"Property Owned by Others" is defined in Section 4.5.

"Rent" means Basic Rent, Fair Market Renewal Rent, Fixed Rate Renewal Rent and Supplemental Rent, collectively.

"Rent Agreement" means the Rent Agreement between Lessor and Lessee dated the date hereof as the same may be supplemented or amended from time to time as provided in Section Eleven.

"Rent Payment Date" means July 29, 1991 and each succeeding January 29 and July 29, to and including the last such date in the term of this Lease (and including the January 29 next following the Basic Term Termination Date to the extent any payment of Basic Rent is due on such date).

"Replacement Part" is defined in Section 4.5.

"Security Trustee" is defined in the recitals above.

"Settlement Date" means each of: July 16, 1990, August 1, 1990, September 27, 1990, or such other dates not later than December 31, 1990 as the Lessee may select pursuant to the Participation Agreement.

"Special Purchase Option" means Lessee's option to purchase Equipment pursuant to Section 10.2(b) hereof.

"Special Purchase Option Date" is the Special Purchase Option Date set forth in Schedule C to the Rent Agreement.

"Supplemental Rent" means all amounts, liabilities and obligations (other than Basic Rent, Fair Market Renewal Rent and Fixed Rate Renewal Rent) which the Lessee assumes or agrees to pay to the Lessor or others hereunder, under the Participation Agreement, to the extent due and payable by the

Lessee under the Tax Indemnity Agreement or under any of the other Operative Documents.

"Surplus Equipment" is defined in Section 10.1.

"Tax Indemnity Agreement" means the Tax Indemnity Agreement dated as of the date hereof between the Lessor and Beneficial Owner or, if amended as therein provided, as so amended.

"Taxes" is defined in Section 7.2.

"Termination Value" with respect to any Unit of Equipment on any Rent Payment Date means the amount determined by multiplying the Original Cost of such Unit of Equipment by the Termination Value percentage set forth opposite such Rent Payment Date in Schedule B to the Rent Agreement.

"Transaction Expenses" means expenses funded by the Lessor including, but not limited to, (1) fees and disbursements of Lessor's counsel; provided that such fees and disbursements shall be included in Transaction Expenses only to the extent such fees and disbursements do not exceed the sum of (a) $66,962 and (b) the lesser of (i) the excess of such fees and disbursements over $66,962, and (ii) the amount of reasonable counsel fees and disbursements of Cadwalader, Wickersham & Taft that have been incurred after June 8, 1990 and that are directly attributable to the negotiation and documentation of the indemnity loan provisions contained in Section 5(d) of the Tax Indemnity Agreement; (2) costs of the appraisal of B. Royce Green & Associates of Equipment conducted prior to the Settlement Date for such Equipment; (3) the initial fees of the Security Trustee and the Lessor and the fees and disbursements of their respective counsel; (4) the cost of any recordation or filing made pursuant to the Operative Documents; (5) document reproduction costs incurred in connection with the negotiation of the Operative Documents and the performance of any obligation thereunder; (6) fees and disbursements of Davis Polk & Wardwell, counsel to the Debt Participants (as such term is defined in the Participation Agreement); and (7) debt placement fees of Goldman, Sachs & Co.

"Trust Agreement" means the Trust Agreement (No. 32-A) dated as of the date hereof between the Beneficial Owner and the Lessor.

"Unit" means any railroad car included in the Equipment or any part thereof or any interest therein.

SECTION ONE
DELIVERY AND ACCEPTANCE

1.1. Acceptance Under Participation Agreement and Lease. Lessor, subject to satisfaction or waiver of the conditions set forth in Section Three of the Participation Agreement, hereby agrees to accept, on each Settlement Date, delivery of Equipment from Lessee under the Participation Agreement and to simultaneously lease such Equipment to Lessee hereunder, and Lessee hereby agrees to lease such Equipment on each Settlement Date from Lessor hereunder. Lessee's acceptance of such Equipment for lease will be evidenced by the execution, on each Settlement Date, by Lessor and Lessee of a Certificate of Acceptance and Lease Supplement hereto (if necessary).

If the Lessor shall be relieved of its obligation to purchase any Unit of such Equipment because of the failure of any condition set forth for such purchase in Section Three of the Participation Agreement or for acceptance of the Equipment by the Lessee in this Section 1.1, then all rights of the Lessor to purchase Lessee's interest in such Equipment and Lessee's obligation to lease such Equipment from Lessor shall terminate.

1.2. Appointment of Lessee as Agent. The Lessor hereby appoints the Lessee its agent, with full power of substitution, so long as no Default relating to Section 8.1(g) hereof or Event of Default has occurred or is continuing, to assert and enforce, at Lessee's own expense, any rights the Lessor may have against the vendors of the Equipment or any Unit or component thereof with respect to such vendors' warranties. The Lessee shall be obligated to assist diligently with respect to any such claims and to use the proceeds, if applicable, for the repair or restoration of the Equipment affected thereby and, otherwise, for application in accordance with Section 6.2.

SECTION TWO
TERM AND RENT

2.1. Rental Terms. (a) Interim Term. The interim term (the "Interim Term") for any Equipment delivered on any Settlement Date to Lessor pursuant to the Participation Agreement shall be the period commencing on such Settlement Date and ending at 11:59 p.m. on the Basic Term Commencement

Date, or such earlier date on which this Lease shall be terminated hereunder.

(b) Basic Term. The basic term (the "Basic Term") for any Equipment delivered on any Settlement Date to Lessor pursuant to the Participation Agreement shall be the period commencing upon the expiration of the Interim Term for such Equipment and ending at 11:59 p.m. on the Basic Term Termination Date.

(c) Fixed Rate Renewal Term. Unless a Default shall have occurred and shall be continuing, the Lessee, by 120-days' written notice to the Lessor prior to the end of the Basic Term, shall have a one-time option to elect to extend the term of this Lease for an additional term (the "Fixed Rate Renewal Term") with respect to all, but not less than all, of the Units of either or both Car Types comprising Equipment then subject to this Lease for an additional period specified by Lessee of up to four years in half-year increments, commencing on the day following the Basic Term Termination Date and ending not later than the earlier of the last day on which (i) the estimated residual value (without inflation or deflation) of such Units would be greater than or equal to 20% of the Original Cost of such Units and (ii) the period from the first Settlement Date for such Units to such last day would be less than or equal to 80% of the estimated useful life of such Units measured from such Settlement Date, in each case based upon an appraisal at the end of the Basic Term. Such estimated residual value and estimated useful life shall be determined by an appraiser selected by the Lessee and the Lessor, or if such parties cannot agree on a single appraiser by 105 days prior to the Basic Term Expiration Date, by two appraisers, one selected by each party by 90 days prior to the Basic Term Expiration Date. If the two appraisers cannot agree on a value by 75 days prior to the Basic Term Expiration Date, then they shall select a third appraiser by 60 days prior to the Basic Term Expiration Date. If such two appraisers fail to appoint a third appraiser by such date, then either the Lessor or the Lessee, on behalf of both, may request such appointment by the then President of the Association of the Bar of the City of New York (or any successor organization thereto) or, in his absence, failure, refusal or inability to act, then either the Lessor or the Lessee may apply to the American Arbitration Association (or any successor organization thereto) in New York, New York for the appointment of such third appraiser. The decision of the third appraiser so appointed shall be given prior to the Basic Term Expiration Date and the parties shall be bound by such decision. The

cost of the first appraiser shall be borne by the Lessee, the cost of the second appraiser shall be borne by the Lessor and the cost of the third appraiser shall be borne by the Lessee.

(d) Fair Market Renewal Term. Unless a Default shall have occurred and shall be continuing, the Lessee, by 120-days' written notice to the Lessor prior to the end of the Fixed Rate Renewal Term (or the end of the Basic Term if no Fixed Rate Renewal Term is available), may elect to extend the term of this Lease for an additional two-year term (the "Fair Market Renewal Term") with respect to not less than all of the Units of either or both Car Types comprising Equipment then subject to this Lease.

(e) Continuation of Lease. If the Lessee shall exercise its right to renew this Lease pursuant to Section 2.1(c) or 2.1(d) hereof, this Lease shall continue in full force and effect.

2.2. Rent. (a) Interim Rent. No rent shall be due from Lessee during the Interim Term.

(b) Basic Rent. Throughout the Basic Term on each date specified in Schedule A to the Rent Agreement, Lessee shall pay to Lessor basic rent ("Basic Rent") in an amount per Unit of Equipment then subject to this Lease equal to the Original Cost of such Unit of Equipment multiplied by the percentage of Original Cost specified in such Schedule A for such date, each such payment to be treated as having been made in advance or arrears as specified opposite the respective date and percentage in such Schedule A.

(c) Fixed Rate Renewal Rent. Throughout the Fixed Rate Renewal Term, Lessee shall pay to Lessor fixed rate renewal rent ("Fixed Rate Renewal Rent") semiannually in arrears on each July 29 and January 29 during such term and on the last day of such term in an amount per Unit of any Car Type equal to 50% of the average semiannual payment of Basic Rent paid per Unit of such Car Type during the Basic Term hereunder.

(d) Fair Market Renewal Rent. Throughout the Fair Market Renewal Term, Lessee shall pay to Lessor fair market renewal rent ("Fair Market Renewal Rent") semiannually in arrears on each July 29 and January 29 during such term and on the last day of such term at the Fair Market Rent of such Units as determined pursuant to Section 10.2(c) hereof.

(e) Supplemental Rent. Anything contained in this Lease or the Participation Agreement to the contrary notwithstanding, on each Rent Payment Date (or other date on which payments are due on the Equipment Trust Certificates) the Lessee shall pay in addition to any other amount of Rent due hereunder that amount along with such other amount of Rent which in the aggregate shall be, under any circumstances and in any event, at least sufficient to pay in full, as of the date of payment thereof, the aggregate principal amount of the due and unpaid installments on the Equipment Trust Certificates outstanding on such date of payment, together with the accrued and unpaid interest on such aggregate principal amount.

The parties hereto contemplate that the Lessor shall (to the extent sufficient funds are received from the Beneficial Owner) be liable for payment of certain obligations under the Equipment Trust Agreement and the Equipment Trust Certificates on the Basic Term Commencement Date and that no payment of Basic Rent shall be due on such date. If for any reason the Lessee shall be obliged by the preceding paragraph to make any payment on such date, the Lessor shall promptly reimburse the Lessee (either out of funds received from the Beneficial Owner or out of funds then due to the Beneficial Owner) for any amount so paid, and any costs incurred by the Lessee in the collection of such amounts, together with interest thereon at 14.85% per annum (which is 5% plus 9.85%, the rate on the Equipment Trust Certificates) from the date of such payment by the Lessee to the date of such reimbursement.

The Lessee will also pay as Supplemental Rent hereunder on each Rent Payment Date an amount equal to the amount of any interest payment then due and payable with respect to (i) any Indemnity Loan made pursuant to Section 5(d) of the Tax Indemnity Agreement, or (ii) any advance made pursuant to Section 10 of the Tax Indemnity Agreement or Section 7.2 hereof. The Lessee shall pay (or cause to be paid), promptly to the Lessor or to whomsoever shall be entitled thereto any and all Supplemental Rent constituting Casualty Value or Termination Value as the same shall become due and owing and all other amounts of Supplemental Rent within five days after demand or within such other relevant period as may be provided in any Operative Document. The Lessee shall pay as Supplemental Rent when due any amount of premium payable when due under the Equipment Trust Agreement.

The Lessee will also pay as Supplemental Rent all fees and expenses of the Lessor in accordance with the terms

of the Trust Agreement (to the extent the same shall not be included in Transaction Expenses), and an amount equal to all damages, costs, charges, and expenses, including attorneys' fees and disbursements, incurred by the Security Trustee or the holders of Equipment Trust Certificates because of the occurrence of any Event of Default hereunder or the exercise of the Security Trustee's rights with respect thereto. Nothing herein shall constitute a guaranty of the principal or interest of the Equipment Trust Certificates.

2.3. Method of Payment; Overdue Payments. The Lessee agrees to make each payment provided for herein in accordance with the instructions of the Lessor or any assignee of the Lessor (or in the case of any Supplemental Rent constituting Excluded Interests in accordance with the instructions of the party entitled thereto) in immediately available funds at or prior to 11:00 a.m. in the city where such payments are to be made. If any date of payment is not a Business Day, then payment shall be due on the next succeeding Business Day without interest or penalty.

The Lessee promptly shall pay an amount equal to interest at the rate per annum equal to 10.85% (which is 1.0% plus 9.85%, which is the rate of interest on the Equipment Trust Certificates) on any overdue Rent payments and other obligations hereunder for the period of time during which they are overdue, or such lesser amount as may be legally enforceable.

2.4. Net Lease. This Lease is a net lease, and the Lessee agrees that its obligations to make payments due hereunder, and the rights of the Lessor and any assignee of the Lessor in and to such payments, are absolute and unconditional and are not subject to any abatement, reduction, set-off, defense, counterclaim or recoupment for any reason whatever, any present or future law, rule or regulation to the contrary notwithstanding. The Lessee also agrees that, except as otherwise expressly provided herein, this Lease will not terminate nor will the Lessee's obligations hereunder be affected for any reason whatever, it being the intention of the parties that all payments due and to become due hereunder are, and shall continue to be, payable in all events unless the obligation to pay the same is expressly terminated pursuant hereto.

SECTION THREE
REPRESENTATIONS AND WARRANTIES

3.1. Representations and Warranties of the Lessee. Other than agreements for the purchase of Equipment by the Lessee from the manufacturers thereof that secure the purchase price thereof (which security interests shall have been discharged in full with respect to each Unit of Equipment when such Unit becomes subject to this Lease), the Lessee represents and warrants that there is no financing statement or similar instrument naming the Lessee as debtor or lessee covering any or all of the Equipment described in Schedule A hereto or any of it filed or recorded in any public office, except this Lease recorded with the Interstate Commerce Commission as provided for herein.

3.2. No Representations by the Lessor. THE LESSOR HAS NOT MADE, AND SHALL NOT BE DEEMED TO HAVE MADE, AND HEREBY EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER (EXCEPT AS SET FORTH IN THE PARTICIPATION AGREEMENT), INCLUDING, WITHOUT LIMITATION, THE TITLE TO, THE OPERATION, DESIGN OR CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF ITS MATERIAL OR WORKMANSHIP OR ITS CONFORMITY TO THE SPECIFICATIONS OF ANY PURCHASE ORDERS RELATING THERETO, THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT, OR THE ABSENCE OF OBLIGATIONS BASED ON STRICT LIABILITY IN TORT. THE LESSOR SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES.

SECTION FOUR
THE EQUIPMENT

4.1. Maintenance. The Lessee shall, at its own cost and expense, maintain and keep, or cause to be maintained and kept, each Unit of Equipment that is subject to this Lease in such condition as the Lessee would, in the prudent management of its own business, maintain and use similar equipment owned by the Lessee, consistent with prudent industry practice but in any case so as to maintain each Unit in good operating order, repair and condition, ordinary wear and tear excepted, and in accordance with all Association of American Railroads standards as they may apply.

4.2. Inspection. The Lessor shall have the right, by its agents, to inspect the Equipment and the records of the Lessee pertaining to the Equipment at any reasonable time.

4.3. Compliance with Laws and Rules. The Lessee shall use and maintain each Unit of Equipment in compliance with all applicable laws, government regulations, and standards of the Association of American Railroads and any other national organization applicable to the use, maintenance and interchange of such Unit ("Applicable Laws"), and shall at its own expense make such alterations to each such Unit as may be required from time to time for such compliance; provided, however, that the Lessee may upon written notice to the Lessor and the Security Trustee, in good faith, contest the validity or application of any such Applicable Laws in any reasonable manner which does not, in the opinion of the Lessor and the Security Trustee adversely affect the property or rights of the Lessor and the Security Trustee, respectively, under this Lease or under the Equipment Trust Agreement.

4.4. Hypothecation. THE LESSEE SHALL NOT, WITHOUT THE EXPRESS WRITTEN PERMISSION OF THE LESSOR, (a) SELL, TRANSFER, ASSIGN, OR SUBLEASE THE EQUIPMENT OR ANY UNIT THEREOF OR INTEREST THEREIN, OR (b) OTHERWISE PART WITH POSSESSION OR CONTROL OF THE EQUIPMENT OR ANY UNIT except:

(i) to the manufacturer or other maintenance facilities for maintenance, repair, or overhaul, or for modification to the extent permitted hereby;

(ii) pursuant to subleases or car contracts, to sublessees or users incorporated in the United States of America, Canada, or Mexico, upon lines of railroad owned or operated by any railroad company or companies incorporated in such jurisdictions, or over which such railroad companies have trackage rights or rights for the operation of trains, and upon connecting and other carriers in the usual interchange of traffic in North America provided, however, that if the Lessee subleases, uses or permits the use of any Unit in Canada (or any Province or Territory thereof) or Mexico, the Lessee shall, except as otherwise provided in Section 4.7 hereof, first have (a) taken all necessary action to protect the right, title and interest of the Lessor and the Security Trustee in the Units to be so subleased or used and (b) furnished the Lessor and the Security Trustee with an Opinion of Canadian counsel or Mexican

counsel, as the case may be, satisfactory to the Lessor and the Security Trustee to the effect that such action is all that is necessary to protect the right, title and interest of Lessor and the Security Trustee in such Units.

Any such sublease or car contract shall be subject to all of the terms and conditions of this Lease, including return of cars if required at the end of the Lease or any renewal term, and the Lessee shall remain primarily liable for performance of its obligations hereunder. The rights of any such sublessee or user shall be subject to the rights and remedies of the Lessor hereunder and the Security Trustee under the Equipment Trust Agreement.

4.5. Accessions and Improvements. All replacement parts (each, a "Replacement Part") installed in maintaining the Equipment or improvements or modifications required for compliance with Section 4.3 hereof will be considered accessions and ownership thereof will, upon installation, automatically vest in the Lessor.

The Lessor acknowledges that special devices, racks, automobile-carrying superstructures, and other assemblies may be attached to Units of Equipment and may be owned and financed by persons other than the Lessee, the Lessor, and the Security Trustee. The Lessor expressly acknowledges, for the purpose of assurance of any such persons and for the purpose of inducing attachment of special devices, racks, automobile-carrying superstructures, and other assemblies to the Units of Equipment from time to time, that the Lessor has no rights therein and that such persons may, at their own cost and expense, remove such special devices, racks, automobile-carrying superstructures and assemblies (all of which are hereinafter called "Property Owned by Others"). Lessee represents and warrants that it will, at the time of the termination of this Lease (i) cause all Property Owned by Others to be removed from the Units of Equipment, (ii) repair all damage, if any, caused by such removal, and (iii) after such removal, the value or utility of the Unit to which it was attached will not be diminished or impaired from what such value or utility would have been if such Property Owned by Others had not been attached thereto.

The Lessee and its affiliates, sublessees, and users, at their own cost and expense, may from time to time make such other alterations, modifications and additions at any time attached or affixed to any Unit of Equipment, the cost of which is not included in the Original Cost of such

Unit and which are not required for the operation or use of such Unit in compliance with Section 4.3 hereof (hereinafter collectively called "Additions"), as the Lessee or such sublessees or users may deem desirable in the proper conduct of their business so long as such Additions shall not be inconsistent with the continuing operation of such Units and shall not diminish the useful life, value, utility or condition of such Units below the useful life, value, utility and condition thereof immediately prior to the making of such Additions, assuming such Units were then in the condition required to be maintained by the terms of this Lease; provided, that, without the prior written consent of the Lessor and the Security Trustee, no such Addition shall be made if it is not readily removable from the Unit to which it relates without material damage thereto or without diminishing or impairing the useful life, value or utility which such Unit would have had immediately prior to such time had such Addition not been made.

4.6. Equipment Identification and Marking. The Lessee shall affix and maintain on each side of each Unit of Equipment (a) the reporting marks assigned to the Lessee by the Association of American Railroads, (b) the identification number set forth in Schedule A hereto (or in a Lease Supplement) for such Unit, (c) the legend "Ownership Subject to a Security Agreement filed with the Interstate Commerce Commission," and (d) such other markings as from time to time may be required by law or deemed necessary by the Lessor or the Security Trustee to protect the interests of the Lessor and the Security Trustee in the Equipment. Units of Equipment with the reporting mark "TTAX" will bear the legend "do not hump."

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit of Equipment as a designation that might be interpreted as a claim of ownership; provided, that the Lessee may permit the Equipment to be lettered with the names, trademarks, initials or other insignias customarily used by the Lessee on railroad equipment used by it of the same or a similar type for convenience or identification of its rights to use the Equipment under this Lease, and the Equipment may be lettered in an appropriate manner for convenience of identification of the interest of the Lessee therein.

4.7. Recordation and Filing. This Lease or a counterpart or copy hereof or evidence hereof may be filed or recorded in any public office as may be necessary or

appropriate to protect the interest of the Lessor or the Security Trustee herein or in the Equipment. The Lessee shall, at its own expense, file and record this Lease, any assignments hereof and amendments hereto, and the Equipment Trust Agreement pursuant to Section 11303 of Title 49 of the United States Code, and shall execute and file any other instruments requested by the Lessor or the Security Trustee that are necessary or appropriate to protect and preserve such interests. The Lessee shall additionally be required to deposit the Lease with the Registrar General of Canada (and notice of such deposit shall be given forthwith in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. The Lessee shall not be required to take any such action in respect of any jurisdiction outside the United States if (1) the Lessee deems such action to be unduly burdensome, (2) after giving effect to the failure to take such action, the Lessee has taken all action required by law to protect the interest of the Lessor or the Security Trustee in Units of Equipment having an Original Cost of not less than 85% of the aggregate Original Cost of all the Units of Equipment then subject to this Lease, and (3) any Unit of Equipment at any time located in such jurisdiction shall have been marked with the markings specified in Section 4.6 hereof.

4.8. Insurance. The Lessee shall at all times while this Lease is in effect cause to be carried and maintained public liability insurance in an amount not less than $10,000,000 per occurrence, with such deductibles and against such risks as are customarily insured against and with such insurance companies of recognized responsibility as is usually carried by businesses of established reputation engaged in the same or similar business as the Lessee and similarly situated, and in any event, in amounts not less than and against such risks so as to be no less protective than the insurance, if any, maintained by the Lessee with respect to similar equipment owned or leased by the Lessee. Each policy with respect to such insurance shall (i) name the Lessor, both in its individual and trust capacity, the Beneficial Owner and the Security Trustee as additional insureds, as their respective interests may appear, (ii) not require premiums, commissions or assessments from any additional insured, (iii) not require contribution from any other insurance coverage purchased by any additional insured, (iv) provide that no cancellation or material change shall be effective as to any insured until at least 30 days after the Lessor's, the Beneficial Owner's and the Security Trustee's receipt of written notice thereof and (v) waive any right of subrogation against any additional insured.

On or before May 1 in each year during the term of this Lease, commencing May 1, 1991, the Lessee shall furnish to the Lessor and the Security Trustee appropriate evidence of the insurance required to be maintained hereunder.

The Lessor, the Beneficial Owner, and the Security Trustee shall each have the right to maintain at its expense any casualty insurance on the Equipment for the purpose of protecting the fair value of the Units, provided, that such casualty insurance would not in any way impair any insurance maintained by the Lessee. The parties hereto shall cooperate with each other to effectuate the purposes of the preceding sentence.

4.9. Condition upon Return. Upon the expiration or early termination of this Lease with respect to each or both Car Types comprising Equipment, or as soon as practical thereafter and in any event not later than 90 days after such expiration or early termination, the Lessee shall, at its own expense and risk, assemble all the Units of such Car Type(s) comprising Equipment at not more than three locations (which may be facilities of the Lessee) designated by the Lessee and reasonably satisfactory to the Lessor, and there store such Equipment for a period not to exceed one hundred twenty (120) days after the assembly of at least 90% of such Units of Equipment, and deliver the Equipment to carriers for shipment at the instruction of the Lessor.

Each Unit of Equipment returned to the Trustee pursuant to this Section 4.9 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear expected, (ii) have attached or affixed thereto any Replacement Part title to which is in the Trustee pursuant to Section 4.5 hereof and have removed therefrom at Lessee's expense any other part or Addition, title to which is in the Lessee or any other person pursuant to such Section 4.5, and any Property Owned by Others (unless the parties agree not to remove such Property Owned by Others) and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect.

Not less than 30 days prior to the expiration of this Lease with respect to each or both Car Types comprising Equipment, the Lessee shall notify the Lessor of the location to which such Equipment is to be delivered pursuant to this section. The Lessor or any person designated by the Lessor may there inspect such Equipment, but the Lessee shall not be

liable, except in the case of negligence or intentional acts, for any injury to any person exercising such right of inspection. If any Unit of such Equipment is found not conforming to the requirements of this Section, the Lessee shall make such repairs as are necessary for such conformance.

If any Unit of Equipment shall not be returned or shall not be in the condition required upon such return within 90 days of the expiration of this Lease with respect to such Equipment, the Lessee shall pay to the Lessor daily rent for each day from the 90th day after the expiration of this Lease to the date such Unit of Equipment is returned or restored to the condition required, as the case may be (or payment made in respect of any such Unit deemed to have suffered a Casualty Occurrence in accordance with Section 6.3 hereof). Such daily rent shall be the daily equivalent of the average annual rent (excluding Supplemental Rent) payable over the rental term immediately preceding the termination of this Lease in respect of such Unit. If Lessee shall have failed to return all such Units within 270 days, Lessor may exercise all rights available to it under law to obtain possession of such Units or to recover damages for the loss of such Units.

4.10. Encumbrances. The Lessee shall not create or permit to exist any claims, liens, security interests, or other encumbrances of any nature upon or against the Equipment (except pursuant to any sublease or car contract permitted by Section 4.4 hereof, the assignment of this Lease by the Lessor to the Security Trustee, and any encumbrance resulting from claims against the Lessor not related to the ownership or leasing of the Equipment), and the Lessee shall take such action at its own expense as may be necessary to duly discharge any such encumbrance.

SECTION FIVE
COVENANTS

5.1. Reports. The Lessee shall furnish to the Lessor, the Beneficial Owner, the Security Trustee, and each holder of Equipment Trust Certificates issued under the Equipment Trust Agreement:

(a) as soon as available, and in any event within 60 days after the end of the first, second and third quarterly accounting periods in each fiscal year, a copy of the unaudited Balance Sheets of the Lessee (consolidated and Lessee only) as of the end of such

quarterly accounting period and as of the end of the prior fiscal year and of the Statements of Income and Statements of Cash Flows of the Lessee (consolidated and Lessee only) for the portion of its fiscal year ending with the last day of such current quarterly accounting period and for the comparable period of the prior fiscal year, all in reasonable detail and prepared in accordance with generally accepted accounting principles consistently applied, certified by the Chief Financial Officer or Controller of the Lessee;

(b) as soon as available, and in any event within 120 days after the end of each fiscal year, a copy of the Balance Sheets of the Lessee (consolidated and Lessee only) as at the end of such fiscal year, and the Statements of Income and Statements of Cash Flows of the Lessee (consolidated and Lessee only) for such fiscal year, all in reasonable detail and stating in comparative form the figures as of the end of and for the previous fiscal year, certified by a firm of nationally recognized independent certified public accountants selected by the Lessee;

(c) a copy of each report, if any, filed by the Lessee pursuant to the Securities and Exchange Act of 1934 (which reports, if containing the financial statements referred to in clauses (a) and (b), may be delivered in substitution for the financial statements referred to in such clauses);

(d) within the period set forth in (b) above, an Officer's Certificate of the Lessee (i) setting forth the identifying numbers of each Unit of Equipment then subject to this Lease, (ii) identifying those Units of Equipment that have suffered a Casualty Occurrence since the date of the last such certificate, (iii) identifying those Units of Equipment that have been withdrawn from use pending repairs or otherwise, and (iv) stating that such officer has reviewed the activities of the Lessee and that, to the best of his knowledge, there exists no Default;

(e) written notice specifying any condition which constitutes a Default hereunder, and the nature and status thereof, within 10 Business Days of any responsible officer of the Lessee acquiring actual knowledge thereof unless such Default shall have been cured within such 10 Business Day period; for purposes hereof, "responsible officer" shall mean, with respect to the

subject matter of any covenant, agreement or obligation of the Lessee, any corporate official of the Lessee who in the normal performance of his duties or responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto; and

(f) from time to time, such other information regarding the Equipment or this Lease as the Lessor or the Security Trustee shall reasonably request.

5.2. Quiet Possession. If and so long as there is no Event of Default by the Lessee hereunder, the Lessee shall be entitled to the use and possession of the Equipment according to the terms hereof without interference by the Lessor or by any party lawfully claiming by or through the Lessor.

The Lessor shall not directly or indirectly suffer to exist any claim, lien, encumbrance, or security interest on or with respect to the Equipment resulting from claims against the Lessor not relating to the ownership or leasing of the Equipment or the financing thereof contemplated by the Equipment Trust Agreement.

SECTION SIX
LOSS OR DESTRUCTION

6.1. Risk of Loss. The Lessee bears the entire risk of loss of or damage to each Unit of Equipment from the relevant Settlement Date, through the term of this Lease and the period of storage specified in Section 4.9 hereof, until the Lessor or a party designated by the Lessor shall have recovered possession of such Unit.

6.2. Insurance; Warranty, and Other Proceeds. All net proceeds of and recoveries from insurance, manufacturers' or dealers' warranty settlements, payments and compensation from taking or requisitioning authorities, sale or disposition in accordance with Section 6.4, or similar payments from other parties in respect of loss of or damage to any Unit of Equipment, whether received by the Lessor or the Lessee, and whether or not such loss or damage shall be regarded as a Casualty Occurrence under the next section, shall be paid to the Lessor, except the following, which shall be paid to the Lessee unless a Default shall have occurred and shall be continuing:

(a) damages or compensation for the Lessee's business interruption, loss of use of any Unit of Equipment, consequential or incidental damages, or any other claim not based upon the reduction in value of a Unit of Equipment as a result of a Casualty Occurrence;

(b) interline settlements due or paid to the Lessee in respect of any Unit of the Equipment under the rules of the Association of American Railroads, and other payments for damage to any Unit of Equipment, if the Lessee shall repair such damage or make payment in respect of the loss of such Unit pursuant to the next section; and

(c) such other proceeds as are attributable to a Casualty Occurrence with respect to any Unit of Equipment, up to the amount of the Casualty Value previously paid by the Lessee in respect of such Unit pursuant to the next section.

6.3. Casualty Loss. If any Unit of the Equipment shall be or become worn out, lost, stolen, destroyed, rendered permanently unfit for the intended use, or irreparably damaged, from any cause whatsoever, returned to the manufacturer pursuant to any patent indemnity or warranty settlement, or taken or requisitioned by condemnation or otherwise by any government agency resulting in loss of possession by the Lessee for a period of 90 consecutive days (any such occurrence being herein called a "Casualty Occurrence"), prior to the return of such Unit to the Lessor, the Lessee shall, notwithstanding the provisions of Section 5.1(d) hereof, promptly and fully notify the Lessor and the Security Trustee with respect thereto. On the Rent Payment Date next succeeding such notice (unless such Rent Payment Date occurs within 15 days of such Casualty Occurrence, in which case the next following Rent Payment Date) the Lessee shall pay to the Lessor an amount equal to any arrears Rent due in respect of such Unit plus the Casualty Value of such Unit as of the date of such payment, reduced by any proceeds received by the Lessor pursuant to Section 6.2 hereof. If such Casualty Occurrence occurs within 15 days of the expiration of this Lease, or thereafter, such payment shall be made within 15 days of such Casualty Occurrence.

Upon the making of such payment by the Lessee in respect of any Unit of Equipment, the rent for such Unit shall cease to accrue, this Lease shall terminate with respect to such Unit, and (except in the case of the loss, theft, complete destruction, or the return to the manufac-

turer of such Unit) the Lessor shall be entitled to recover possession of such Unit.

6.4. Equipment Disposition. The Lessor hereby appoints the Lessee its agent to dispose of any Unit of the Equipment suffering a Casualty Occurrence, at the best price obtainable on an "as is, where is" basis, and the Lessee agrees to use its best efforts to effect such disposition. Any proceeds thereof shall be distributed in accordance with Section 6.2 hereof.

SECTION SEVEN
INDEMNITIES

7.1. General Indemnity. The Lessee shall indemnify, defend and hold the Lessor (both in its individual and trust capacity), the Beneficial Owner, the Security Trustee, all holders of Equipment Trust Certificates issued under the Equipment Trust Agreement, and their respective directors, officers, agents and employees (any of the foregoing being hereinafter referred to as an "Indemnified Party") harmless on an after-tax basis from and against any and all liabilities, losses, damages, injuries, penalties, claims, demands, actions, suits, costs, and expenses, including reasonable attorney's fees (collectively called "Expenses"), and including but not limited to any of the foregoing arising out of or imposed by the doctrine of strict liability or any statute imposing liability on owners of property, or arising out of the manufacture, ordering, purchase, acceptance, rejection, lease, sublease, ownership, delivery, nondelivery, maintenance, sale, possession, or operation by the Lessee or any other entity, the condition, return, or use of the Equipment, latent or other defects, whether or not discoverable, any claim for patent, trademark or copyright infringement, the offer, sale or delivery of the Equipment Trust Certificates, or by operation of law, except any of the foregoing as may arise due to the willful misconduct or gross negligence of the party seeking indemnity; provided that no indemnity shall be provided under this Section 7.1 with respect to Taxes as defined in Section 7.2 hereof or with respect to matters governed by the Tax Indemnity Agreement; provided further that no indemnity shall be provided under this Section 7.1 with respect to matters with respect to Units of Equipment returned to Lessor in compliance with Section 4.9 hereof unless arising on or prior to the date of return. The willful misconduct or gross negligence of any Indemnified Party shall not affect the rights of any other Indemnified Party. Upon written notice by any Indemnified Party of the

assertion of any such liability, loss, damage, injury, penalty, claim, demand, action, or suit, the Lessee shall be entitled, at its sole cost and expense, acting through counsel selected by the Lessee and reasonably acceptable to the respective Indemnified Party, (i) in any judicial or administrative proceeding that involves solely a claim for one or more Expenses, to assume responsibility for and control of such proceeding, (ii) in any judicial or administrative proceeding involving a claim for one or more Expenses and other claims related or unrelated to the transactions contemplated by the Operative Documents, to assume responsibility for and control of such claim for Expenses to the extent that the same may be and is severed from such other claims, and (iii) in any other case, to be consulted by such Indemnified Party with respect to judicial proceedings subject to the control of such Indemnified Party. Notwithstanding any of the foregoing to the contrary, the Lessee shall not be entitled to assume responsibility for and control of any such judicial or administrative proceeding (x) while a Default relating to Section 8.1(g) hereof or an Event of Default shall have occurred and be continuing or (y) if such proceedings will involve the sale, forfeiture or loss of, or the creation of any lien, charge or other encumbrance on the Equipment, the Collateral (as such term is defined in the Equipment Trust Agreement), any Excluded Interest or any part thereof unless such sale, forfeiture or loss shall effectively be stayed or the Lessee shall have furnished sufficient security to protect the Lessor and the Security Trustee against loss of the Unit subject thereto. The Indemnified Party may participate at its own expense and with its own counsel in any judicial proceeding controlled by the Lessee pursuant to the preceding provisions. Nothing herein shall constitute a guaranty of the principal or interest of the Equipment Trust Certificates.

Upon payment of the applicable Expense, the Lessee shall be subrogated to the rights of any Indemnified Party in respect of the matter for which the indemnity has been given.

7.2 General Tax Indemnity.

(a) Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay, and to indemnify and hold harmless any Indemnified Party on an after-tax basis from all taxes, assessments, levies, imposts, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon any such Indemnified Party or otherwise, by any federal,

state or local government or governmental subdivision in the United States, or by any territory or possession of the United States, or by any foreign country or subdivision thereof or any international taxing authority, upon or with respect to: any Unit of Equipment; the manufacture, purchase, ownership, delivery, leasing, subleasing, possession, use, location, operation, storage, transport, importation, exportation, assembly, return, financing, sale, transfer of title, registration, re-registration, transfer of registration, return or other disposition thereof or the imposition of any lien (or the incurrence of any liability to refund or pay over any amount as the result of any lien) on any such Unit of Equipment; the rentals, receipts or earnings arising therefrom; the replacement or substitution of any Equipment or Unit thereof pursuant to Sections 4.1, 4.3 and 4.5 of this Lease or Section 1.4 of the Participation Agreement or pursuant to any interchange of a Unit of Equipment; or this Lease, the Rent Agreement, the Equipment Trust Agreement, the Participation Agreement or any other Operative Documents and any other documents contemplated hereby and amendments and supplements thereto, or the issuance or refinancing of the Equipment Trust Certificates; any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to property held in trust by the Lessor or the Security Trustee under the Equipment Trust Agreement; or otherwise with respect to or in connection with the transactions contemplated by the Operative Documents (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes") (it being understood that, except as provided below, the Lessee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in Section 7.2(b)); excluding, however:

(i) in the case of (A) the Beneficial Owner, (B) any affiliated group within the meaning of Section 1504 of the Code of which the Beneficial Owner is, or may become, a member if consolidated, joint or combined returns are filed for such affiliated group for federal, state and local income tax purposes, (C) any assignee or transferee of the Beneficial Owner, and any member of an affiliated group of which such assignee or transferee is or may become a member, if consolidated, joint or combined returns are filed for such affiliated group for federal, state and local income tax purposes, and (D) the Lessor (collectively, the "Owner Group") (a) any Taxes of the United States or of any state or political subdivision thereof, imposed on or measured by the gross or net income (including, without limitation, capital gains taxes, alternative minimum taxes and taxes measured by

tax preference items or excess profits, but not including sales, use, value added or property taxes) of the Beneficial Owner, or Taxes that are franchise or doing business taxes of the Beneficial Owner on or measured by capital, stock value, intangibles or the net worth or other status of the Beneficial Owner ("Income Taxes") and (b) any Income Taxes imposed by a foreign jurisdiction or political subdivision thereof or international taxing authority ("Foreign Income Taxes"), other than Foreign Income Taxes imposed by reason of (x) the location or use of the Equipment in the jurisdiction imposing the Foreign Income Tax, (y) other activities of any Lessee Person (as defined in the Tax Indemnity Agreement) within the jurisdiction imposing the Foreign Income Tax, or (z) the making of any payment required or permitted under the Operative Documents by any Lessee Person from the jurisdiction imposing the Foreign Income Tax (provided, however, that in no event will the Lessee be required to indemnify or hold harmless the Owner Group from any Foreign Income Tax to the extent such Foreign Income Tax would not have been imposed but for activities of any member of the Owner Group (either within the jurisdiction imposing such Foreign Income Tax or otherwise) that are not both (x) directly related to the transactions contemplated by the Operative Documents and (y) contemplated by the Operative Documents);

(ii) in the case of any Indemnified Party other than a member of the Owner Group, any Taxes of the United States or of any state or political subdivision thereof, or of any foreign jurisdiction or political subdivision thereof, or any international taxing authority, imposed on or measured by gross or net income (including, without limitation, withholding taxes on gross income, capital gains taxes, alternative minimum taxes and taxes measured by tax preference items or excess profits) of such Indemnified Party, or Taxes that are franchise or doing business taxes on or measured by capital, stock value, intangibles, or net worth or other status of such Indemnified Party, other than such Taxes to the extent imposed by any jurisdiction in which such Indemnified Party is not otherwise subject to tax and does not maintain a permanent establishment, office or other place of business, and in such case only to the extent such Taxes (x) do not exceed the Taxes that would have been imposed by such jurisdiction if the Tax solely were based on and measured by the transactions contemplated by the Operative Documents and (y) are not utilized by such Indemnified Party as a credit against Taxes that are not indemnified against hereunder;

(iii) in the case of any Indemnified Party any Taxes imposed (a) as a direct result of any voluntary dis-

position or transfer by such Indemnified Party (including a transfer under Section 338 of the Code if applicable), or (b) as a direct result of any involuntary disposition or transfer by such Indemnified Party resulting from (1) the bankruptcy of, or any creditor's action against, such Indemnified Party or (2) events that are not directly related to transactions contemplated by the Operative Documents, in each case of any interest in a Unit of Equipment, the Equipment Trust Certificates, any interest in rentals under the Lease, or any such Indemnified Party's rights or obligations under the Operative Documents, in each case other than a disposition or transfer of any Unit of Equipment pursuant to Sections 4.1, 4.3, 4.5, 6.3, 8 or 10.2 hereof or Section 1.4 of the Participation Agreement or pursuant to any interchange of a Unit of Equipment;

(iv) in the case of the Lessor or the Security Trustee, any Taxes imposed on or measured by any fees received by the Lessor or the Security Trustee;

(v) in the case of any Indemnified Party, any Taxes which are imposed on or measured by the gross or net income of such Indemnified Party if and to the extent that such Taxes are in lieu of Taxes payable by such Indemnified Party which the Lessee has not agreed to pay or indemnify against pursuant to this Section 7.2;

(vi) any Taxes imposed on any Indemnified Party resulting directly from the gross negligence or willful misconduct of such Indemnified Party;

(vii) except to the extent directly attributable to a failure of the Lessee to fully discharge its obligations under the Lease or imposed on or with respect to payments due hereunder after such termination or expiration, any Taxes imposed with respect to events occurring or matters arising after the later of (A) the return of possession of the Equipment to the Beneficial Owner pursuant to the terms hereof, or (B) the expiration or earlier termination of the term of the Lease;

(viii) any Taxes which are included in Original Cost, provided that such Taxes have been remitted to the proper taxing authorities;

(ix) any Taxes which are imposed on any Indemnified Party to the extent resulting directly from the failure to perform any requirement imposed with respect to any return otherwise required to be filed by any such Indem-

nified Party (or any of its affiliates) without regard to the transactions contemplated by the Operative Documents, in connection with the preparation or filing of tax returns, the payment of its taxes or the conduct of any proceeding in respect thereof; provided, however, that the exclusion set forth in this subclause (ix) shall not apply (1) if any such failure is the direct result of the failure of the Lessee to (A) perform its duties and responsibilities pursuant to any of the Operative Documents, (B) timely notify such Indemnified Party of the applicable filing requirement, or (C) provide reasonable assistance in complying with such requirement or (2) if, in order to comply with such requirement, the Indemnified Party would be required to make any inaccurate statement or (3) if by complying with such requirement the Indemnified Party might suffer any material adverse consequences for which the Indemnified Party is not indemnified by the Lessee;

(x) the amount of any Taxes imposed on any Indemnified Party to the extent such Taxes would not have been imposed but for the failure of any such person to file timely and properly any return or any form, certificate or other document which would have entitled any Indemnified Party to an exemption from, or a reduction in, a Tax indemnified under this Section 7.2, or other tax benefit with respect to such Tax to the extent such benefit, had it been available, would have been taken into account in determining any indemnity payable under this Section 7.2; provided, however, that the exclusion set forth in this subclause (x) shall not apply (1) if any such failure is the direct result of the failure of the Lessee to (A) perform its obligations under this Section 7.2 or to perform its duties and responsibilities pursuant to any of the Operative Documents, (B) timely notify such Indemnified Party of the applicable filing requirement, or (C) provide reasonable assistance in complying with such requirement or (2) if, in order to comply with such requirement, the Indemnified Party would be required to make any inaccurate statement or (3) if by complying with such requirement the Indemnified Party might suffer any material adverse consequences for which the Indemnified Party is not indemnified by the Lessee;

(xi) any Taxes (A) to the extent such Taxes would have been imposed on an Indemnified Party even if it had not engaged in activities related to the transactions contemplated by the Operative Documents, or (B) to the extent such Taxes would not have been imposed but for a breach by

any Indemnified Party of any of its representations, warranties, duties and obligations under any of the Operative documents to which it is a party;

(xii) any Taxes for which the Lessee has actually and fully paid or reimbursed, in accordance with the terms of any of the Operative Documents, the Indemnified Party entitled to payment under this Section 7.2; and

(xiii) penalties, interest or additions to tax to the extent resulting from Taxes which are not indemnifiable hereunder (provided, however, that this exclusion (xiii) shall not apply to the pro rata portion of any penalties, interest or additions attributable to Taxes indemnifiable hereunder, computed on the basis of the relative contribution of such Taxes to the penalties, interest or additions to tax).

(b) Except as provided herein, the Lessee shall pay all Taxes subject to indemnification under this Section 7.2 for which it is required to file a return prior to the latest time permitted by the relevant taxing authority for timely payment. In the case of a Tax subject to indemnification under this Section 7.2 for which the Lessee is required to file a return, when the Lessee resists payment and while the Lessee is contesting such Tax in accordance with this Section 7.2, the Lessee (i) shall be obligated to make any loans or advances with respect to such Tax wherever required under this Section 7.2, and (ii) shall pay such Tax (in the amount finally determined to be owing in such contest) prior to the latest time permitted by the relevant taxing authority for timely payment after a Final Determination (as defined below). In the case of a Tax subject to indemnification under this Section 7.2 for which no return is required to be filed by the Lessee, the Lessee shall pay such Tax to the appropriate Indemnified Party within 15 days after receipt of a demand in writing that specifies in reasonable detail the payment and the facts upon which the right to payment is based, but not prior to the later of (i) 15 days before the due date (ignoring extensions of time) for payment of such Tax by the Indemnified Party, and (ii) in the case of a Tax whose payment is being contested in accordance with this Section 7.2, a Final Determination (which shall mean (i) a decision, judgment, decree or other order by any court of competent jurisdiction that resolves the matter, which decision, judgment, decree or other order has become final (i.e., the earliest of when all allowable appeals have been exhausted by either party to the action or the time for filing such appeal has expired or the Indemnified Party has

notified the Lessee in writing that it does not intend to make such an appeal (as and to the extent permitted by the penultimate sentence of Section 7.2(c) hereof)), (ii) a closing agreement entered into under Section 7121 of the Code (or any successor provision) or any other settlement agreement entered into in connection with the administrative or judicial proceedings, in any case with the Lessee's consent, (iii) the expiration of the time for instituting an initial suit with respect to a claimed deficiency or for instituting a claim for refund, or, if a refund claim was filed, the expiration of the time for instituting suit with respect thereto, or (iv) the point in time when the Indemnified Party is no longer required to contest the imposition of such Tax pursuant to Section 7.2(c)).

(c) If any written claim is made against any Indemnified Party for any Taxes indemnified against under this Section 7.2, such Indemnified Party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing within 30 days of receipt of such notice (or, if sooner, on or before the last date upon which the contest of such Tax can be initiated, provided that the Indemnified Party's notice to the Lessee discloses such date), such Indemnified Party shall, upon receipt of indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee (it being understood that such indemnity is not intended to expand the scope of Lessee's indemnification obligations with respect to liabilities specifically dealt with in this Section 7.2), contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, or (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both; provided, however, that in no event will such Indemnified Party be required to contest or continue to contest the imposition of any Tax for which the Lessee is obligated pursuant to Section 7.2 unless (1) no Event of Default shall have occurred and be continuing, (2) such Indemnified Party and the Beneficial Owner shall have reasonably determined that the action to be taken will not result in any material danger of sale, forfeiture or loss of, or the creation of any Lien (except if the Lessee shall have adequately bonded such Lien, or otherwise made provision to protect the interests of such Indemnified Party and the Beneficial Owner in a manner reasonably satisfactory to such Indemnified Party and the Beneficial Owner) on, any Unit of Equipment, and (3) if such

contest shall involve payment of the claim, the Lessee shall have advanced the amount of such payment plus (to the extent indemnified under Section 7.2(a)) interest, penalties and additions to tax with respect thereto to such Indemnified Party on an interest-bearing basis in accordance with the next sentence of this Section 7.2(c). Each such advance shall bear interest at the rate, and shall be payable at the times, specified for Indemnity Loans under Section 5(d)(iii) of the Tax Indemnity Agreement. On the day that is the earlier of (i) 15 years after the Lessee advances funds to the Indemnified Party pursuant to this Section 7.2(c) or (ii) 15 days after a Final Determination of the liability of the Indemnified Party for Taxes with respect to which indemnification is required pursuant to this Section 7.2, the Indemnified Party shall repay to the Lessee any such advance and any payment previously made with respect to such Taxes, in each case unless and to the extent previously repaid, applied or offset pursuant to this Section 7.2, together with any interest to which the Indemnified Party is entitled in respect of such advances or payments; provided, however, that if any such repayment is required to be made prior to 15 days after a Final Determination of the liability of the Indemnified Party for the Taxes at issue, and an indemnification payment is ultimately required to be made with respect to such Final Determination, then such indemnification payment shall be paid with interest calculated at a rate exceeding by one percentage point per annum the prime lending rate on 90-day loans to responsible and substantial commercial borrowers of nationally recognized and unquestioned standing, as such prime lending rate is announced from time to time by The Bank of New York, measured from the date of such repayment to the date such indemnification payment is required to be made (subject to Section 2.3 hereof) or, if earlier, the date such indemnification payment is actually made. Within 15 days after such a Final Determination, the Lessee shall pay to the Indemnified Party the amount then due pursuant to the terms of this Section 7.2. Any advance shall be repaid first by offset against any indemnification payment then due and payable hereunder and any indemnification payment then due and payable hereunder shall be paid first by offset against any advance then due and repayable. Any payment owing to the Lessee in excess of the amounts so offset and any indemnification owing in excess of the amount offset against the advance shall be paid in cash at such time. Any interest received by the Indemnified Party or credited to the Indemnified Party against an amount not indemnifiable hereunder and attributable to a payment by the Indemnified Party to a taxing authority with respect to which an advance hereunder was made shall be paid to the Lessee within 30 days of such

receipt or credit. The Lessee may also contest, if permitted by applicable law, at its own expense, the validity, applicability or amount of such Taxes in the name of such Indemnified Party; provided that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of such Indemnified Party in any such proceeding or action) (a) without the prior written consent of such Indemnified Party, such consent not to be unreasonably withheld, and (b) unless the conditions stated in clauses (1), (2) and (3) of the second sentence of this paragraph 7.2(c) are satisfied. In the case of any contest brought by the Lessee in accordance with the preceding sentence, the Indemnified Party shall cooperate with the Lessee by, at the Lessee's cost, providing to the Lessee all documents, reports and other information relevant thereto. An Indemnified Party will in good faith consult with the Lessee and its counsel regarding the conduct of any administrative or judicial contest and will not enter into any settlement or compromise with respect to any Tax that such Indemnified Party is required to contest without the Lessee's prior written approval. In the event the Indemnified Party effects a settlement or compromise of any such contest or otherwise terminates any such contest without such prior written consent of the Lessee, then, to the extent a contest of such Tax (or any other claim) has been precluded by the resolution of such proposed adjustment, such Indemnified Party (a) shall have no right to indemnity under this Section 7.2 with respect to such Tax (or with respect to such other claim), and shall pay to the Lessee any amount previously paid or advanced by the Lessee pursuant to this Section 7.2 with respect to such Tax (or such other claim) (which amount shall not include costs and expenses previously paid by the Lessee with respect to such contest), plus interest at a rate of 9.85% per annum. In the event the Indemnified Party waives its right to indemnification hereunder with respect to the issues raised in a contest, such Indemnified Party (a) shall have no right to indemnity with respect to such Tax (and any other claim the contest of which is precluded by the resolution of the issues waived) and (b) shall pay to the Lessee any amount previously paid or advanced by the Lessee pursuant to this Section 7.2 with respect to such Tax (or such other claim) (which amount shall not include costs and expenses previously paid by the Lessee with respect to such contest), plus interest at a rate of 9.85% per annum. Notwithstanding the foregoing, the Lessee shall be entitled to pursue any claim (for damages or otherwise) in law or equity that it may have against any Indemnified Party as a result of an unauthorized settlement or termination of a contest that the

Indemnified Party is required to contest hereunder (whether or not such unauthorized settlement or termination precludes any contest).

(d) If in the course of a contest the appropriate taxing authority shall advise the Indemnified Party that it is willing to agree to a settlement of such claim, the Indemnified Party shall notify the Lessee of such settlement proposal. In addition, if in the course of a contest the Lessee believes that the appropriate taxing authority might compromise a proposed adjustment, the Lessee shall advise the Indemnified Party of the terms of the settlement proposal that the Lessee is then willing to make, and upon receipt of such notice the Indemnified Party will explore such settlement proposal with the appropriate taxing authority. If, in either case, a settlement proposal relates solely to Taxes for which the Lessee is liable hereunder and is acceptable to both the Lessee and the taxing authority, the Indemnified Party shall agree to the settlement proposal; provided, however, that the Indemnified Party shall not be obligated to formally propose or agree to a settlement if the Indemnified Party agrees that the amount of any Taxes in respect of such proposed claim and all future related claims that the Lessee shall be required to indemnify against to the Indemnified Party shall not exceed the amount of such Taxes which would have been required if the settlement proposal had been made and accepted and the underlying basis of such proposal applied to all future claims of the same nature; provided, further, however that an Indemnified Party may in its sole discretion reject any such settlement proposal unless the Lessee, after receiving 10 days prior written notice from such Indemnified Party regarding the acceptance by the taxing authority of such settlement proposal, acknowledges liability for the claim that is the subject of such settlement proposal.

(e) Any payment which the Lessee shall be required to make to or for the account of any Indemnified Party with respect to any Tax which is subject to indemnification under this Section 7.2 shall (A) reflect any current permanent savings (but only up to the amount of the Tax for which such Indemnified Party is being indemnified) of such Indemnified Party resulting by way of deductions, credits or other tax benefits attributable to the payment (or accrual) of such indemnified Tax unless such deduction or credit or other tax benefit was taken into account in computing the payment which the Lessee is required to make with respect to any Tax which is subject to indemnification under this section by way of a deduction or credit against such Tax and (B) include the

amount necessary to hold such Indemnified Party harmless on an after-tax basis from the amount of any federal, state, local or foreign taxes required to be paid by such Indemnified Party as the result of any such payment. If, by reason of any Tax payment made to or for the account of an Indemnified Party by the Lessee pursuant to this Section 7.2, such Indemnified Party currently or subsequently receives a refund (or any amount representing interest thereon), or realizes a tax benefit, savings, deduction or credit (including foreign tax credit) not previously taken into account in computing such payment, such Indemnified Party shall promptly pay to the Lessee an amount equal to the sum of (I) the net reduction in Taxes, if any, realized by such Indemnified Party which is attributable to such deduction or credit (or, if applicable, the amount of such refund or interest net of expenses) and (II) the reduction in any federal, state, local or foreign taxes realized by such Indemnified Party as the result of any payment made by such Indemnified Party pursuant to this sentence; provided, however, that such Indemnified Party shall not be obligated to make payment pursuant to this Section 7.2(e) with respect to any tax savings to the extent that the amount of such payment would exceed (x) the sum of (ı) all prior indemnity payments (excluding costs and expenses incurred with respect to contests) made by the with respect to such Tax Lessee pursuant to this Section 7.2 and (ıi) interest calculated at a rate of 6% per annum from the date each such indemnity payment was made to the date of the payment at issue less (y) the sum of (i) the amount of all prior payments by such Indemnified Party to the Lessee hereunder with respect to such Tax and (ii) interest calculated at a rate of 6% per annum from the date each such prior payment was made to the date of the payment at issue; provided further, however, that the sum of (A) any amount not paid to the Lessee because the amount set forth in clause (x) above is less than the amount set forth in clause (y) above and (B) interest on the amount set forth in clause (A) calculated at a rate of 6% per annum from the date such amount would otherwise have been paid shall be carried forward to reduce any subsequent obligations of the Lessee to indemnify such Indemnified Party with rspect to such Tax hereunder; (y) to be carried forward to reduce any subsequent obligations of the Lessee to indemnify such Indemnified Party);] provided, further, however, that if there is a (i) subsequent loss of any such tax benefit, savings, deduction or credit realized by the Indemnified Party or (ii) a reduction of an amount otherwise payable to an Indemnified Party hereunder as a result of any such tax benefit, savings, deduction or credit, such loss or reduction shall be treated as a Tax for which the Lessee must indemnify such Indemnified Party pursuant to

Section 7.2(a) without regard to clauses (i), (ii), (v), (vii) and (xi)(A) therein (but subject to all other exceptions thereto). For purposes of the preceding sentence, items of tax credit of any Indemnified Party shall be deemed to be utilized by such Indemnified Party as credits for Tax purposes for any taxable year in accordance with the following priorities:

First, all available credits other than those described in the next two clauses of this sentence;

Second, any credits attributable to any tax payment made to or for the account of such Indemnified Party pursuant to this Section 7.2 on a pari passu basis with all available credits attributable to any transaction with respect to which the income falls within the same category of income (as specified in Section 904(d)(1) of the Code) as income generated by this transaction, entered into by such Indemnified Party or any member of any affiliated group (within the meaning of Section 1504 of the Code) filing a consolidated federal income tax return which includes the income of such Indemnified Party (the "Indemnified Group") with a person other than the Lessee and for which such member of such Indemnified Group was indemnified or held harmless by anyone in such transaction, other than (i) a transaction described in the next clause of this sentence or (ii) a prior leasing transaction that has priority;

Third, all available credits attributable to any transaction with respect to which the income falls within the same category of income (as specified in Section 904(d)(1) of the Code) as income generated by this transaction, entered into by any member of any Indemnified Group for which such member was indemnified or held harmless by anyone in such transaction and in which the credit ordering rules applicable to such indemnification effectively provide that credits attributable to such transaction shall be taken into account last, or otherwise after credits attributable to this transaction.

(f) In case any report or return is required to be made with respect to any obligation of the Lessee under this Section 7.2 or arising out of this Section 7.2, the Lessee either (i) shall make such return properly and on a timely basis or (ii) if not permitted by law to file such report or return, shall promptly notify the Lessor or, if applicable, the Beneficial Owner of such requirement, and shall not later

than 60 days prior to the due date for such report or return provide the Beneficial Owner in writing with all information (other than information regarding the Beneficial Owner itself) reasonably available to the Lessee, and not in the possession of the Beneficial Owner, as is necessary for such return or report. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee. If an Indemnified Party has notice that a report, return, statement, or other information is required with respect to any Tax other than Taxes required to be reported on a return in the name of such Indemnified Party or any of its affiliates reporting transactions other than those contemplated by the Operative Documents, or that a taxing authority has made a claim for payment of such Tax, it shall promptly so notify the Lessee, shall furnish the Lessee with copies of the relevant portions of all written communications from any taxing authority relating to such tax, and, if requested by the Lessee, shall request such taxing authority to contact the Lessee regarding such information relating to the transactions contemplated by the Operative Documents.

(g) All the obligations of the Lessee and each Indemnified Party under this Section 7.2 shall survive and continue, notwithstanding termination of this Lease. All amounts payable by the Lessee pursuant to this Section 7.2 shall be payable directly to the Indemnified Party entitled to indemnification, except to the extent paid to a governmental agency or taxing authority.

(h) The Lessee shall furnish promptly, upon request, such information and data as are normally available to the Lessee and which the Security Trustee or the Beneficial Owner reasonably may require to permit compliance with the requirements of any taxing authorities.

(i) If on the date any payment (other than the repayment pursuant to the 4th sentence of Section 7.2(c) hereto of an amount previously paid or advanced to on behalf of an Indemnified Party) is required to be made by either party under this Section 7.2, there shall have occurred and be continuing an Event of Default with respect to the obligations of the payee hereunder, then such payment shall not be required unless and until the payee shall have cured such Event of Default, at which time such payment shall be made with interest calculated at a rate equal to the lesser of (i) 6.85% per annum or (ii) the prevailing rate from time to time on six-month obligations of the United States Treasury, measured from the date such payment would have been made in

the absence of such Event of Default to the date such payment is actually made.

(j) Any assignment by any Indemnified Party of this Lease or any of the other Operative Documents shall neither reduce the rights nor increase the obligations of the Lessee hereunder.

(k) For purposes of this Section 7.2, the term "Indemnified Party" shall include (i) any affiliated group within the meaning of Section 1504 of the Code of which the Beneficial Owner is, or may become, a member if consolidated, joint or combined returns are filed for such affiliated group for federal, state and local income tax purposes and (ii) any assignee or transferee of the Beneficial Owner, and any member of an affiliated group of which such assignee or transferee is or may become a member, if consolidated, joint or combined returns are filed for such affiliated group for federal, state and local income tax purposes. The Beneficial Owner undertakes on behalf of such other members of its affiliated group to perform or cause to be performed all obligations of such affiliated group hereunder.

SECTION EIGHT
DEFAULTS AND REMEDIES

8.1. Events of Default. In case any of the following events (any such event being herein called an Event of Default) shall occur (whatever the reason for such event and whether it shall be voluntary or involuntary):

(a) the Lessee shall fail to make any payment of Basic Rent, Fixed Rate Renewal Rent or Fair Market Renewal Rent or any payment in respect of a Casualty Occurrence due under Section 6.3 hereof within five Business Days after the same shall have become due;

(b) the Lessee shall fail to make any payment of Supplemental Rent or other payment due hereunder (other than any tax indemnity payments due pursuant to the Tax Indemnity Agreement, unless such tax indemnity payments are due and payable in accordance with the provisions of the Tax Indemnity Agreement) within five Business Days after the receipt of written notice thereof by the Lessor;

(c) the Lessee shall fail to perform or observe any material covenant, condition, or agreement under this Lease, in any Operative Document or any agreement, document, or certificate delivered by the Lessee in connection herewith or therewith, and (i) such failure shall continue for 30 days after the receipt of written notice thereof from the Lessor to the Lessee, unless such default is capable of being cured, action has been taken within such 30 days to commence such cure and such action is being diligently pursued, or (ii) such failure shall continue for 120 days after such written notice;

(d) the Lessee shall fail to maintain the insurance required by Section 4.8 hereof, provided that if (i) the insurance required by such Section 4.8 is not obtainable on commercially reasonable terms and (ii) the Lessor shall have received written notice from Lessee at least one Business Day prior to the expiration of such insurance to the effect that such insurance is not so obtainable (such notice shall give reasonable detail regarding the circumstances giving rise to such insurance not being so obtainable), then such failure shall not constitute an Event of Default until 30 days after the expiration of such insurance;

(e) any representation or warranty made by the Lessee in this Lease, in any Operative Document or in any agreement, document, or certificate delivered by the Lessee in connection herewith or therewith, other than any such representation or warranty made in the Tax Indemnity Agreement, shall fail to have been correct in any material respect when made or given and such failure shall continue for 30 days after the receipt of written notice thereof from the Lessor to the Lessee, unless such default is capable of being cured, action has been taken within such 30 days to commence such cure and such action is being diligently pursued;

(f) the Lessee shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, reorganization, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general

assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing; or

(g) an involuntary case or other proceeding shall be commenced against the Lessee seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, reorganization, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 days, or an order for relief shall be entered against the Lessee under the federal bankruptcy or reorganization laws as now or hereafter in effect, unless the debtor-in-possession, Trustee in bankruptcy or person with similar authority shall have assumed this Lease within such 60 days;

then, and in every such event, the Lessor may, by written notice to the Lessee, declare the Lease in default; provided that in the case of any of the Events of Default specified in clause (f) or (g) above with respect to the Lessee, no such notice or any other act by the Lessor shall be required and the Lease shall thereupon automatically be in default.

8.2. Remedies. If at any time after the Lessor shall have declared this Lease to be in default or the Lease shall automatically be in default, the Lessor may:

(a) proceed by appropriate court action or actions, at law or in equity, to enforce performance by the Lessee of the applicable covenants and agreements of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing terminate this Lease with respect to any or all Units of Equipment, whereupon all rights of the Lessee to the use of such Units of Equipment shall absolutely cease and terminate but the Lessee shall remain liable as herein provided; and thereupon the Lessee, if so requested by the Lessor, shall at the expense of the Lessee (i) give prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession or any Unit of Equipment to return the Equipment promptly to the Lessee, (ii) promptly transport the Equipment to the loca-

tion specified in Section 4.9 hereof, (iii) store the Equipment for a period of up to six months at the direction of the Lessor and (iv) return the Equipment to the possession of the Lessor in the condition required by, and as more fully set forth in, Section 4.9 hereof; or the Lessor may, by its agents, enter upon the premises where the Equipment is located and take immediate possession of and remove the same, and may use and employ in connection with such removal any services, aids, equipment, trackage, and other facilities of the Lessee.

The obligation to return the Equipment to the possession of the Lessor is of the essence of this Lease, and the Lessor shall be entitled to a judgment conferring upon the Lessor the immediate right to such possession and to a decree of specific performance requiring the return of the Equipment.

8.3. Damages. The Lessee shall be liable for all damages, costs, charges, and expenses, including attorneys' fees and disbursements, incurred by the Lessor or the Security Trustee because of the occurrence of any Event of Default or the exercise of the Lessor's rights with respect thereto.

When the Lessor shall have terminated this Lease pursuant to clause (b) of Section 8.2 hereof or when this Lease shall have terminated automatically pursuant to the proviso appearing at the end of Section 8.1 hereof, the Lessee shall pay to the Lessor without further demand the following amounts:

(a) the amount of Basic Rent, Fixed Rate Renewal Rent or Fair Market Renewal Rent payable in arrears and due and unpaid to the date the Equipment is surrendered to the Lessor as hereinabove provided, and the amount of any indemnity payment or other Supplemental Rent due hereunder;

(b) an amount equal to the Casualty Value of the Equipment, determined as of the Rent Payment Date on or next preceding the date of such surrender, which amount, because of the difficulty or impossibility of determining actual damages, the parties have agreed as the reasonable, fixed, and liquidated damages the Lessor is entitled to receive in lieu of actual damages (and not as a penalty) for loss of bargain and non-payment of rent after the surrender of the Equipment to the Lessor;

(c) any damages and expenses that the Lessor shall have sustained because of the breach of any obligation or the occurrence of an Event of Default under this Lease, other than for payment of rent; and

(d) such other expenses as shall be expended or incurred in the seizure, storage, rental or sale of the Equipment or in the enforcement of any right or privilege hereunder.

8.4. Mitigation of Damages. Upon the recovery of the Equipment by the Lessor, the Lessor may retain the use of the Equipment, or with or without recovering possession of the Equipment the Lessor may sell or lease the Equipment or any Unit thereof in a commercially reasonable manner. If any Unit of Equipment shall be sold or leased, the Lessee shall be entitled, in mitigation of the damages set forth in clause (b) of Section 8.3 hereof, to the net proceeds of such sale or the net present value of the contractual rentals under any new lease for the period through, but not extending beyond, the earlier of the expiration of such new lease or January 29, 2011 (discounted at the interest rate that the lessee under such new lease could borrow funds on a secured basis for a term equivalent to the term of the new lease or, if such interest rate is not reasonably susceptible of determination, at the higher of 10.85% and the rate of interest publicly announced by The Bank of New York as its prime rate in effect for such day plus two percentage points), as the case may be, after deduction from such proceeds or present value of all costs, charges, and expenses incurred by the Lessor in the exercise of its remedies hereunder, up to the amount of the Casualty Value of such Unit, if the Lessee shall have theretofore paid the full amount of such Casualty Value. If the Lessor shall elect to retain any Unit of Equipment, the Lessee shall be entitled, in mitigation as aforesaid, to a credit against the amount of Casualty Value due or paid in respect of such Unit in an amount equal to the Fair Market Value of such Unit, determined in accordance with the procedures set forth in Section 10 hereof (provided that if Lessee shall have failed, within five Business Days of Lessor's request in writing, to select an appraiser, then Lessee shall be bound by Lessor's selection of appraiser) less the amount of all costs, charges, and expenses of the Lessor, as aforesaid.

8.5. Remedies Not Exclusive; No Waiver. No remedy referred to herein is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to the Lessor at law

or in equity. The Lessee hereby waives any requirement of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the payments of Rent due hereunder and agrees to make payments of Rent regardless of any offset or claims which may be asserted by the Lessee or on its behalf. No express or implied waiver by the Lessor of any default or Event of Default hereunder shall be, or be construed to be, a waiver of any future or subsequent default or Event of Default. The failure or delay of the Lessor in exercising any right hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation of such contingencies or similar contingencies and any single or partial exercise of any particular right by the Lessor shall not exhaust the same or constitute a waiver of any other right provided herein.

SECTION NINE
ASSIGNMENTS

9.1. Assignments; Indemnified Parties. This Lease, including all agreements, covenants, indemnities, representations, and warranties, shall be binding upon and inure to the benefit of, and may be enforced by, (a) the Lessor and its successors, and, to the extent permitted by the Participation Agreement, its assigns, and their respective agents, employees, and representatives; and (b) the Lessee and its successors and, to the extent permitted hereby, assigns. In addition, the obligations of the Lessee under Section 7 hereof shall inure to the benefit of, and may be enforced by, each Indemnified Party.

9.2. Rights of Lessor's Assignee. This Lease may be assigned to a financial institution as security for certain obligations of the Lessor. The Lessee consents to such assignment, and agrees that:

(a) all rights of the Lessor hereunder shall, to the extent provided for in the Equipment Trust Agreement, be exercisable by such assignee and its successor assignees;

(b) the rights of such assignee and such successors shall not be subject to any defense, counterclaim, or set-off that the Lessee may have or assert against the Lessor; and

(c) such assignee and any successor assignees shall not be or become liable for any obligation of the Lessor or otherwise.

9.3. Merger. Nothing in this Lease shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest hereunder to any solvent corporation incorporated under the laws of any state of the United States of America or the District of Columbia, into or with which the Lessee shall have become merged or consolidated or that shall have acquired the business and property of the Lessee substantially as an entirety, provided that such assignee or transferee shall have duly assumed the obligations of the Lessee hereunder, and that such assignee or transferee will not, upon the effectiveness of such merger, consolidation, or acquisition, be in default under any provision of this Lease.

SECTION TEN
LESSEE'S OPTIONS

10.1. Early Termination. If any Car Type comprising Equipment shall in the sole opinion of the Lessee be determined to be obsolete or surplus to the Lessee's requirements, the Lessee may, by 120-days' notice to the Lessor, terminate this Lease with respect to all, but not less than all, of the Units of such obsolete or surplus Car Type comprising Equipment then subject to this Lease (such Equipment is hereinafter referred to as "Surplus Equipment") on a Rent Payment Date not earlier than January 29, 2001, unless an Event of Default shall have occurred and shall be continuing. On the date set forth in such notice for such termination, the Lessee shall, unless the Surplus Equipment shall be sold as provided for in the immediately succeeding paragraph, return such Surplus Equipment to the Lessor in accordance with the provisions of Section 4.9 hereof, and shall pay to or for the account of the Lessor the accrued and unpaid Rent (to the extent such Rent is payable in arrears and including Supplemental Rent) and an amount equal to the Termination Value of such Surplus Equipment determined as of the Rent Payment Date specified in the notice of termination.

During the period from the giving of notice of such termination until the Rent Payment Date specified therein for termination, the Lessee shall, as agent for the Lessor, use its best efforts to, and the Lessor may, obtain bids for such Surplus Equipment. If any such bid received prior to the date set for such termination shall equal or exceed the Termination Value of such Surplus Equipment determined as of

the Rent Payment Date specified in the notice of termination, then the Lessor shall, unless the Lessor shall have exercised its right to retain the Surplus Equipment pursuant to the second succeeding paragraph, sell such Surplus Equipment for cash to the highest bidder (which shall not be the Lessee or any related party) on the date on which this Lease is terminated with respect to such Surplus Equipment pursuant to this section. The net proceeds of such sale received by the Lessor, less the Lessor's expenses incurred in connection with such sale, shall be paid to the Lessee to the extent of the Termination Value determined as of the Rent Payment Date specified in the notice of termination (if such Termination Value shall have theretofore been paid by the Lessee), and any balance shall be retained by the Lessor.

If, no later than 30 days prior to the date on which this Lease is to be terminated with respect to such Surplus Equipment pursuant to this section, a responsive bid equal to or greater than such Termination Value shall not have been received and the Lessor shall not have exercised its right to take possession of the Surplus Equipment pursuant to the immediately succeeding paragraph, then the Lessee may, by notice to the Lessor, rescind the notice of termination and continue this Lease as if notice of termination had not been given; provided, that Lessee may not rescind such notice of termination pursuant to this paragraph more than three times during the term of this Lease.

If the Lessor, by notice to the Lessee not more than 15 days after the receipt of notice of termination pursuant to this section, elects to take possession of such Surplus Equipment, the Lessee shall return such Surplus Equipment to the Lessor and shall have no obligation to pay the Termination Value, but shall be required to pay to the Lessor the accrued and unpaid Rent (to the extent such Rent is in arrears) due on the Rent Payment Date (and including any Supplemental Rent then due) specified for termination.

Any premium payable in connection with the prepayment of all or a portion of the Equipment Trust Certificates shall be paid as Supplemental Rent by the Lessee on the date of termination pursuant to this section, whether the Surplus Equipment shall have been sold to a third party or retained by the Lessor.

10.2. Purchase Options. (a) Basic Term Purchase Option. Unless an Event of Default shall have occurred and shall be continuing, the Lessee, by not less than 120-days' and not more than 180-days' written notice to the Lessor

prior to the end of any of the Basic Term, Fixed Rate Renewal Term or Fair Market Renewal Term, may elect to purchase all of the Units of either or both Car Types comprising Equipment then subject to this Lease for the Fair Market Value of such Units as determined pursuant to paragraph (c) hereof.

(b) Special Purchase Option. Unless an Event of Default shall have occurred and shall be continuing, the Lessee, by not less than 120-days' and not more than 180-days' written notice to the Lessor prior to the Special Purchase Option Date specified in Schedule C to the Rent Agreement, may elect to purchase all, but not less than all, of the Units of either or both Car Types comprising Equipment then subject to this Lease at the date and for the percentage of Original Cost specified in such Schedule C.

(c) Determination of Fair Market Rent and Fair Market Value. The Fair Market Rent or Fair Market Value shall be determined as of the time of the commencement of any such extended term or exercise of purchase option, as the case may be, and shall be equal to the amount that would obtain in an arms' length transaction between an informed and willing lessee or buyer (other than a lessee or buyer in possession), as the case may be, and an informed and willing owner under no compulsion to lease or sell and disregarding the purchase and renewal options provided in this Lease, and in such determination, the Equipment shall be assumed to be in the condition required by, and otherwise in compliance with the terms of, Section 4.9 hereof upon a return of the Equipment to the Lessor and as if the Equipment had been maintained at all times as required in accordance with Section 4.1 hereof, the costs of removal from the location of current use shall not be a deduction from such rent or value.

If the Lessee and the Lessor are unable to agree on the Fair Market Rent or Fair Market Value, as the case may be, before 90 days prior to the expiration of the term of this Lease, such rent or value shall be determined by an appraiser selected by the Lessee and the Lessor, or if such parties cannot agree on a single appraiser, by two appraisers, one selected by each party. If the two appraisers cannot agree on a rent or value before 60 days prior to the expiration of the term of this lease, then they shall select a third appraiser not later than 55 days prior to the expiration of the term of this Lease. If such two appraisers fail to appoint a third appraiser within such time, then either the Lessor or the Lessee, on behalf of both, may request such appointment by the then President of the Association of the Bar of the City of New York (or any

successor organization thereto) or, in his absence, failure, refusal or inability to act, then either the Lessor or the Lessee may apply to the American Arbitration Association (or any successor organization thereto) in New York, New York for the appointment of such third appraiser. The parties shall be bound by the decision of the third appraiser. The cost of the first appraiser shall be borne by the Lessee, the cost of the second appraiser shall be borne by the Lessor and the cost of the third appraiser shall be borne by the Lessee.

(d) Any purchase under paragraphs (a) or (b) of this Section 10.2 shall be "as is, where is", and with all faults. Upon payment by the Lessee of the amounts contemplated by such sections together with any amounts of Rent (to the extent payable in arrears) then due and unpaid, the Lessor will convey the Units of Equipment so being purchased by delivery of a bill of sale without recourse or warranty of title except as to freedom from liens, claims, security interests, and encumbrances arising from, through, or under the Lessor, including the security interest of the Equipment Trust Agreement.

Any premium payable in connection with the pre-payment of all or a portion of the Equipment Trust Certificates shall be paid as Supplemental Rent by the Lessee on the date of purchase pursuant to this section. Upon such purchase in respect of any Unit of Equipment, the rent for such Unit shall cease to accrue, and this Lease shall terminate with respect to such Unit.

10.3. Refinancing. Any premium payable in connection with the pre-payment of all or a portion of the Certificates in connection with a refinancing contemplated by Section 5.3 of the Participation Agreement shall be paid as Supplemental Rent by the Lessee on the date of pre-payment pursuant to this section. For purposes of this Section 10.3 only, "Certificates" shall include the Equipment Trust Certificates and any debt certificates issued in connection with the refinancing of the Equipment Trust Certificates issued pursuant to the Equipment Trust Agreement.

SECTION ELEVEN
LEASE SUPPLEMENTS; ADJUSTMENTS
TO THE RENT AGREEMENT

11.1. Lease Supplements. Unless an Event of Default shall have occurred and shall be continuing, if:

(a) the Lessee exercises its rights with respect to Units of one, but not both, Car Types comprising Equipment subject to this Lease, pursuant to any of Sections 2.1(c) (regarding Fixed Rate Renewal Terms), 2.1(d) (regarding Fair Market Renewal Terms), 10.1 (regarding Early Terminations), 10.2(a) (regarding Basic Term Purchase Option) or 10.2(b) (regarding Special Purchase Option); or

(b) the Lessee exercises its rights under Section 1.4 of the Participation Agreement to alter the mix of Units within Car Types or to substitute other Units from other builders within such Car Types prior to the relevant Settlement Dates thereunder;

then, and in every such case, the Lessee and the Lessor shall execute agreements supplemental hereto (each, a "Lease Supplement") effecting such change or changes (including releasing or subjecting Equipment to this Lease) as may be necessary or desirable to carry out the transactions contemplated in this Lease and the Participation Agreement, and the Lessee, at its expense, shall cause such Lease Supplement to be recorded and filed as provided in Section 4.7 hereof. The Lessee shall pay (on an after tax basis) all fees and expenses of the Lessor incurred in connection with the execution of each Lease Supplement entered into in connection with clause (a) above.

11.2. Rent Agreement Amendments. The percentages for Basic Rent set forth in Schedule A of the Rent Agreement and for Casualty Value and Termination Value set forth in Schedule B of the Rent Agreement shall be appropriately adjusted from time to time (upward or downward) in the manner set forth in Section 11.4 hereof to reflect: (a) the Settlement Dates or amounts having occurred on dates and in amounts other than on Expected Settlement Dates as specified in Section 1.3 of the Participation Agreement, (b) any incurrence of Transaction Expenses in excess of 0.5% of Original Cost, (c) any reoptimization pursuant to Section 1.5 of the Participation Agreement and (d) any refinancing of the Equipment Trust Certificates pursuant to Section 5.3 of the Participation Agreement; provided that notwithstanding any

provision in any Operative Document to the contrary, no change in the Special Purchase Option amount shall be made.

11.3. Change in Tax Law. The percentages for Basic Rent set forth in Schedule A to the Rent Agreement, the percentages for Casualty Value and Termination Value set forth in Schedule B to the Rent Agreement, the Special Purchase Option amount set forth in Schedule C to the Rent Agreement, and the leverage and debt amortization Schedules set forth in the Schedule to the Equipment Trust Certificates as provided in Section 1.5 of the Participation Agreement shall be appropriately adjusted to reflect any Change in Tax Law occurring prior to the Settlement Date of any Unit of Equipment; provided that in the case of any Change in Tax Law (a) affecting a minimum tax or alternative minimum tax, (b) that does not result in any of the Tax Assumptions set forth in Section 1 of the Tax Indemnity Agreement being incorrect, or (c) with respect to which the aggregate pre-tax present value (computed at 9.85%, compounded semiannually) of the increase in rent occasioned by such Change in Tax Law is in excess of 125 basis points, the Lessee shall have the right, in lieu of making any adjustment otherwise required by this Section 11.3, to elect not to close on any Settlement Date occurring on or after the date of such Change in Tax Law; provided, further, that there shall not be any adjustment for any Change in Tax Law with respect to any Unit of Equipment unless the Lessor gives to the Lessee notice of a Change in Tax Law referred to in clause (a) or (b) above and the amount of the required adjustment prior to delivery on the Settlement Date for such Unit of Equipment; and, provided, further, that (i) there shall not be any adjustment for any Change in Tax Law with respect to any Unit of Equipment unless the Lessor gives the Lessee notice of a Change in Tax Law referred to in clause (c) above and the amount of the required adjustment within three months after the Settlement Date with respect to which an adjustment is sought hereunder, and (ii) unless the Lessor gives to the Lessee notice of a Change in Tax Law referred to in clause (c) above and the amount of the required adjustment prior to the delivery on the Settlement Date for such Unit of Equipment, the aggregate pre-tax present value (computed at 9.85%, compounded semiannually) of an increase in Rent occasioned by such Change in Tax Law shall not exceed 125 basis points. The term "Change in Tax Law" means (i) any revocation of, or modification of, or addition to, any Federal, state or local income tax statute, regulation (or other action of a taxing authority with legal import similar to a regulation), revenue procedure or revenue ruling or administrative publications announcing the intent of the Treasury to promulgate such regulations, or

(ii) any proposal to revoke or modify, or make additions to, any Federal, state or local income tax statute, or any proposed regulation. In the case of any proposal described in the preceding clause (ii) the adjustment shall be made as of the applicable Settlement Date; provided, however, that if any such proposal is not adopted, in the case of a proposal to revoke or modify (A) a Federal statute, by the 101st Congress, (B) a state or local income tax statute, on or before December 31, 1990, or (C) a proposed regulation, within two years of the applicable Settlement Date the remaining rentals, Casualty Values, Termination Values, Special Purchase Options, leverage and debt amortization Schedules, to the extent applicable, shall be adjusted to reflect such revocation or the failure to adopt such proposed Change in Tax Law. Any adjustments made pursuant hereto shall be subject to the verification procedures contained in Section 10(f) of the Tax Indemnity Agreement.

11.4. Manner of Making Rent Agreement Amendments. All adjustments pursuant to Section 11.2 or 11.3 hereof shall be made by the Lessor prior to the first date on which payment of Rent by the Lessee is due hereunder; provided that as far as practicable, only one such adjustment shall be made. All adjustments shall be made in a manner which (a) maintains the Beneficial Owner's Net Economic Return during the Interim Term and Basic Term, (b) minimizes Lessee's Net Present Value of Rent during the Basic Term, (c) insures that the ratio of (i) the aggregate principal amount of Certificates outstanding on the date of such reoptimization, and (ii) the aggregate Original Cost of Equipment subject to the Lease, does not exceed 80%, (d) insures that the Beneficial Owner's equity contribution does not exceed $21,000,000, and (e) insures that the average life of the Equipment Trust Certificates remains within one half year of the Expected Average Life thereof; provided that any benefits associated with adjustments pursuant to Section 11.2(d) shall directly be passed on to Lessee in the form of adjusted rent during the Basic Term.

For purposes hereof:

"Net Economic Return" shall mean the Beneficial Owner's anticipated after-tax yield and aggregate after-tax cash flow, as calculated by the Beneficial Owner utilizing the multiple investment sinking fund method of analysis, computed on the basis of the same methodology and assumptions as were utilized by the Beneficial Owner in determining, as of the date hereof, Basic Rent, Casualty Value, Termination Value and Special Purchase Option percentages, as such

assumptions may be adjusted for events which have been the basis of adjustments to rent pursuant to Section 11.2 and 11.3 hereof.

"Net Present Value of Rents" means the net present cost to Lessee, expressed as a percentage of Original Cost, as of the date hereof, of all Basic Rent payments, discounted at a rate per annum compounded semi-annually, equal to 9.85%.

SECTION TWELVE
MISCELLANEOUS

12.1. Method of Notice. All notices, demands, instructions and other communications required or permitted to be given to or made upon any party hereto shall in writing and shall be personally delivered or sent by registered mail, postage prepaid, or by prepaid telex, or by telecopier or by prepaid courier service, and shall be deemed to be given for purposes of this Lease on the day that such writing is delivered or sent to the intended recipient thereof in accordance with the provisions of this Section 12.1(a) and shall be given to or made upon the parties as follows:

(a) if to the Lessor, at

Meridian Trust Company
35 North 6th Street
P.O. Box 1102
Reading, PA 19603
Attn: Corporate Trust Department
Fax: (215) 320-1349

with a copy to:

BNY Leasing Corporation
1290 Avenue of the Americas, 29th Floor
New York, NY 10104
Attn: Chief Financial Officer
Fax: (212) 246-1803

(b) if to the Lessee, at

Trailer Train Company
101 North Wacker Drive
Chicago, Illinois 60606
Attention: Treasurer
Fax: (312) 984-3855

(c) and in each case, so long as any amounts remain outstanding on any Equipment Trust Certificate, with a copy to:

Mercantile-Safe Deposit and Trust Company
Two Hopkins Plaza
Baltimore, Maryland 21201
Attention: Corporate Trust Department

and

Davis Polk & Wardwell
1300 I Street, N.W., Suite 1200
Washington, D.C. 20005
Attention: Stephen H. Case, Esq.
Fax: (202) 962-7111

or such other address that any party shall designate by notice to the others.

12.2. Indemnity for Lessor's Performance. If the Lessee shall fail to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee itself perform or comply with such agreement, and the Lessee shall pay to the Lessor, upon demand, the amount of the reasonable costs and expenses incurred by the Lessor in connection with such performance or compliance, together with interest on such amount at the rate per annum set forth in Section 2.3 hereof for overdue payments of rent.

12.3. Covenants to Survive. All indemnities, representations, and warranties contained in this Lease or any document, agreement, or certificate delivered pursuant hereto shall survive the expiration or other termination of this Lease.

12.4. Amendments and Waivers. The terms of this Lease shall not be waived, altered, modified, amended, supplemented, or terminated in any manner whatsoever except by written instrument signed by the Lessor and the Lessee and, so long as any amounts remain outstanding on any Equipment

Trust Certificate, with the written consent of the Security Trustee in the manner provided in the Equipment Trust Agreement; provided, however, that no consent of the Security Trustee shall be required to any waiver, alteration, modification, supplement or termination of any term of this Lease governing Excluded Interests.

12.5. Enforceability and Severability. If any provision of this Lease is invalid, prohibited or unenforceable in any jurisdiction, such invalidity, prohibition or unenforceability shall not invalidate the remaining provisions hereof, and any such invalidity, prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by law, the Lessee hereby waives any provision of law that renders any provision hereof invalid, prohibited or unenforceable in any respect.

12.6. Law Governing. THIS LEASE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, BUT THE PARTIES HERETO SHALL HAVE ALL OF THE BENEFITS OF 49 U.S.C. § 11303.

12.7. Recourse. This Lease is solely a corporate obligation of the Lessee and the Lessor and no recourse shall be had in respect of any obligation, covenant, or agreement of this Lease, or referred to herein, against any stockholder, incorporator, director, or officer, as such, past, present, and future, of the parties hereto by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of statute or otherwise.

Meridian Trust Company is entering into this Agreement solely as trustee under the Trust Agreement and not in its individual capacity and in no case whatsoever shall Meridian Trust Company or any person or entity acting as a trustee under the Trust Agreement be personally liable for, or for any loss in respect of, any of the statements, warranties, representations, agreements or obligations of the Lessor hereunder except for the willful misconduct or gross negligence of such person and except for statements, warranties, representations, agreements or obligations expressly made by it in its individual capacity.

12.8. Intention of the Parties. This Lease shall be construed as an agreement of lease and nothing herein shall be construed as conveying to the Lessee any right, title, or interest in or to the Equipment, except as lessee only. This agreement and the other agreements and documents

referred to herein constitute the final and entire expression of the agreement of the parties regarding to the matters contemplated hereby.

12.9. Counterparts. This Lease may be executed in any number of counterparts and by the different parties hereto on separate counterparts, all of which together shall constitute a single agreement, but the counterpart or counterpart set delivered to the assignee of the Lessor shall be and be marked the "Original" and all other counterparts hereof shall be and be marked "Duplicate." No security interest or other right in this Lease can be created by the transfer or possession of any counterpart or counterpart set other than the "Original," but any "Duplicate" counterpart or counterpart set shall be valid evidence of this Lease for any other purpose.

12.10. Effectiveness. Although this Lease is dated as of the date first above written for convenience, the actual dates of execution hereof by the parties hereto are respectively the dates set forth in the notaries' acknowledgments thereof, and this Lease shall be effective on the latest of such dates.

12.11. Service of Process. The Lessor and the Lessee each hereby irrevocably submits itself to the non-exclusive jurisdiction of the United States District Court for the Southern District of New York and to the non-exclusive jurisdiction of the Supreme Court of the State of New York, New York County, for the purposes of any suit, action or other proceeding arising out of this Lease, the subject matter hereof or any of the transactions contemplated hereby brought by the Lessor, the Lessee, the Security Trustee, the holders of Equipment Trust Certificates issued under the Equipment Trust Agreement or the Beneficial Owner or their respective successors or assigns.

12.12. Successor Trustee. The Lessee agrees that in the case of the appointment of successor Owner Trustee pursuant to the terms of the Trust Agreement, such successor Owner Trustee shall, upon written notice by such successor Owner Trustee, succeed to all the rights, powers and title of the Lessor hereunder and shall be deemed to be the Lessor and the owner of the Equipment for all purposes hereof without the necessity of any consent or approval by the Lessee and without in any way altering the terms of this Lease or the Lessee's obligations hereunder. One such appointment and designation of a successor Owner Trustee shall not exhaust the right to appoint and designate further successor Owner

Trustees pursuant to the Trust Agreement, but such right may be exercised repeatedly as long as this Lease shall be in effect.

12.13. Headings. The headings of the sections hereof are for convenience of reference and are not intended to be part of, and shall not affect the interpretation of, the sections so headed.

IN WITNESS WHEREOF, the parties hereto have each caused this Lease to be duly executed by their respective officers thereunto duly authorized:

TRAILER TRAIN COMPANY, as Lessee

By _____
Name: Thomas D. Marion
Title: Treasurer

MERIDIAN TRUST COMPANY, as Lessor

By _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have each caused this Lease to be duly executed by their respective officers thereunto duly authorized:

TRAILER TRAIN COMPANY, as Lessee

By _____
Name: Thomas D. Marion
Title: Treasurer

MERIDIAN TRUST COMPANY, as Lessor
(not in its individual capacity but solely as trustee)

By _____
Name:
Title:

STATE OF ILLINOIS)
) SS.:
COUNTY OF COOK)

On this 11TH day of July, 1990, before me personally appeared Thomas D. Marion, to me personally known, who, by me being duly sworn, says that he is Treasurer of Trailer Train Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said company, and that said instrument was signed and sealed on behalf of said company by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said company.

"OFFICIAL SEAL"
John G. Rainsford
Notary Public, State of Illinois
My Commission Expires 10/1/90

John G. Rainsford
Notary Public

My commission expires

COMMONWEALTH OF PENNSYLVANIA)
) SS.:
COUNTY OF BERKS)

On this day of July, 1990, before me personally appeared to me personally known, who, by me being duly sworn, says that he is an _____ of MERIDIAN TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

My commission expires

STATE OF ILLINOIS)
) SS.:
COUNTY OF COOK)

On this day of July, 1990, before me personally appeared Thomas D. Marion, to me personally known, who, by me being duly sworn, says that he is Treasurer of Trailer Train Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said company, and that said instrument was signed and sealed on behalf of said company by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said company.

_____
Notary Public

My commission expires

COMMONWEALTH OF PENNSYLVANIA)
) SS.:
COUNTY OF BERKS)

On this day of July, 1990, before me personally appeared Gary T. Bauer to me personally known, who, by me being duly sworn, says that he is an ACCOUNTANT of MERIDIAN TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Lucy Cortez
Notary Public

My commission expires

NOTARIAL SEAL
LUCY CORTEZ, Notary Public
Reading, Berks County, PA
My Commission Expires 4 - 20 - 92

Lease (No. 32-A)

07/11/90
TL32A1

(BNY LEASING)

SCHEDULE A
TRAILER TRAIN COMPANY LEASE NO. 32-A
DATED AS OF JULY 16, 1990
CLOSING #1 ON JULY 16, 1990

BUILDER/ CAR TYPE	QUANTITY	CAR NUMBERS (INCLUSIVE)	UNIT COST	TOTAL COST	DELIVERY PERIOD	CONTRACT
BETHLEHEM STEEL CORPORATION:						
FIVE-PLATFORM ARTICULATED ALL-PURPOSE SPINE FLATCARS WITH RETRACTABLE HITCHES FOR CARRYING TRAILERS OR CONTAINERS - TTAX.	31	78209,78273, 78315-78337, 78339,78342, 78349,78351, 78353,78354.	$148,576.74	$4,605,878.94	MAY, 1990	T-5088-B
THRALL CAR MANUFACTURING COMPANY:						
FIVE-PLATFORM ARTICULATED ALL-PURPOSE SPINE FLATCARS WITH RETRACTABLE HITCHES FOR CARRYING TRAILERS OR CONTAINERS - TTAX.	35	77103,77104, 77106-77125, 77165-77173, 77175-77178.	$144,677.00	$5,063,695.00	MAY-JUNE, 1990	T-4089-T
73-FOOT CENTER-PARTITIONED BULKHEAD FLATCARS WITH WINCH TIE-DOWN DEVICES FOR CARRYING PACKAGED LUMBER PRODUCTS- TTZX.	104	86907-86933, 86991-87044, 87103-87122, 87124-87126.	$47,345.00	$4,923,880.00	MARCH-JUNE, 1990	T-5A89-T
TRINITY INDUSTRIES, INC.:						
FIVE-PLATFORM ARTICULATED ALL-PURPOSE SPINE FLATCARS WITH RETRACTABLE HITCHES FOR CARRYING TRAILERS OR CONTAINERS - TTAX.	29	76291-76319.	$151,222.00	$4,385,438.00	APRIL-MAY, 1990	T-5A89-P
	199			$18,978,891.94		