

PNC Leasing Corp
Fifth Avenue and Wood Street
Pittsburgh, PA 15265
412 762 2783 Tel

PNCBANK

November 19, 1993

18478
RECORDED NO. FILED NO.

Sidney L. Strickland, Jr., Secretary
Interstate Commerce Commission
Washington, D.C.

NOV 19 1993 10 42 AM

INTERSTATE COMMERCE COMMISSION

Dear Mr. Secretary:

I have enclosed an original and one (1) copy of the document described below, to be recorded pursuant to §11303 of Title 49 of the U.S. Code.

1. This document is a Lease of Railroad Equipment dated November 19, 1993.
2. The names and addresses of the parties to the document are as follows:

Lessor:

PNC Leasing Corp
One Oliver Plaza, 34th Floor
Pittsburgh, Pennsylvania 15265

Lessee:

Consolidated Rail Corporation
Two Commerce Square
2001 Market Street
Philadelphia, Pennsylvania 19101-1425

3. A description of the equipment covered by the document is as follows:

150 Fully-enclosed bi-level Auto Racks, numbered CR 9688 through CR 9837 (both inclusive), and 75 grate lock chock systems installed on CR 9763-9837 (both inclusive).

4. A fee of \$18.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to:

Douglas B. Bickmore, Vice President
PNC Leasing Corp
One Oliver Plaza, 34th Floor
Pittsburgh, Pennsylvania 15265

Counters Barbara Hob

LICENSING DIVISION

Sidney L. Strickland, Jr.
November 19, 1993
Page 2

5. A short summary of the document to appear in the index is as follows:

Lease of Railroad Equipment dated November 19, 1993, between PNC Leasing Corp as Lessor, and Consolidated Rail Corporation as Lessee, pursuant to which are leased 150 Fully-enclosed bi-level Auto Racks, bearing numbers CR 9688 through CR 9837 (both inclusive), and 75 grate lock chock systems installed on CR 9763-9837 (both inclusive).

Very truly yours,



Douglas B. Bickmore
Vice President
PNC Leasing Corp

DBB:RWC:djb
Enclosures

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6805-05779

Interstate Commerce Commission
Washington, D.C. 20423

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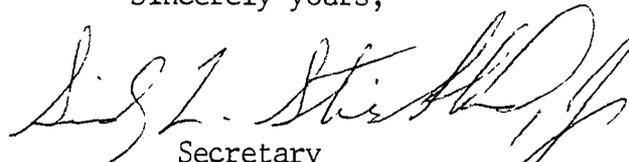
OFFICE OF THE SECRETARY

Douglas B. Bickmore
Vice President
PNC Leasing Corp.
One Oliver Plaza, 34th Fl.
Pittsburgh, PA. 15265

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 **11/19/93** at **10:40am**, and assigned recordation number(s). **18478**

Sincerely yours,


Secretary
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

18478
RECEIVED NOV 19 1993

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INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of November 19, 1993

between

CONSOLIDATED RAIL CORPORATION

and

PNC LEASING CORP

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LEASE OF RAILROAD EQUIPMENT dated as of November 19, 1993 (the "Lease") between **CONSOLIDATED RAIL CORPORATION**, a Pennsylvania corporation (the "Lessee"), and **PNC LEASING CORP**, a Pennsylvania corporation (the "Lessor").

WHEREAS, the Lessor has entered into an assignment of a purchase agreement dated as of December 30, 1992 and Appendix II, Addendum A thereto dated April 29, 1993 (collectively the "Purchase Agreement") between the Lessee and Thrall Car Manufacturing Company (the "Builder"), wherein the Builder has agreed to manufacture, sell, apply to Trailer Train Company ("Trailer Train") flatcars (the "Flatcars") and pursuant to the assignment of the Purchase Agreement (the "Assignment of Purchase Agreement") to sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (the "Autoracks");

WHEREAS, the Lessor and Lessee have entered into an agreement dated as of November 19, 1993, pursuant to which Lessee has assigned to Lessor its rights to purchase from Holden America Inc. (the "Vendor") the tangible personal property described in Schedule B hereto (the "Tie Downs") and attached to and made a part of the Autoracks identified on Schedule A as CR 9763-9837 (both inclusive) (the "Assignment of Purchase Rights"), and the Vendor has agreed to sell and deliver to Lessor the Tie Downs (collectively the Assignment of Purchase Agreement and Assignment of Purchase Rights being referred to herein as the "Purchase Agreement Assignments");

WHEREAS, the Lessee desires to lease from Lessor, and Lessor desires to lease to Lessee, as a single unit of railroad equipment, the Autoracks and Tie Downs (the Autoracks and, with respect to the Autoracks identified as CR 9763-9837, such Autoracks and the Tie Downs attached thereto, being referred to herein individually as a "Unit" and collectively as the "Units") as are delivered and accepted and settled for under the Purchase Agreement and Assignment of Purchase Rights at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

Section 1. Net Lease. This Lease is a net lease and except as expressly provided herein the Lessee shall not be entitled to any abatement of rent or additional rent, or setoff against or recoupment or reduction of rent or additional rent, including, but not limited to, abatements, setoffs, reductions or recoupments due or alleged to be due by reason of any past,

present or future claims or counterclaims of the Lessee against the Lessor under this Lease, the Assignment of Purchase Rights or the Purchase Agreement, or against the Builder, the Vendor or otherwise. The Lessee's obligations hereunder, including its obligations to pay all rentals, additional rentals and other amounts hereunder, shall be absolute and unconditional under any and all circumstances, and, except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. So long as no Event of Default, or a situation which after notice or with the passage of time or both would become an Event of Default ("Potential Default") exists hereunder, if Lessor or anyone claiming through it shall interfere with Lessee's possession and use of any Unit in accordance with the terms of the Lease, Lessee's obligation to pay rent with respect to such Unit hereunder shall abate for so long as such interference continues provided, however, that Lessor's inspection of the Equipment in accordance with the terms of the Lease shall not be deemed to be an interference.

Section 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Autoracks and Tie Downs pursuant to the Purchase Agreement and Assignment of Purchase Rights. Lessee shall timely execute and deliver to the Lessor a certificate of acceptance (the "Certificate of Acceptance") in the form annexed hereto as Schedule C-1 and C-2 (as applicable), whereupon such Autoracks and Tie Downs shall be deemed to have been accepted by the Lessee on such date (the "Acceptance Date") and shall be subject thereafter to all the terms and conditions of this lease.

Section 2A. Lessee's Representations and Warranties. In order to induce Lessor to enter into this Lease and to lease the Units to Lessee hereunder, Lessee represents and warrants to Lessor that:

(a) Organization. Lessee is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania, and is duly qualified to do business as a foreign corporation and in good standing under the laws of each other jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification, except to the extent that the failure to so qualify does not, in the aggregate, have a material adverse effect upon the business, operations, assets, prospects or financial condition of the Lessee taken as a whole, or a material adverse effect on the ability of the Lessee to perform its obligations under this Lease.

(b) Power and Authority. Lessee has full power, authority and legal right to execute, deliver and perform this Lease and the Purchase Agreement Assignments and the execution, delivery and performance hereof and thereof has been duly authorized by all necessary corporate action of Lessee.

(c) Enforceability. This Lease and the Purchase Agreement Assignments have been duly executed and delivered by Lessee and each constitutes a legal, valid and binding obligation of Lessee enforceable in accordance with their respective terms except that the enforceability hereof and thereof may be limited by bankruptcy, insolvency, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally, and except that the remedy of specific performance and injunctive and other forms of equitable relief are subject to certain equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

(d) Consent and Permits. The execution, delivery and performance of this Lease and the Purchase Agreement Assignments does not require any stockholder approval or approval or consent of any trustee or holders of any indebtedness or obligations of Lessee, and will not contravene any law, regulation, judgment or decree applicable to Lessee, or the Articles of Incorporation or Bylaws of Lessee, or contravene the provisions of, or constitute a default under, or result in the creation of any Lien (as defined below) upon any property of Lessee under any mortgage, instrument or other agreement to which Lessee is a party of by which Lessee or its assets may be bound or affected; and no authorization, approval, license, filing or registration with any court or governmental agency or instrumentality is necessary in connection with the execution, delivery, performance, validity and enforceability of this Lease or the Purchase Agreement Assignments. As of the Acceptance Date with respect to a Unit, Lessee will have obtained all approvals, authorizations, consents, licenses and permits, including but not limited to environmental permits, and made all filings and registrations, necessary for Lessee or Lessor to operate the Unit.

(e) Lessee Liens. On the Acceptance Date, the Units shall be free and clear of all Liens, except Liens created by or through Lessor.

(f) No Litigation. There is no action, suit, investigation or proceeding by or before any court, arbitrator, administrative agency or other governmental authority pending or threatened against or affecting Lessee (i) which involves the transactions contemplated by this Lease or the Purchase Agreement Assignments or the Units; or (ii) which if adversely determined, could have a material adverse effect on the financial condition, business or operations of Lessee.

(g) Compliance with Decrees, etc. Lessee is in compliance with all orders, decrees and decisions of any court, arbitrator, administrative agency or other governmental agency, in each case applicable to or binding upon Lessee or any of its property, or to which Lessee or any of its property is subject, except to the extent that the failure to so comply does not, in the aggregate, have a material adverse effect upon the business, operations, assets, prospects or financial condition of Lessee taken as a whole, or a material adverse effect upon the ability of Lessee to perform its obligations under this Lease or the Purchase Agreement Assignments.

(h) Event of Default. No Event of Default or Potential Default has occurred and is continuing.

(i) No Trade Name. Lessee is not, and on the Acceptance Date with respect to each Unit will not be, doing business in any jurisdiction under any name or trade name other than Consolidated Rail Corporation.

(j) Recording. Except for the filing for recordation of this Lease with the Interstate Commerce Commission and the Registrar General of Canada and the placing on the Units of the legend referred to in Section 5 of this Lease, no further filing or recording of this Lease or of any other document and no further action, are necessary or desirable under the laws of any governmental authority in order to (i) fully protect and establish Lessor's title to and interest in any property rights with respect to the Units as against Lessee or any third party and to ensure that the property rights of the Lessor therein will have priority in all respects over the claims of all creditors of Lessee, or (ii) ensure the validity, effectiveness and enforceability of this Lease.

(k) Taxes. All income tax returns and all other tax returns required to be filed by the Lessee in any jurisdiction have, in fact, been filed, and all taxes, assessments, fees and other governmental charges upon the Lessee or upon any of its properties, income or franchises, which are shown to be due and

payable in such returns have been paid, other than those being contested by Lessee in good faith by appropriate proceedings. The Lessee does not know of any proposed additional tax assessment against it for which adequate provision has not been made on its accounts. All taxes, fees and other charges in connection with the execution, delivery, recording, filing and registration of this Lease have been paid.

(l) No misstatements. No information, exhibit, document, or report furnished by or on behalf of Lessee to Lessor in connection with the negotiation of, or pursuant to, this Lease contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements therein not misleading.

(m) Lessee Location. Lessee's headquarters are located in Philadelphia, Pennsylvania.

Section 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit, interim and base rent in accordance with the terms set forth herein and on Schedule F.

The interim term of this Lease with respect to each Unit shall commence on the Acceptance Date and shall continue until the Base Lease Commencement Date (as defined below) (the "Interim Term"), unless earlier terminated in accordance with the terms of this Lease. The initial base term (the "Base Term") with respect to each Unit shall commence on January 19, 1994 (the "Base Lease Commencement Date") and shall continue for a fifteen (15) year term expiring on January 19, 2009 (the "Expiration Date") unless earlier terminated in accordance with the terms of this Lease. The base rent (the "Base Rent") for each Unit during the Base Term shall be an amount equal to the product of (a) the percentage set forth on Schedule F with respect to the applicable Rental Payment Date (the "Rent Factor"), and (b) the aggregate Lessor's Cost (as defined below) of the Unit. Base Rent shall be payable in arrears in the amounts and at times set forth herein and in Schedule F. The Lessee shall also pay any applicable sales and use taxes in connection with the sale of the Units to Lessor and/or the payments of rent hereunder. The date specified herein and on Schedule F for the payment of rent shall be referred to as the "Rental Payment Date(s)".

The Lessor's cost of each Unit (the "Lessor's Cost") is (i) the Lessor's Cost of the Autorack as set forth on Schedule A hereto with respect to the Autoracks identified as CR 9688-9762 (both inclusive), and (ii) the sum of the Lessor's Cost of the Autorack as set forth on Schedule A hereto and the Lessor's Cost of the Tie Down attached to such Autorack as set forth in Schedule B hereto, with respect to the Autoracks identified as CR 9763-9837 (both inclusive).

If any of the Rental Payment Dates set forth on Schedules F is not a business day the rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Philadelphia or Pittsburgh, Pennsylvania, are authorized or obligated to remain closed.

The Base Rent has been set forth herein and on Schedule F and the related Casualty Values are set forth on Schedule D hereto.

All amounts payable by the Lessee hereunder shall be paid in immediately available funds. Lessee shall not pay any Base Rent prior to the date due. All rent due hereunder shall be payable to Lessor at One Oliver Plaza, 34th Floor, Pittsburgh, Pennsylvania 15222, or as otherwise directed by Lessor from time to time in writing, free from all claims, demands, or setoffs except as provided in Section 1.

Section 4. Term of Lease. The term of this Lease as to each Unit shall begin on the Acceptance Date of such Unit hereunder and, subject to the provisions of Sections 7 and 10 hereof, shall terminate on the date on which the final payment of all rent and other obligations due hereunder are made pursuant to Sections 3 and 13 hereof and all other obligations of Lessee hereunder are satisfied in full ("Lease Term"). The obligations of the Lessee hereunder (including, but not limited to, the obligations under Sections 6, 7, 9, 14 and 16 hereof) shall survive the expiration or termination of the term of this Lease and the full payment of all amounts payable under this Lease, as shall the obligations of the Lessor under Sections 6, 7, 9, 14 and 16 hereof.

Section 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identification number set forth in Schedule A hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership subject to documents filed with the Interstate Commerce Commission." with appropriate changes thereof as from time to time may be required by law, in the reasonable opinion of the Lessor, in order to protect the Lessor's title to and interest in such Unit and the rights of the Lessor under this Lease. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed.

The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or

numbers to be substituted therefor shall have been filed with the Lessor and duly filed and deposited by the Lessee in all public offices where this Lease shall have been filed and deposited and (ii) the Lessee shall have furnished the Lessor an opinion of counsel to the effect that such statement has been so filed and deposited, and that no other filing, deposit or giving of notice with or to any federal, state or local government or agency thereof is necessary to protect the rights of the Lessor in such Units.

Except as provided in the immediately preceding paragraphs, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

Section 5A. Liens. Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance, lease, security interest, title retention or claim ("Lien") on or with respect to any Unit or any interest therein, except (i) the respective rights of Lessor and Lessee as herein provided; (ii) Liens with respect to obligations of the Lessor unrelated to this transaction; (iii) Liens for taxes, assessments or other governmental charges either not yet due or being contested in good faith and by appropriate proceedings (and for the payment of which appropriate provision has been made, in accordance with generally accepted accounting principles, on any financial statements required to be provided to Lessor under this Lease); (iv) materialmen's, mechanics', workmen's, repairmen's, employees' or other like Liens arising in the ordinary course of business and for amounts the payment of which is either not yet delinquent or is being contested in good faith and by appropriate proceedings (and for the payment of which appropriate provision has been made, in accordance with generally accepted accounting principles, on any financial statements required to be provided to Lessor under this Lease); and (v) Liens arising out of any judgment or award against Lessee, other than in respect of any Unit, if the judgment shall, within 60 days after entry thereof, have been discharged, vacated or reversed, so long as in each case such proceedings do not adversely affect the title, property or rights of Lessor. Lessee shall promptly, at no expense to Lessor, discharge any such Lien not excepted above if the same shall arise at any time with respect to any Unit, and shall give Lessor prompt notice of an attachment or other judicial process affecting the Unit.

Section 6. General Tax Indemnity

(a) Indemnity. The Lessee agrees to pay, and to indemnify and hold the Lessor harmless from, on an after-tax basis, all taxes, assessments, fees, imposts, duties and charges together with any penalties, fines, withholdings, additions to tax or interest thereon, however imposed, whether levied or imposed upon the Lessor, this Lease, the Units or any part thereof by any Federal, state, foreign, District of Columbia or local taxing authority, government or governmental subdivision thereof, upon or with respect to, any Unit or this Lease; the purchase, ownership, delivery, leasing, re-leasing, subleasing, possession, use, operation, maintenance, repair, condition, transfer of title, return or other disposition thereof; the rentals, receipts or earnings arising therefrom; or this Agreement or any payment made pursuant to this Agreement (all such taxes, assessments, fees, imposts, duties, charges, penalties, fines, withholdings, additions to tax and interest imposed hereafter referred to as "General Taxes"); excluding, however:

(i) United States Federal income taxes and income taxes imposed by any state or the District of Columbia;

(ii) taxes on, based on, or measured by the income or gross receipts (other than sales and use type taxes), capital, franchise, excess profits or conduct of business of Lessor imposed by any state or local government, political subdivision or taxing authority in the United States other than such which are (a) imposed as a result of a nexus between any Unit of Equipment and any such taxing jurisdiction in which the Lessor is not at the time otherwise subject to such Taxes and (b) not subject to offset or credit against the tax liability of Lessor in the jurisdiction of Lessor's principal place of business;

(iii) taxes on, based on, or measured by the income or gross receipts (other than sales and use type taxes), capital, franchise, excess profits or conduct of business of the Lessor imposed by any government or taxing authority of or in a foreign country or of or in a territory or possession of the United States, or by any international authority, other than such Taxes which are (a) imposed as a result of a nexus between any Unit of Equipment and such a taxing jurisdiction in which the Lessor is not at the time otherwise subject to such Taxes, and (b) not subject to offset or credit against the Lessor's United States federal income tax liability or the tax liability of the Lessor in the jurisdiction in which is located its principal place of business;

(iv) taxes relating to each Unit fairly attributable to events occurring during any period following the expiration or early termination of the Lease Term and return of such Unit by Lessee, except that taxes incurred in connection

with the return of the Unit(s) and/or the exercise of any remedies pursuant to an Event of Default hereunder shall not be excluded from the indemnity provided for in Section 16(c) hereof;

(v) taxes imposed on the Lessor which arise out of or are caused by the negligence, gross negligence, fraud or willful misconduct of the Lessor;

(vi) taxes for which Lessee is obligated to indemnify the Lessor under Section 16 hereof;

(vii) U.S. withholding taxes imposed on payments to a foreign person;

(viii) taxes which have been included (to the extent included) in Lessor's Cost; or

(ix) taxes imposed upon Lessor as a result of the voluntary transfer of title, sale, or other disposition of the Units to someone other than Lessee at a time when no Event of Default or Potential Default has occurred and is continuing.

(b) Payment. All amounts payable to the Lessor pursuant to this Section 6 shall be paid promptly in immediately available funds and in any event within 30 days after receipt by the Lessee of written demand therefor from the Lessor requesting reimbursement or indemnification for any General Taxes, setting forth in reasonable detail the basis for and calculation of such indemnification, on the basis that the Lessor has paid or within 15 days expects to pay such amounts.

(c) Contest. If any proceeding (including the written claim or written threat of such proceeding) is commenced against the Lessor for any General Taxes, the Lessor shall, upon receipt of notice of such proceeding, promptly, but in any event within the time necessary for Lessee to meet any statutory contest requirements, notify the Lessee. Provided no payment Event of Default or bankruptcy Event of Default (where the trustee has not assumed the Lease) has occurred or is occurring, Lessor agrees to confer with Lessee, if so requested, and agrees to take such action in connection with contesting any such proceeding as the Lessee shall reasonably request provided, however, that:

(i) within 30 days, or such shorter time as may be required by law, but in any event at least 5 business days before Lessor must exercise its contest rights, after notice by the Lessor to Lessee of such proceeding the Lessee shall request in writing that it be contested;

(ii) Lessor, at its sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with any applicable agency with respect to any such

claim, accept the findings of such agency or otherwise terminate any audit or other administrative proceedings and may, at its sole option, either pay the General Taxes and sue for a refund in such court as the Lessor shall elect, or contest the proceeding in any appropriate forum; provided, however, that Lessee shall have no obligation to indemnify Lessor for any such General Taxes, if as a result of Lessor's foregoing of any such administrative appeals, proceedings, hearings or conferences, Lessor shall lose the right to contest the merits of such imposition or levies; and

(iii) prior to taking such action, the Lessee at its expense shall furnish the Lessor in a timely manner with an opinion of independent tax counsel satisfactory to the Lessor to the effect that there exists a reasonable likelihood of the Lessor's prevailing on the merits in the contest of such proceeding; it being understood, however, that in no event shall the Lessor be required to commence any proceeding pursuant to this paragraph (c) unless the Lessee shall have provided the Lessor with sufficient funds on an interest-free basis to pay such General Taxes as are required to be paid so to proceed.

(d) Costs of Contest. As a condition precedent to Lessor's obligation to contest hereunder, the Lessee shall indemnify the Lessor in a manner satisfactory to the Lessor for any liability or loss which the Lessor may incur from time to time as a result of participating in any proceeding described in paragraph (c) of this Section 6. The indemnification shall be an amount which, on an after-tax basis, shall be equal to all costs and expenses which the Lessor may incur from time to time in connection with any such proceeding or any appeal thereof, including, without limitation, reasonable attorneys' and accountants' fees and disbursements, and the amount of any interest, tax, additions to tax or penalty which may ultimately be due and payable as a result of any such proceeding. Such amounts shall be payable within 15 days after the presentation to Lessee of appropriate documentation in reasonable detail of such costs, expenses, interest, taxes, additions to tax or penalties and the demand for payment thereof.

(e) Refund. If the Lessor shall obtain a refund of all or any part of such General Taxes paid by the Lessee or with the Lessee's advance of funds, the Lessor shall promptly pay to the Lessee the amount of such refund in its entirety, subject to the Lessee making the indemnification in this Section 6 in its entirety. If in addition to such refund the Lessor shall receive an amount representing interest on the amount of such refund, the Lessee shall be paid that proportion of such interest which is fairly attributable to General Taxes paid by the Lessee prior to the receipt of such refund or with an advance provided by the Lessee.

(f) **Reports.** In case any report or return is required to be made relating to any General Taxes, the Lessee will, at its own expense, make and timely file such reports and returns where permitted to do so under applicable rules and regulations (the interest of the Lessor in the Units to be shown in a manner satisfactory to the Lessor) or, where not so permitted, notify the Lessor of such requirement and at Lessee's expense will prepare and deliver such reports or appropriate portions thereof to the Lessor within a reasonable time prior to the time such reports are to be filed. Any allocable expenses incurred by the Lessor with respect to the submission, review or execution of any such report or return, or the filing or recording thereof, shall be reimbursed to the Lessor by the Lessee in the manner provided in paragraph (d) of this Section 6. Lessor agrees to notify Lessee of any reporting or return requirements of which it is aware in the ordinary course of its principal business (other than reports or returns required in the railroad industry or for property or sales and use taxes) and to provide Lessee, in a timely manner, all information in the possession of Lessor which is reasonably required for the preparation and filing of such report or return.

Section 7. Maintenance: Casualty Occurrences:
Insurance.

Maintenance. The Lessee, at its own expense, will bear the risk of damage and will maintain, service and adhere to a maintenance schedule with respect to each Unit so that each Unit will remain (a) in good operating condition (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations. Lessee agrees to maintain the Units to the same standards existing for its autorack fleet and in no event shall any Unit be maintained on a basis less frequent than the maintenance basis employed as of the date hereof by the Lessee for any similar equipment owned or operated by Lessee.

Casualty Occurrences. In the event that any Unit shall be or become lost, stolen, destroyed or irreparably damaged, or in the reasonable opinion of Lessee worn out from any cause whatsoever, permanently returned to the Builder or Vendor pursuant to any patent indemnity provision of the Purchase Agreement or Assignment of Purchase Rights, or (i) title is taken by any governmental authority; or (ii) use is requisitioned by condemnation or otherwise by the United States Government or by any other government or governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days (such occurrences being hereinafter called "Casualty Occurrences"), before the final payment of rent in respect thereof is due pursuant to Sections 3 and 13 hereof and prior to the return of such Unit in the manner set forth in Section 14 hereof, the Lessee shall promptly (but in any event within 30 days after such Casualty Occurrence) and fully notify the Lessor,

with respect thereto. On the Rental Payment Date next succeeding such Casualty Occurrence the Lessee shall pay to the Lessor an amount equal to all rental payment or payments in respect of such Unit then due and payable or accrued to such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of such Rental Payment Date, in accordance with Schedule D hereto. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft; complete destruction or permanent return to the Builder of such Autorack or Vendor of such Tie Down) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis without representations or warranties and the Lessee may be a purchaser of such Unit (unless such Unit is declared worn out by Lessee) and shall notify the Lessor prior to any such purchase by the Lessee. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default or Potential Default shall have occurred and be continuing the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit permanently returned to the Builder or Vender pursuant to any patent indemnity provisions of the Purchase Agreement or Assignment of Purchase Rights in an amount equal to any patent indemnity payment in respect of such Unit made by the Builder or Vendor to the Lessor under the Purchase Agreement or Assignment of Purchase Rights.

The Casualty Value of each Unit as of any Rental Payment Date shall be that amount for that Unit as is set forth in Schedule D hereto opposite such date.

Whenever any Unit shall suffer a Casualty Occurrence after the final payment of rent in respect thereof is due pursuant to Sections 3 and 13 hereof and before such Unit shall have been returned in the manner provided in Section 14 hereof, the Lessee shall promptly (as provided above) and fully notify the Lessor with respect thereto and, except as provided in Section 14 hereof, pay to the Lessor on demand an amount equal to the Casualty Value of such Unit and all other rental payments then due and payable which Casualty Value shall be equal to the Casualty Value for such Unit on the final Base Term Rental Payment Date following the Base Rent Commencement Date. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit or return to the Builder of such Autorack or Vendor of such Tie Down), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee

its agent to dispose of any Unit suffering a Casualty Occurrence, or any component thereof at the best price obtainable on an "as is, where is" basis without representations or warranties and the Lessee may be a purchaser of such Unit (unless such Unit is declared worn out by Lessee) and shall notify the Lessor prior to any such purchase by the Lessee. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default or Potential Default shall have occurred and be continuing, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition (other than a requisition which constitutes a Casualty Occurrence) for use by the United States Government or by any other government or governmental entity (hereinafter collectively called the "Government") of any Unit during the Lease Term, all of the Lessee's obligation to pay rent under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the Lease Term, the Lessee shall be obligated to return such Unit to the Lessor pursuant to Section 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease, but the Lessee shall in all other respects comply with the provisions of said Section 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the Lease Term of this Lease shall be paid over to, or retained by, the Lessee, provided no Event of Default pursuant to Section 10(A) (or other event which after notice or lapse of time or both would become an Event of Default pursuant to Section 10(A)) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the Lease Term of this Lease shall be paid over to, or retained by, the Lessor. Notwithstanding the foregoing, all payments received by the Lessor or Lessee from the Government expressly designated to be with respect to an ownership interest in the Units shall be paid over to or retained by Lessor provided that Lessee has not exercised any of its purchase options contained in Section 13 of this Lease.

Except as hereinabove provided in this Section 7, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance hereof by the Lessee hereunder.

Insurance. Lessee agrees to include the Units in its regular program of insurance but nothing in this Lease shall be deemed to require Lessee to change its insurance program or to

take out separate insurance on the Units. Lessee will promptly notify Lessor of any material change in its insurance at least 60 days in advance of such change. All existing insurance (other than self-insurance) that is carried by the Lessee for these Units shall name Lessor as a lender loss payee with respect to property loss or damage, and as an additional insured with respect to liability. Upon request of Lessor, but no more frequently than annually, Lessee shall provide Lessor with a certificate of such existing insurance or other evidence satisfactory to Lessor of such insurance, if any.

Lessee shall, at its own expense, make all proofs of loss and take all other steps necessary to collect the proceeds of such insurance. If Lessor shall receive any insurance proceeds with respect to insurance carried by Lessee at its expense or condemnation payments in respect of any Unit suffering a Casualty Occurrence, Lessor shall, subject to Lessee's having made payment in its entirety of the Casualty Value in respect of such Unit and provided no Event of Default or Potential Default shall have occurred and be continuing, pay such insurance proceeds or condemnation payments to Lessee. All insurance proceeds received by Lessor (with respect to insurance carried by Lessee at its expense) in respect of any Unit not suffering a Casualty Occurrence shall be paid to Lessee upon proof satisfactory to Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired, provided no Event of Default or Potential Default shall have occurred and be continuing. Any amounts paid or payable to Lessor under the foregoing insurance shall not be reduced on account of any amount which may be paid or payable to Lessor by reasons of claims made under any other policies of insurance under which Lessor is a beneficiary claimant. Notwithstanding the foregoing, Lessor shall in no event be obligated to participate in the funding of any self-insurance program of Lessee. Lessor shall have the right to carry insurance on the Units for its own benefit and receive the proceeds thereof; provided, that such insurance is carried at the expense of any person other than Lessee.

Section 8. Reports. On or before April 30 in each year, commencing with a calendar year 1994, the Lessee will furnish to the Lessor a certificate signed by the Chief Mechanical Officer of the Lessee (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request (including if available, the mileage data with respect to each Unit) (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by Section 5 hereof

have been preserved or replaced. The Lessor, at its sole expense, shall have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease. Lessee will provide Lessor with quarterly 10Qs and annual reports on Form 10K when and as filed with the SEC.

The Lessee shall promptly notify the Lessor of any occurrence of an Event of Default or specifying such Event of Default and all such events, and the nature and status thereof.

Section 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. LESSEE HAS SELECTED BOTH THE UNITS AND THE MANUFACTURER OF THE UNITS. LESSEE ACKNOWLEDGES THAT THE UNITS ARE OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY LESSEE. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF THE LESSOR OR ANYONE CLAIMING THROUGH IT), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EXCEPT THAT LESSOR REPRESENTS IT HAS WHATEVER TITLE IT RECEIVES FROM THE BUILDER IN RESPECT OF EACH AUTORACK THERETO, AND THE VENDOR IN RESPECT OF EACH TIE DOWN THERETO, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee, its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder and Vendor; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, subleasing, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory

to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws, rules and regulations of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease, such laws or rules or regulations require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense (any such additions which are readily removable without material damage to the Units shall become the property of the Lessee if their removal would not adversely and materially affect the value of the Units and their installation was required by law for limited special use and not general operation); provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Lessor (which shall be promptly given to Lessee), adversely affect the property or right of the Lessor in and to the Units and/or under this Lease. The Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value of the Units). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, except to the extent such additions, modifications or improvements are described in the following sentence. Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit or were installed or were added to such Unit in contravention of the provisions contained hereinabove, or (ii) the cost of which is included in the Lessor's basis for such Unit, or (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the United States Department of Transportation or any other regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for additions required by law for limited

special use and not general operation which are readily removable without causing material damage to the Units and without adversely and materially affecting the value of the Units) shall immediately be vested in the Lessor. Upon removal of any addition, replacement, alteration or modification by Lessee hereunder Lessee shall, at its expense, repair any damage to the Unit caused by such removal.

General Indemnity. The Lessee agrees to indemnify, defend, protect and hold harmless the Lessor, its employees, agents, officers and directors (each an "Indemnified Party") from and against all losses, damages, injuries, liabilities, suits, proceedings, actions, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and costs and expenses, patent, trademark and copyright liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of this Lease or the Purchase Agreement Assignments or the occurrence of an Event of Default or Potential Default under this Lease or any sublease entered into pursuant to Section 12 hereunder, the ownership of any Unit, the manufacture, ordering, acquisition, use, operation, condition, purchase, lease, sublease, delivery, acceptance, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in Section 14 of this Lease, provided that Lessee shall not be required to indemnify an Indemnified Party under this Section in respect of any claim:

(1) attributable to acts or events which occur after the Units are no longer leased under this Lease unless arising out of an Event of Default,

(2) arising out of the gross negligence or willful misconduct of such Indemnified Party,

(3) constituting General Taxes, whether or not the Lessee is required to indemnify therefor pursuant to Section 6 hereof,

(4) arising out of any voluntary transfer by the Lessor (other than in connection with the exercise of remedies following an Event of Default),

(5) arising out of the incorrectness in any respect of any representation or warranty by the Lessor,

(6) arising out of the authorization or giving or withholding of any future amendments, supplements, waivers or consents by such Indemnified Party with respect to the Lease or

other related document other than such as have been requested by the Lessee,

(7) arising out of any expense that is included in transaction expenses and for which Lessor is responsible pursuant to this Lease or that is incurred by any Indemnified Party (or any successor, assign, director, officer, employee, servant or agent of such Indemnitee) to the extent that such Indemnified Party shall have expressly agreed in the Lease or other related document to bear such expense without right of reimbursement under any related document,

provided further, however, that this paragraph shall not be read as a waiver of any right of action Lessee may have in respect of any such act, omission or misrepresentation (including but not limited to the gross negligence or willful misconduct) of Lessor or anyone acting under, through, or on behalf of Lessor. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease of the expiration or termination of the term of this Lease.

Except as otherwise expressly provided in Section 14, the Lessee shall bear the responsibility and risk for, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any or all of the Units of Equipment.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required filing date all reports (or the appropriate portions thereof) (other than tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units, or the leasing thereof to the Lessee.

Section 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:

(A) default shall be made in payment of any amount provided for in Section 3 or 7 hereof, and such default shall continue for five (5) business days after receipt of written notice by Lessee of Lessor's failure to receive such payment;

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

(C) the failure of Lessee to maintain any insurance required under the seventh paragraph of Section 7 of this Lease;

(D) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 30 days after the earlier of (i) written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied and (ii) the date on which such default shall first become known to any officer of the Lessee provided, however, that a default as described in this subsection (D) which jeopardizes Lessor's right, title or interest in or to any Unit of Equipment shall become an Event of Default on the date defined in subsection (D)(ii);

(E) any material representation or warranty made by the Lessee contained herein (other than those contained in Section 16 herein), in the Purchase Agreement Assignments, or in any certificate furnished to the Lessor in connection with the Lease or the Purchase Agreement Assignments is untrue in any material respect as of the date of issuance or making thereof;

(F) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision as the same may hereafter be amended; or

(G) any other proceeding shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of such obligations), and, unless (1) such proceeding shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), (2) any and all defaults shall have been cured and (3) all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed

(whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceeding shall have been commenced; then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including but not limited to amounts due to the Lessor pursuant to Section 16 hereof;

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents, subject to compliance with all mandatory requirements of law and upon reasonable notice to Lessee, enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom, provided that Lessor shall remain fully liable for any and all personal injuries or property damage caused solely and directly by Lessor, its employees, agents, officers and directors; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may then be due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) including but not limited to any amounts due the Lessor pursuant to Section 6 and Section 16, provided, however, that Lessor shall not be relieved of its obligation, under Section 6(c) or Section 16(h) except as specifically provided therein, and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts the Lessor, in its sole discretion, shall specify:
(x) a sum, with respect to each Unit, equal to the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such

termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of 7% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated; appropriate refunds of any amounts previously collected from the Lessee which would be inconsistent with the amounts which would be due in the context of the facts and circumstances of such actual rental arrangement will be immediately repaid to the Lessee and if any additional amounts would be due the Lessor pursuant to this clause (x) based upon the facts and circumstances of such actual rental arrangement such amounts will be immediately paid to the Lessor, or (y) an amount equal to the excess, if any, of the Casualty Value as of the Rental Payment Date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the Rental Payment Date on or next preceding the date of termination over the net proceeds of such sale. Any excess of actual sale proceeds over the Casualty Value shall be paid to or retained by Lessor. In the event Lessee does not pay Lessor the amounts required under the previous sentence, Lessee shall pay charges at the Overdue Rate from date of sale until date of receipt of Lessee's funds.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessor and the Lessee agree that the Lessor shall be entitled to all rights (such rights being fundamental to the willingness of the Lessor to enter into this Lease) provided for

in §1168 of the Bankruptcy Act or any comparable provision of any amendment thereto, or of any other bankruptcy act, so that the Lessor shall have the right to take possession of the Units upon an Event of Default under this Lease regardless of whether the Lessee is in reorganization.

No failure by the Lessor to exercise, and no delay by the Lessor in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege by the Lessor preclude any other or future exercise thereof, or the exercise of any other right, power or privilege by the Lessor preclude any other or future exercise thereof, or the exercise of any other right, power or Privilege.

Section 11. Return of Units Upon Default. If this Lease shall terminate pursuant to Section 10 hereof, the Lessee shall forthwith deliver possession of the Units and the Flatcars to the Lessor and shall assign to Lessor all rights to the use of the Flatcars. Each Unit so delivered shall be in the condition required by the first paragraph of Section 7 and the second paragraph of Section 9 hereof. For the purpose of delivering possession, the Lessee shall:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) place such Units upon storage tracks of the Lessee or any of its affiliates as the Lessor may reasonably designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; provided, however, that such storage without charge shall not extend beyond the latest storage date specified in Section 14 hereof; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

Except as specifically provided herein, the assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any

storage period, the Lessee will, at its own expense, maintain and keep the Units in the condition required by the first paragraph of Section 7 and the second paragraph of Section 9 hereof and will permit and cooperate with the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same in a reasonable manner consistent with current industry practice. All rent and per diem charges earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor.

Section 12. Assignment; Possession and Use. So long as no Event of Default exists hereunder, this Lease shall be assignable in whole or in part by the Lessor or any affiliated company of Lessor to any person provided that it has obtained the prior written consent of the Lessee (such consent not to be unreasonably withheld). Notwithstanding the foregoing, Lessor may assign this Lease, in whole or in part, to an affiliated company of Lessor without the prior written consent of Lessee. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's successors and assigns.

So long as no Event of Default exists hereunder, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and, without the prior written consent of the Lessor, the Lessee may assign and/or sublease the Units to, or permit their use by, a user incorporated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by the Lessee or such user or by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Lessor's consent, not to be unreasonably withheld, must be obtained for any sublease or assignment that is for a term longer than twelve months; provided, further, however, that the Lessee shall not sublease, assign or permit the sublease, assignment or use of any Unit to service involving predominant operation or maintenance outside the United States of America; and provided, further, however, that any such sublease or assignment or use shall be consistent with the provisions of Section 16 hereof. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety.

Section 13. Renewal and Purchase Options. Provided that this Lease has not been earlier terminated and no Event of Default has occurred and is continuing, the Lessee may:

(a) **Early Buyout Option:** Upon not less than 120 days prior written notice Lessee may on January 19, 2006 purchase all, but not less than all Units at a purchase price equal to 44.183% of Lessor's Cost for such Units (the "Early Buyout Value").

(b) **End of Term Purchase Option.** Upon notice given to Lessor not less than 180 days prior to the scheduled Base Term Expiration Date, Lessee may purchase all, but not less than all, Units at the purchase price equal to the lesser of the then fair market sales value or 34% of Lessor's Cost for such Units (the "Base Term Purchase Price"). Additionally, at the end or any renewal period and upon not less than 180 days prior written notice, Lessee may exercise its option to purchase all, but not less than all, Units for the then fair market sales value of such Units. Fair market sales value shall be the price agreed to by Lessee and Lessor, in writing, as the cash purchase price that would be obtained in an arm's length transaction between a purchaser and seller, both being informed and willing and neither being under any compulsion to buy or sell.

(c) **Renewal Option.** Upon notice given to Lessor not less than 180 days prior to the scheduled Base Term Expiration Date, extend the Lease with respect to all, but not less than all, the Units for one period of one year commencing at the end of the Base Term. The rent payable for each Unit the lease of which has been so extended under this Section 13(c) shall be equal to the then fair market rental value of the Units payable in the same semi-annual installments in arrears as prior rent. All other provisions of this Lease will remain unchanged. Fair market rental value of the Units shall be equal to the rental value of the Units agreed to by Lessee and Lessor, in writing, as the rent which would be obtained in an arm's length transaction between an informed and willing lessor and an informed and willing lessee, neither being under any compulsion to lease.

(d) **Bill of Sale.** Upon payment of the purchase price of any Unit, pursuant to an election by the Lessee to purchase the Unit, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale without representations or warranties on an "as is, where is" basis for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Builder and Vendor, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

Section 14. Disposition of Units upon Expiration of Term. If Lessee shall not purchase the Units pursuant to the terms and conditions set forth in Sections 13(a) or (b) hereof,

or pay Lessor the Casualty Value following a Casualty Occurrence for the Units, then Lessee shall notify Lessor in writing not less than 240 days before expiration of the Lease Term of its intent to return the Units and, Lessor shall have the following options which will be exercised with at least 60 days written notice prior to the expiration of the Lease Term:

(1) Require Lessee to remove the Units from the Flatcars and prepare the Flatcars so that they are acceptable to Trailer Train, all at Lessee's expense and risk. During the period of time necessary for removal of the Units, all related expenses (flatcar rental, insurance, transportation charges, etc.) shall be Lessee's responsibility. The Units shall be removed from the Flatcars by Lessee, at Lessee's expense, on or before the expiration of the Lease Term. Lessee shall return the Units, at Lessee's expense, freight and insurance prepaid, to Lessor (or Lessor's nominee) at a location on Lessee's lines as designated by Lessor. Each Unit shall be returned to the Lessor in the condition required by the first paragraph of Section 7 and the second paragraph of Section 9 hereof. Subsequent to the expiration of the Lease Term and prior to any transfer of any Unit from the possession and control of Lessee to Lessor, the parties hereto and a representative of Trailer Train may inspect the Units for damage in a reasonable manner consistent with current industry practice; or

(2) Require the Lessee to store the Unit or Units attached to the Flatcars on its storage tracks for a period not exceeding 90 days from the expiration date (the "Storage Period") and transport the same, at any time within the Storage Period, to any point that Lessor shall designate on Lessee's lines or to a point on Lessee's lines for a connecting carrier for shipment, the movement and storage of such Units during the Storage Period to be at the expense and risk of the Lessee. During the Storage Period Lessor shall not be responsible for the expenses of storage. During the Storage Period under this option, Lessor shall be responsible for all rents, including but not limited to Trailer Train rental due on the subject Flatcars pursuant to the Flatcar lease(s), from and after the date each Flatcar is delivered to the storage tracks. If Lessor requests and provides funds, Lessee shall continue to make the subject Flatcar rent payments to Trailer Train on Lessor's behalf during the Storage Period, or if Lessor requests, Lessee shall assign whatever rights it has to the subject Flatcars to another Class I railroad. Each Unit returned to the Lessor pursuant to this subparagraph shall be in the condition required by the first paragraph of Section 7 and the second paragraph of Section 9 hereof. Subsequent to the expiration of the term and prior to any transfer of any Unit from the possession and control of Lessee to Lessor, the parties hereto and a representative of Trailer Train may, at Lessor's option, inspect the Units for damage in a reasonable manner consistent with current industry

practice. In the event that any Unit shall suffer a Casualty Occurrence during such Storage Period, the Lessee shall pay the Lessor the Casualty Value thereof as provided in Section 7 hereof, provided, however, Lessee shall have no obligation to pay Lessor the Casualty Value for a Unit which suffers a Casualty Occurrence while being operated or inspected by Lessor or its agents during the Storage Period. During such Storage Period the Lessee will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same in a reasonable manner and consistent with current industry practice; provided, however, that the Lessee shall not be liable, except in the case of negligence or strict liability of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor or any prospective purchaser, lessee or user, such rights of inspection. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof.

Upon return of the Units at the end of the Base Term under option (1) or (2) above, in addition to the return conditions set forth in Section 7 and the second paragraph of Section 9 hereof, each Unit shall have at least two years remaining prior to the next required recertification, provided that there has been no change in the current Association of American Railroads ("AAR") regulations governing such recertification. Should such laws change, Lessee will use its best efforts to maximize the remaining recertification life, so long as such efforts constitute reasonable business practice.

Until the Unit is returned to Lessor as required in (1) or (2) above, all of the provisions of this Lease with respect to each Unit not returned in accordance with this Lease shall continue in full force and effect, and Lessee shall be deemed to continue to lease the Unit on a month-to-month basis at the same amount of Base Rent or renewal rent (prorated for monthly payments on the last day of each month), as the case may be, then in effect.

Section 15. Recording. The Lessor, at Lessee's expense, will cause this Lease or memorandum of lease and any assignment hereof to be filed in accordance with 49 U.S.C. §11303 and deposited with the Registrar General of Canada pursuant to Section 90 of the Railway Act of Canada prior to the delivery and acceptance of any Unit hereunder. The Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably

requested by the Lessor for the purpose of proper protection, to its satisfaction, of the Lessor's rights in the Units, or for the purpose of carrying out the intention of this Lease, and the Lessee will promptly furnish to the Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this Section 15, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lessor.

Section 16. (a) Assumed Tax Consequences. This Lease has been entered into and the Base Rent, Casualty Values, Early Buyout Value and the Base Term Purchase Price have been calculated, on the assumption that the Lessor will have the following tax consequences (herein referred to as "Assumed Tax Consequences"):

(i) The transaction will be treated as a lease for tax purposes and that Lessor shall be entitled to the Cost Recovery Deductions and Amortization Deductions (as defined below) (collectively the "Tax Benefits"). The Lessor will be treated as the owner and Lessor of each Unit and the Lessee will be treated as Lessee of each Unit.

(ii) In the hands of the Lessor as of the Acceptance Date of each Unit, such Unit will constitute "7-year property" within the meaning of Section 168 of the Internal Revenue Code of 1986, as amended ("Code"), and the Lessor will be entitled to the deductions allowed under Sections 168(1)(A) and (B) and 168(e)(3)(C) of the Code with respect to such Unit using a half year convention (the "Cost Recovery Deductions").

(iii) Each Unit will be "placed in service" for purposes of Section 168 of the Code no later than the Acceptance Date.

(iv) The Lessor will be entitled to the Cost Recovery Deductions with respect to the full amount of the Lessor's Cost for each of the Units and the full amount of the Cost Recovery Deductions will be allowed to the Lessor and there will be no recapture of the Cost Recovery Deductions by the Lessor.

(v) Alterations, improvements and additions to any Unit by the Lessee will not result in any adverse tax consequences to the Lessor.

(vi) All income and deductions with respect to the Units will be derived from and allocable to sources within the United States.

(vii) The maximum Federal income tax rate applicable to the Lessor is thirty-five (35%) percent in 1993 and subsequent years.

(viii) The Lessor will be entitled to current deductions for the amortization of all transaction expenses paid or incurred by the Lessor, such deductions to be allowed ratably during the Interim Term and the Base Term, computed on a straight-line basis over a period equal to the scheduled duration of the Interim Term plus the Base Term (the "Amortization Deductions").

(ix) Each Unit is not and will not be "limited use property" within the meaning of Revenue Procedure 76-30 (1976-2 Cum. Bull. 647).

It being expressly agreed, however, that the Lessee does not warrant or represent the accuracy of any of the assumptions set forth in subsection (a) of this Section.

(b) Lessee's Representations and Warranties. The Lessee covenants with, represents and warrants to Lessor for purposes of this Section that:

(i) in the hands of the Lessee as of the Acceptance Date of each Unit, such Unit will constitute "7-year property" within the meaning of Section 168 of the Code;

(ii) the Lessee has not made any claim and without the prior written consent of the Lessor will not make any claim predicated on tax or legal ownership of the Units, including but not limited to, a claim of the Cost Recovery Deductions, or the Amortization Deductions;

(iii) at all time during the Lease Term the Lessee will not use nor permit the use of the Units in any taxable year of the Lessor "predominately outside the United States," within the meaning of Section 168(g)(1)(A) of the Code;

(iv) at all times during the Lease Term, the Lessee will not use or permit the use of the Units outside the United States of America in such a manner as to affect the ability of the Lessor to treat, for Federal income tax purposes, each item of income, deduction and credit relating to all Units subject to the Lease as being derived from or allocable to, sources within the United States of America;

(v) as of the Acceptance Date of each Unit, such Unit will not be property described in Section 168(g) of the Code and throughout the Lease Term Lessee will take no action which would cause the Units to be property described in Section 168(g);

(vi) as of the Acceptance Date of each Unit, such Unit will not be "limited use property" within the meaning of the Internal Revenue Service Revenue Procedure 76-30, 1976-2 C.B. 647.

(vii) each Unit does not require any severable improvements or nonseverable improvements in order to render it complete for its intended use by Lessee, other than ancillary items of equipment of a kind that are customarily selected and furnished by purchasers or lessees of property of the kind similar to the Unit;

(viii) Lessee is not, has never been, and will take no action which could cause it to become, a "tax-exempt entity" as such term is defined in Section 168(h)(2) of the Code;

(ix) Each Unit will be "placed in service" for purposes of Section 168 of the Code no later than the Acceptance Date.

(c) Indemnity. If by reason of any act of commission or omission (including any acts of commission or omission permitted to be taken pursuant to the Lease), the misrepresentation, inaccuracy or breach of any agreement, covenant, representation or warranty contained herein on the part of the Lessee, (i) the Lessor shall not have or shall lose the right to claim or shall not claim (as the result of a good faith determination based upon the advice of independent tax counsel selected by the Lessor and approved by Lessee, which approval shall not be unreasonably withheld (hereinafter referred to as "Tax Counsel"), that such claim is not properly allowable by reason of any act of commission or omission, the misrepresentation or inaccuracy or breach of any agreement, covenant, representation or warranty contained herein on the part of the Lessee), shall suffer a disallowance, recomputation or reduction of or shall be required to recapture all or any portion of the Tax Benefits, or such Tax Benefits are available as to the Lessor only at later dates than assumed, or (ii) the Lessor shall suffer a disallowance, recomputation or reduction of or shall be required to recapture an amount of foreign tax credit which would have been allowable to the Lessor if the Lessor had not participated in the transactions contemplated by the Lease (the "Foreign Tax Credit") (any of such events being a "Loss"), then the Lessee shall either (i) pay to the Lessor a lump sum amount which, after deduction of all federal, state and local taxes required to be paid by the Lessor in respect to the receipt of such amount, shall preserve the Lessor's Net Economic Return as if such Loss had not occurred plus, on an after-tax basis, an amount equal to any interest, additions to tax and/or penalties imposed as a result of the Loss which gave rise to indemnification hereunder, or (ii) agree to an adjustment of the Base Rent which will preserve the Lessor's Net Economic Return as

if such Loss had not occurred. The Lessor's anticipated net after-tax economic and accounting yields and aggregate cash flows computed on the basis of such assumptions and the same method of tax and book accounting as were utilized by the Lessor in evaluating this transaction are herein called "Net Economic Return."

Upon the request of the Lessee, the Lessor will furnish to the Lessee a certificate of the Lessor's independent accountants, verifying that the amount of such indemnification payment is in an amount sufficient, but not greater than the amount necessary, on an after tax basis assuming a Federal tax rate of thirty-five (35%) percent (except as provided in Section 16(e)), to preserve the Lessor's Net Economic Return.

(d) Subsequent Benefit. If, as a result of any Loss for which indemnification is paid by the Lessee hereunder the aggregate Federal income taxes paid or accrued by the Lessor for any taxable year shall be less than the amount of such taxes which would have been payable by the Lessor had no such Loss occurred, and if such reduction in taxes was not taken into account in determining the amount of indemnification payable by the Lessee hereunder, then the Lessor will pay the Lessee the amount of such difference in taxes plus an amount equal to any additional reductions in tax realized by the Lessor as a result of such payment; provided, however, that the Lessor shall not be obligated to make any payment pursuant to this Section 12(d), (i) so long as an Event of Default or Potential Default has occurred and is continuing, (ii) to the extent that such payment would cause the Lessor not to realize its Net Economic Return, or (iii) to the extent that such payment, together with all amounts previously paid by the Lessor, pursuant to this subsection (d) are in excess of all amounts previously paid by the Lessee with respect to such loss.

(e) Payment. All amounts payable to the Lessor under this Section 16 hereunder shall be paid promptly and in immediately available funds and in any event within 15 days after receipt by the Lessee of a written demand therefor on the basis that the Lessor has paid or within 15 days expects to pay such amounts (including in the form of estimated taxes). Any such demand shall set forth in reasonable detail the nature of the loss and calculation of the indemnity hereunder. For purposes of calculating the amount of a payment to be made hereunder on an "after tax basis", "after deduction of all taxes required to be paid by the Lessor in respect of the receipt of such amounts" or on a similar gross-up basis, it is assumed that the Lessor will be subject to Federal, state and local corporate income tax at the maximum marginal rate in effect on the date such amount is included within Lessor's income for federal, state or local tax purposes. Any payment due to the Lessee from the Lessor pursuant to this Section shall be paid promptly and in any event within 15

days after the Lessor realizes any reduction in its income or franchise taxes, unless such benefit is provided to Lessee in the form of rent adjustments, based upon net income.

(f) Limitations on Special Tax Indemnities. Notwithstanding anything to the contrary hereinbefore set forth, no amount shall be payable to the Lessor as an indemnity under this Paragraph in respect of any Loss to the extent that such Loss results from the occurrence of any of the following events:

(i) a voluntary transfer or other voluntary disposition by the Lessor of any interest in any Unit or any interest in the Lease, except pursuant to its exercise of any rights in respect of a Event of Default;

(ii) the failure of the Lessor to claim (unless Tax Counsel has advised that such claim is not properly allowable by reason of acts of commission or omission, the misrepresentations, inaccuracies or breach of any agreement, covenant, representation or warranty by the Lessee) the Tax Benefits;

(iii) the loss results solely and directly from the negligence, gross negligence or willful misconduct of the Lessor that is inconsistent with the tax assumptions in Section 16;

(iv) the failure of the Lessor to have sufficient income to benefit from the Tax Benefits;

(v) a Casualty Occurrence to the extent of the Casualty Value timely and fully paid by the Lessee pursuant to Section 7 of the Lease; or

(vi) any changes in tax law enacted and effective for periods after October 31, 1993.

(g) Indemnity for Improvements. If at any time the Lessor is required to include in its gross income an amount in respect of any Lessee improvement or addition to the Units or any accession (an "Income Inclusion") Lessee shall pay to the Lessor, as an indemnity, such amount or amounts as, after deduction of all Federal, state and local taxes required to be paid by the Lessor in respect to the receipt of such amounts shall be equal to the additional taxes payable by the Lessor from time to time as a result of such Income Inclusions plus, on an after-tax basis, the amount of any interest, penalties or additions to tax payable by the Lessor as a result of any such Income Inclusions. If as a result of any such Income Inclusions the taxes paid by the Lessor for any taxable year shall be less than the amount of such taxes which would have been payable by the Lessor had not such Income Inclusions been made, then the Lessor shall pay the

Lessee the amount of such savings in taxes plus any additional tax benefits realized by the Lessor as the result of such payment; provided, however, that the Lessor shall not be obligated to make any payment pursuant to this sentence with respect to any Income Inclusions (i) so long as an Event of Default or Potential Default has occurred and is continuing, (ii) to the extent that any such payment would cause the Lessor not to realize its Net Economic Return or (iii) to the extent that such payment, together with all amounts previously paid by the Lessor to the Lessee pursuant to this subsection (g) with respect to such Income Inclusion, are in excess of all amounts previously paid by the Lessee to the Lessor with respect to such Income Inclusion.

(h) Contest of Disallowance of Tax Benefits. If a claim ("Claim") shall be made at any time which, if successful, would require the Lessee to indemnify the Lessor under this Section, the Lessor hereby agrees to immediately notify Lessee of any such Claim in sufficient detail for Lessee to evaluate the merits of such Claim and further, provided no payment Event of Default or bankruptcy Event of Default (where the Trustee has not assumed the Lease) has occurred or is continuing, Lessor agrees to contest such Claim in good faith, taking into consideration such actions as the Lessee may reasonably request; provided, however, that:

(i) within 30 days after notice by the Lessor to the Lessee of such Claim or such shorter time as required by law, but in any event at least 5 business days before the Lessor must exercise its contest rights, the Lessee shall request in writing that such Claim be contested;

(ii) the Lessor shall control all proceedings in connection with such claim and, at its sole option, may forego or terminate any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service with respect to such Claim and may, at its sole option, either pay the tax claimed and sue for a refund in the appropriate United States District Court or the United States Claims Court as the Lessor shall elect, or contest such Claim in the United States Tax Court; provided, however, that the Lessee shall have no obligation to indemnify the Lessor for any such Taxes, if as a result of the Lessor's foregoing or terminating any such administrative appeals, proceedings, hearings, or conferences, the Lessor shall lose the right to contest the merits of such impositions of levies;

(iii) as a condition to the Lessor's taking any such requested action, the Lessee at the Lessee's expense shall have furnished the Lessor in a timely manner with an opinion of independent tax counsel satisfactory to the Lessor to the effect

that there exists a reasonable likelihood of the Lessor's prevailing on the merits in the contest of such Claim;

(iv) the Lessee shall have indemnified the Lessor in a manner satisfactory to the Lessor for any liability or loss directly related to such Claim which the Lessor may incur from time to time as the result of contesting such Claim and shall pay to the Lessor within 15 days after written demand therefor from time to time an amount which, on an after-tax basis, shall be equal to all costs and expenses which the Lessor may incur from time to time in connection with contesting or defending such Claim or any appeal thereof, including, without limitation, reasonable attorneys' and accountants' fees and disbursements, and the amount of any interest, additions to tax or penalties which may ultimately be payable as a result of contesting such Claim or appeal; and

(v) if the Lessor shall have elected hereunder to pay the tax claimed and then seek a refund, the Lessee will advance to the Lessor, on demand, sufficient funds, on an interest-free basis, to pay the tax.

(i) Appeals. Notwithstanding any other obligation of the Lessor under this Section, the Lessor shall have no obligation to appeal any adverse trial or appellate court determination with respect to any Claim, unless:

(i) prior to the Lessor's making any such appeal, the Lessee shall, upon request by the Lessor, have furnished the Lessor with security, satisfactory to the Lessor, with respect to the Lessee's liability for indemnification under this Section 16 with respect to such Claim, together with at Lessee's expense a timely opinion of independent tax counsel satisfactory to the Lessor to the effect that more likely than not the Lessor will prevail on the merits of such appeal; and

(ii) with respect to any appeal of any appellate court determination, prior to the Lessor's making such appeal, the Lessee at its expense shall have timely furnished the Lessor with an opinion of independent tax counsel satisfactory to the Lessor to the effect that the likelihood of reversal of the adverse determination on appeal is greater than the likelihood of affirmance.

(j) Deferral of Lessee's Liability. If any Claim shall be made and the Lessee shall have reasonably requested the Lessor to contest such Claim as above provided and shall have duly complied with all of the terms of subparagraph (h) of this Section, the Lessee's liability for indemnification hereunder (other than as provided in subparagraph (h)(iv) and (v) of this Section) shall be deferred until final determination of the liability of the Lessor. At such time the Lessee shall become

obligated for the payment of any indemnification hereunder resulting from the outcome of such contest, and the Lessor shall become obligated to refund to the Lessee any amount received as a refund by the Lessor fairly attributable to advances by the lessee hereunder, together with any interest received by the Lessor on such refund. Such obligations of the Lessor and the Lessee will first be set off against each other and any difference owing by either party shall be paid within 30 days after such final determination. A "final determination" shall be deemed to occur with respect to a Loss when (1) there is a decision, judgment, decree or other order by any court of competent jurisdiction, which decision, judgment, decree or other order has become final, i.e., all allowable appeals requested by Lessee pursuant to this Section 16 have been exhausted by either party to the action, (2) there is a closing agreement made under Section 7121 of the Code, (3) the time for instituting a claim for refund has expired, or if a claim was filed, the time for instituting suit with respect thereto has expired, (4) Lessee fails duly to notify Lessor in writing of Lessee's intention to require Lessor to contest or appeal a proposed Loss as required herein, or (5) Lessee consents in writing to a settlement of such contest.

(k) Notice and Cooperation. The Lessor agrees promptly to notify the Lessee in writing of any Claim and agrees not to make payment of the tax claimed or to consent to the assessment of any deficiency relating directly to such Claim for at least 30 days after the giving of such notice and agrees to give to the Lessee any relevant information relating to such Claim which may be peculiarly within the knowledge of the Lessor and otherwise to cooperate with the Lessee in good faith in order to contest any such Claim.

(l) Waiver of Indemnification Settlement. Nothing contained in this Section shall require the Lessor to contest any Claim if the Lessor shall waive the payment by the Lessee of any amount that might otherwise be payable by the Lessee under this Section by way of indemnity in respect of such Claim. The Lessor shall not enter into a settlement or other compromise with respect to any Claim without the prior written consent of the Lessee, unless (i) the Lessor shall have complied with its obligations to contest under this Section or (ii) the Lessor shall waive its right to be indemnified with respect to such Claim under this Section.

(m) Consolidated Return. For purposes of this Section 16, the term "Lessor" shall include the common parent and all other corporations included in the affiliated group, within the meaning of Section 1504 of the Code (or in any other successor section thereof, of which Lessor (defined without regard to this sentence) is or becomes a member.

(n) Survival of Indemnities. The respective liabilities of the Lessee and the Lessor to make indemnification payments pursuant to this Section 16 shall, notwithstanding any expiration or termination of the Lease, continue to exist until such indemnity payments are made by the Lessee and the lessor, respectively.

Section 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable ("Overdue Rate"), an amount on the overdue rentals and other obligations for the period of time during which they are overdue at a rate per annum equal to the interest announced from time to time by The Chase Manhattan Bank, N.A. as its "prime rate" on commercial loans (which interest rate shall fluctuate as and when said prime rate shall change), or such lesser amount as may be legally enforceable. Interest hereunder shall be determined on the basis of a 360-day year of twelve 30-day months.

Section 18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been received by the addressee on the date of transmission, if by telex, or on the date of actual receipt, if by mail or by hand, if addressed as follows:

(a) if to the Lessor:

PNC Leasing Corp
One Oliver Plaza
34th Floor
Pittsburgh, Pennsylvania 15222
Attention: Manager of Leasing

(b) if to the Lessee:

Two Commerce Square
2001 Market Street
Philadelphia, Pennsylvania 19101-1425
Attention: Thomas McGraw
Director — Financing

or at such other address as either part shall have designated to the other party in writing.

Section 19. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

Section 20. Conditions Precedent to Funding. The Lessor's obligation to purchase and pay for Units shall be subject: (a) to the terms and conditions of the Purchase Agreement and Assignment of Purchase Rights; and (b) to the receipt by the Lessor in form and substance satisfactory to its counsel, of the following executed documents:

- (i) an opinion of Lessee's counsel dated as of such delivery date and to the same effect as Exhibit One (1) hereto;
- (ii) certified copies of Lessee's Articles of Incorporation and Bylaws;
- (iii) Certificate(s) of Acceptance covering the Units to be purchased in the form set forth on Schedule C-1 and C-2 hereto;
- (iv) Purchase Agreement and Appendix II, Addendum A thereto, and related schedules and purchase orders (if any) and evidence of the manufacturers' consent to such Purchase Agreement;
- (v) a copy of resolutions of the Board of Directors of Lessee, certified by the Secretary of Lessee as of the date of the Acceptance Certificate, authorizing the execution, delivery and performance of this Lease;
- (vi) an incumbency certificate and signature certificate of Lessee, dated the date of this Lease and in form and substance satisfactory to Lessor, setting forth the names and signatures of each officer of Lessee authorized to sign this Lease and all other instruments and documents relating thereto;
- (vii) a certificate of insurance evidencing the current insurance coverage carried by Lessee;

- (viii) an appraisal in form and substance satisfactory to Lessor with respect to the Units;
- (ix) the Bill of Sale and invoice, together with evidence of payment by Lessor to Builder of the Autoracks; and the Bill of Sale and invoice, together with evidence of payment by Lessor to Vendor of the Tie Downs;
- (x) the Assignment of Purchase Agreement and the consent of the Builder to the assignment; and the Assignment of Purchase Rights and the consent of the Vendor to the assignment;
- (xi) such Interstate Commerce Commission (49 U.S.C. §11303), Registrar General of Canada and Uniform Commercial Code Filings, and related publications, if any, releases and waivers of security from Trailer Train with respect to the Units as Lessor shall deem necessary or desirable in order to perfect and protect its interest in and to the Units shall have been duly executed and filed (if required), at Lessee's expense;
- (xii) a good standing certificate of the Department of State of Pennsylvania certifying to the good standing and corporate status of Lessee.
- (xiii) the letter from Trailer Train addressing flatcar non-accession.

Section 21. Further Assistance. Lessee shall execute and deliver to Lessor upon Lessor's request such instruments and assurances as Lessor reasonably deems necessary for confirmation or perfection of this Lease and Lessor's rights thereunder. In furtherance thereof, Lessor may file or record this Lease, a memorandum of lease or a financing statement with respect thereto consistent with Section 15 of this Lease so as to give notice to any interested parties. Lessor is authorized to file a financing statement signed only by Lessor in accordance with the Uniform Commercial Code or one signed by Lessor as Lessee's attorney in fact. Any such filing or recording shall not be deemed evidence of any intent to create a security interest under the Uniform Commercial Code:

Section 22. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Lessor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for

convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

Section 23. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303 and such additional rights arising out of the filing or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed or deposited.

Section 24. Fees and Expenses. Except as otherwise provided in this Lease, each party will pay its own legal, accounting and other fees and expenses in connection with this Lease and all related documents. Lessee will pay all initial fees, costs and expenses (including attorneys' fees and expenses) in connection with the preparation, execution and delivery of this Lease and all related documents, and in connection with the filing or recording of this Lease or any other instruments, documents or statements and publications notices, pursuant to 49 U.S.C. §11303, or with the Registrar General of Canada or pursuant to the Uniform Commercial Code, as the Lessor deems necessary to protect and preserve its interest in this Lease and the Units.

Section 25. Lessor's Right to Perform. If Lessee fails to perform any of its obligations hereunder, Lessor may (but shall not be obligated to) discharge such obligation, and the amount of the expenses of Lessor reasonably incurred in connection with such discharge shall be deemed additional rent, payable by Lessee upon demand.

Section 26. Lease Only. This Lease shall constitute an agreement of Lease, and nothing herein shall be construed as conveying to lessee any right, title or interest in the Units except as lessee only.

Section 27. Successors and Assigns. This Lease and the covenants and agreements contained herein, including without limitation the obligations of Lessee contained in Sections 6, 7, 9, 14 and 16 hereof, shall be binding upon, and inure to the benefit of, Lessor, its successors and assigns and Lessee and its successors and assigns.

Section 28. Headings. The headings of the Sections and paragraphs are for convenience of reference only, are not a part of this Lease and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

Section 29. Incorporation by Reference. All schedules, annexes or other attachments to this Lease are incorporated into this Lease as if set out in full at the first place in this Lease that reference is made thereto.

Section 30. Time is of the Essence. Time and strict and punctual performance are of the essence with respect to each provision of this Lease.

Section 31. Brokers. Lessee and Lessor agree to indemnify and hold harmless the other party from and against any and all claims, suits, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees) asserted by any agent, broker or other third party for any commission or compensation of any nature whatsoever based upon the Lease of the Units.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

ATTEST:

Thomas J. McHadden
Director - Project Financing

ATTEST:

59107

CONSOLIDATED RAIL CORPORATION

By Thomas J. McHadden
Director - Financing

PNC LEASING CORP

By H. Paul Clinton
Vice President

COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF PHILADELPHIA)

SS:

On this 18th day of NOVEMBER, 1993, before me personally appeared THOMAS J. Mc GRAW, to me personally known, who, being by me duly sworn, says that he is DIRECTOR - FINANCING of CONSOLIDATED RAIL CORPORATION, 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.

[Notarial Seal]

Suzanne J. Rossomando
Notary Public

NOTARIAL SEAL
SUZANNE J. ROSSOMANDO, Notary Public
City of Philadelphia, Phila. County
My Commission Expires May 29 1995

COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF _____)

SS:

On this 18th day of NOVEMBER, 1993, before me personally appeared PAUL CHRISTENSEN, to me personally known, who, being by me duly sworn, says that he is VICE PRESIDENT of PNC LEASING CORP, 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.

[Notarial Seal]

Suzanne J. Rossomando
Notary Public

NOTARIAL SEAL
SUZANNE J. ROSSOMANDO, Notary Public
City of Philadelphia, Phila. County
My Commission Expires May 29 1995

SCHEDULE A TO LEASE

TYPE	BUILDER	QUANTITY	LESSEE'S IDENTIFICATION NUMBERS (BOTH INCLUSIVE)	LESSOR'S COST
Fully enclosed bi-level autoracks	Thrall Car Manufacturing Company	150	CR 9688-9837	\$31,429 (weighted average)
				\$4,714,350 (in total)

SCHEDULE B TO LEASE

TYPE	VENDOR	QUANTITY	LESSEE'S IDENTIFICATION NUMBERS (BOTH INCLUSIVE)	LESSOR'S COST
Autorack Grate Lock Wheel Chock (Item No. 93404274)	Holden America Inc.	75	Attached to CR 9763-9837	\$5,245.00 (weighted average)
				\$393,375.00 (in total)

SCHEDULE C-1 TO LEASE

Certificate of Acceptance

To: THRALL CAR MANUFACTURING COMPANY (Builder) and PNC
 LEASING CORP (Lessor)

I, the duly authorized representative for the Lessor and Consolidated Rail Corporation (the "Lessee") under the Lease of Railroad Equipment, dated as of November 19, 1993 do hereby certify that I inspected and accepted delivery thereunder of the following Autoracks:

TYPE OF EQUIPMENT:	Fully enclosed bi-level auto racks
DATE ACCEPTED:	November 19, 1993
NUMBER OF UNITS:	150
NUMBERED:	CR 9688-9837 (both inclusive)
ACCEPTANCE LOCATION:	Philadelphia, PA

I do further certify that the foregoing Autoracks are in good order and condition, and appear to conform to the specifications, requirements and standards applicable thereto as provided in the Lease.

I do further certify that each of the foregoing Autoracks has been marked by means of a stencil printed in contrasting colors upon each side of each such Autorack in letters not less than one inch in height as follows:

"Ownership subject to documents
filed with the Interstate Commerce
Commission"

The execution of this Certificate will in no way relieve or decrease the responsibility of the Builder named above for any warranties it has made with respect to the Equipment.

Authorized Representative of Lessor
and Lessee

SCHEDULE C-2 TO LEASE

Certificate of Acceptance

To: HOLDEN AMERICA INC. (Vendor) and PNC LEASING CORP
(Lessor)

I, the duly authorized representative for the Lessor and Consolidated Rail Corporation (the "Lessee") under the Lease of Railroad Equipment, dated as of November 19, 1993 do hereby certify that I inspected and accepted delivery thereunder of the following Tie Downs:

TYPE OF EQUIPMENT:	Grate Lock Wheel Chock System, Item No. 93404274
DATE ACCEPTED:	November 19, 1993
NUMBER OF UNITS:	75
NUMBERED:	Attached to Autoracks CR 9763- 9837 (both inclusive)
ACCEPTANCE LOCATION:	Philadelphia, PA

I do further certify that the foregoing Tie Downs are in good order and condition, and appear to conform to the specifications, requirements and standards applicable thereto as provided in the Lease.

The execution of this Certificate will in no way relieve or decrease the responsibility of the Builder named above for any warranties it has made with respect to the Equipment.

Authorized Representative of Lessor
and Lessee

SCHEDULE D TO LEASE

Casualty Value

The Casualty Value of any Unit of Equipment payable to Lessor as a result of any Casualty Occurrence shall mean an amount equal to the percentage of the Lessor's Cost of such Unit determined in accordance with the following schedule:

<u>Rental Payment Date</u>	<u>Casualty Value (as % of Lessor's Cost)</u>
19 JUL 1994	102.78958222
19 JAN 1995	101.34991157
19 JUL 1995	99.72896092
19 JAN 1996	97.94498091
19 JUL 1996	96.01303786
19 JAN 1997	93.94706670
19 JUL 1997	91.75442135
19 JAN 1998	89.44697925
19 JUL 1998	87.02198907
19 JAN 1999	84.47726715
19 JUL 1999	81.80914172
19 JAN 2000	79.01528645
19 JUL 2000	76.10101959
19 JAN 2001	73.08487622
19 JUL 2001	69.97179135
19 JAN 2002	66.78372376
19 JUL 2002	63.51434095
19 JAN 2003	60.16803935
19 JUL 2003	56.73661083
19 JAN 2004	53.22436260
19 JUL 2004	49.62299529
19 JAN 2005	45.93672286
19 JUL 2005	42.15715064
19 JAN 2006	38.28839513
19 JUL 2006	34.32196210
19 JAN 2007	30.26186629
19 JUL 2007	26.09950943
19 JAN 2008	21.83880000
19 JUL 2008	17.47103113
19 JAN 2009	13.00000000

This schedule assumes that the rental due on the Rental Payment Date has been paid; if such rental has not been paid, the Casualty Value must be increased by the amount of such rental.

SCHEDULE E TO LEASE

[Intentionally Blank]

SCHEDULE F TO LEASE

Base Rent Schedule For Units

Base Lease Commencement Date: January 19, 1994

Expiration Date: January 19, 2009

<u>Rental Payment Date</u>	<u>Rent Factor (%)</u>	<u>Payment No.</u>
July 19, 1994	5.03014214	1
January 19, 1995	5.03014214	2
July 19, 1995	5.03014214	3
January 19, 1996	5.03014214	4
July 19, 1996	5.03014214	5
January 19, 1997	5.03014214	6
July 19, 1997	5.03014214	7
January 19, 1998	5.03014214	8
July 19, 1998	5.03014214	9
January 19, 1999	5.03014214	10
July 19, 1999	5.03014214	11
January 19, 2000	5.03014214	12
July 19, 2000	5.03014214	13
January 19, 2001	5.03014214	14
July 19, 2001	5.03014214	15
January 19, 2002	5.03014214	16
July 19, 2002	5.03014214	17
January 19, 2003	5.03014214	18
July 19, 2003	5.03014214	19
January 19, 2004	5.03014214	20
July 19, 2004	5.03014214	21
January 19, 2005	5.03014214	22
July 19, 2005	5.03014214	23
January 19, 2006	5.03014214	24
July 19, 2006	5.03014214	25
January 19, 2007	5.03014214	26
July 19, 2007	5.03014214	27
January 19, 2008	5.03014214	28
July 19, 2008	5.03014214	29
January 19, 2009	5.03014214	30

[FORM OF OPINION OF COUNSEL LETTER]

_____, 1993

PNC Leasing Corp
One Oliver Plaza
34th Floor
Pittsburgh, PA 15222

RE: Lease of Railroad Equipment

Gentlemen:

I have been asked by Consolidated Rail Corporation, a Pennsylvania corporation ("Lessee"), in my capacity as Associate General Counsel - Corporate of Lessee to furnish you with my opinion in connection with the execution and delivery of a Lease Agreement ("the Agreement") dated as of November __, 1993, between Lessee and PNC Leasing Corp ("Lessor") whereby the Lessee will lease from Lessor the Units (as defined in the Agreement).

In rendering this opinion, I am relying upon my familiarity, as Associate General Counsel - Corporate for Lessee, with the matters upon which I express an opinion herein and upon the examination and review by me or by other members of the Law Department of the Consolidated Rail Corporation of the Agreement and such other documents, facts and law as I deemed relevant under the circumstances. The opinions set forth herein with respect to the due qualification, valid existence, and good standing of Lessee are based, in part, upon certificates or telegrams received from various public officials. All capitalized terms used herein which are not otherwise defined herein shall the meanings assigned to such terms in the Agreement.

1. Lessee is a corporation duly incorporated, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania, has all requisite power and authority to execute and deliver and to perform its obligations under the Agreement and any related documents, to carry on its business as now conducted, and is duly qualified and in good standing in such other jurisdictions in which the failure to so qualify or be in good standing could adversely affect its ability to perform its obligations under the Agreement.

EXHIBIT ONE

2. The Agreement and any related documents have been duly authorized, executed and delivered by the Lessee, and assuming due authorization, execution and delivery by the other parties, are legal, valid and binding instruments enforceable against the Lessee in accordance with their terms, except as enforcement may be limited by general principles of equity or by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to the enforcement of creditors' rights generally.

3. No authorization or approval from any governmental or public body or authority of the United States of America, or of any of the States thereof or the District of Columbia, is, to the best of my knowledge, after due inquiry, necessary for the execution, delivery and performance by the Lessee of the Agreement and any related documents.

4. Neither the execution and delivery of the Agreement and any related documents nor the consummation of the transactions therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of the certificate of incorporation (as amended) or the by-laws (as amended) of the Lessee or, to my best knowledge after due inquiry, of any bond, debenture, note, mortgage, indenture, deed of trust, lien, agreement or other instrument to which the Lessee is now a party or by which it or its property may be bonded, or constitute (with or within the giving of notice or the passage of time or both) a default thereunder, or result in the creation of any lien upon any property of the Lessee pursuant to any provisions of any thereof.

5. Neither the execution and delivery by the Lessee of the Agreement or any related documents nor the consummation of the transactions therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof will conflict with, or result in a breach or violation of, any of the terms, conditions or provisions of any law, or any regulation, rule, order, award, injunction or decree of any court or governmental instrumentality or arbitrator which conflict, breach, or violation thereof would have any material effect on the ability of the Lessee to consummate the transactions contemplated by the Agreement or any related documents.

6. Except as may be disclosed in publicly available reports or documents filed with the United States Securities and Exchange Commission, there are no pending or, to my knowledge, threatened actions or proceedings before any court or administrative agency which would materially adversely affect the consolidated financial condition of Lessee and its subsidiaries or the ability of Lessee to perform its obligations under the Agreement or any of the related documents to which Lessee is a party.

7. To the best of my knowledge, after due inquiry, the Lessee has good title to (or valid leasehold estates in) all the property it purports to own (or lease) (although the deeds evidencing such title have not all been recorded) and all franchises and rights necessary to operate the same, including the property reflected in the most recent balance sheet (except as sold or otherwise disposed of since the date of such balance sheet in the ordinary course of business).

8. Other than liens and encumbrances which might attach and will be subject and subordinate to the right, title and interest of Lessor, no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects any property or interest therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the right, title and interest of Lessor.

Sincerely,

5925 1 11/17/93