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September 30, 2003

CLIENT/MATTER NUMBER  
0430923-0002

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423

RECORDATION NO. 24617 FILED  
SEP 30 03 10:42 AM  
SURFACE TRANSPORTATION BOARD

Re: Documents for Recordation

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301 are three (3) copies of an agreement constituting the Direct Lease between National Railroad Passenger Corporation ("Amtrak") and ExpressTrak, L.L.C. ("ExpressTrak"), dated November 30, 2001. This document is a primary document as defined in the Board's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed documents are:

Lessor: National Railroad Passenger Corporation  
60 Massachusetts Ave, N.E.  
Washington, D.C. 20002

Lessee: ExpressTrak, L.L.C.  
426 East Freemason Street, Suite 200  
Norfolk, VA 23510

A description of the railroad equipment covered by the enclosed document is:

Fifty-five (55) temperature-controlled box cars with reporting marks: AMTK # 74028, 74034, 74090, 74084, 74015, 74018, 74053, 74046, 74055, 74103, 74016, 74098, 74011, 74096, 74029, 74052, 74022, 74064, 74017, 74093, 74110, 74109, 74072, 74013, 74003, 74030, 74089, 74108, 74009, 74045, 74062, 74019, 74100, 74026, 74070, 74107, 74010, 74044, 74014, 74004, 74051, 74066, 74101, 74039, 74102, 74048, 74032, 74079, 74056, 74067, 74041, 74023, 74095, 74088, and 74082.

A short summary of the document to appear in the index follows:

Agreement between Amtrak and ExpressTrak for the lease of Railroad Equipment.

Also, enclosed is a check in the amount of \$30.00 covering the required recordation and cross-indexing fees.

BRUSSELS  
CHICAGO  
DENVER

DETROIT  
JACKSONVILLE  
LOS ANGELES  
MADISON

MILWAUKEE  
ORLANDO  
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SAN DIEGO/DEL MAR  
SAN FRANCISCO  
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TAMPA  
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WASHINGTON, D.C.  
WEST PALM BEACH

002.1079137.1

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Mr. Vernon A. Williams  
September 30, 2003  
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Please kindly date stamp the enclosed documents and return the original to the undersigned.

Respectfully,

A handwritten signature in black ink, appearing to read "Robert P. vom Eigen". The signature is fluid and cursive, with a large initial "R" and a long, sweeping tail.

Robert P. vom Eigen  
Attorney for ExpressTrak, L.L.C.

REGISTRATION NO. 24617 FILED

NOV 30 2001

10-42 AM



SURFACE TRANSPORTATION BOARD

November 30, 2001

VIA FACSIMILE AND OVERNIGHT MAIL

EXPRESSTRAK, L.L.C.  
3400 East Lafayette Boulevard  
Detroit, Michigan 48207  
Attention: R. Franklin Unger, President & CEO

RE: Agreement between National Railroad Passenger Corporation ("Amtrak")  
and ExpressTrak, L.L.C. ("ExpressTrak") for the Lease of Railroad Equipment

Gentlemen:

Reference is made to that certain Sublease of Railroad Equipment (Amtrak Sublease No. 01-AS) between Amtrak as Lessor and ExpressTrak as Lessee dated as of May 15, 2001 (the "*Sublease*"). Capitalized terms used in this letter agreement (the "*Letter Agreement*") and not otherwise defined herein shall have the respective meanings provided for such terms in the Sublease.

This Letter Agreement memorializes the agreement between Amtrak and ExpressTrak to enter into a direct lease (the "*Direct Lease*") of those certain railcars to be delivered by Manufacturer and purchased by Amtrak and which are not leased under the Sublease. Under the Direct Lease, Amtrak and ExpressTrak shall have substantially the same rights and obligations with respect to the railcars made subject thereto as each currently holds with respect to the railcars subject to the Sublease, with such exceptions as ExpressTrak may agree to. Subject to the following two sentences, Amtrak and ExpressTrak agree that the Equipment Cost for purposes of the Direct Lease shall be the original Manufacturer's invoice cost of \$122,911.50. Amtrak and ExpressTrak acknowledge that there is an outstanding issue regarding which party is responsible for the payment of certain modifications to the Equipment, which payment is in the amount of approximately \$590 per railcar. Amtrak and ExpressTrak agree to work in good faith to resolve such issue and acknowledge that such resolution may require an adjustment to the invoice cost payable to Manufacturer.

Amtrak and ExpressTrak acknowledge that it is Amtrak's intention to enter into a sale and leaseback of the railcars subject or to be made subject to the Direct Lease, and thereby causing the Direct Lease to become a sublease. ExpressTrak agrees to cooperate with such sale and leaseback and to agree to such amendments to the Direct Lease as may be necessary to give effect thereto; provided that after giving effect to the amendments, the rights and obligations of ExpressTrak under the Direct Lease are substantially the same as its rights under the transactions contemplated by the Sublease (including the

EXPRESSTRAK, L.L.C.  
Attention: R. Franklin Unger, President & CEO  
November 30, 2001  
Page Two



Recognition and Attornment Agreement). Amtrak and ExpressTrak agree that for purposes of any sale and leaseback of the railcars, and any on-going deliveries of such railcars to the new headlessor, the Equipment Cost of the railcars shall be \$126,000 per car. Any excess of such Equipment Cost over invoice cost shall be allocated between Amtrak and ExpressTrak as the same would have been allocated if such railcars had been subject to the Sublease.

It is the intention of the parties that this Letter Agreement constitutes the Direct Lease between Amtrak and ExpressTrak pending execution and delivery of a more formal document. Amtrak and ExpressTrak shall diligently work toward consummation of such more formal document which shall have an effective date of November 30, 2001.

In reliance on the foregoing and pursuant to Amtrak's Guarantee Letter to ExpressTrak dated December 28, 2000, Amtrak shall undertake to pay the Manufacturer the invoice price of the railcars to be delivered under the Purchase Agreement and shall lease such railcars to ExpressTrak.

Please acknowledge your agreement with the foregoing by executing in the space provided for such purpose below.

Sincerely,

NATIONAL RAILROAD PASSENGER  
CORPORATION

By: Dale M. Stein  
Dale M. Stein  
Treasurer

ACCEPTED AND AGREED TO:

EXPRESSTRAK L.L.C.

By: R. Franklin Unger  
R. Franklin Unger  
President & CEO

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

24617

RECORDATION NO. FILED

NATIONAL RAILROAD PASSENGER  
CORPORATION,  
a corporation organized under the  
Rail Passenger Service Act,  
60 Massachusetts Avenue, N.E.,  
Washington, D.C. 20002,

SEP 3 0 03

10-42 AM

SURFACE TRANSPORTATION BOARD

Plaintiff,

CASE NUMBER 1:02CV01773

v.

JUDGE: Reggie B. Walton

**JURY  
ACTION**

EXPRESSTRAK, L.L.C.,  
a Delaware limited liability company,  
3400 East Lafayette Boulevard,  
Detroit, MI 48207,

DECK TYPE: General Civil

DATE STAMP: 09/09/2002

Defendant.

**COMPLAINT FOR DECLARATORY RELIEF  
AND FOR DAMAGES, AND REQUEST FOR SPEEDY HEARING**

National Railroad Passenger Corporation ("Amtrak"), by counsel and for its Complaint,  
states as follows:

**NATURE OF THE CASE**

1. This is an action for a declaratory judgment that ExpressTrak, L.L.C. ("ExpressTrak") defaulted under certain leases of railcars with Amtrak, that Amtrak properly cancelled the leases upon ExpressTrak's default, that Amtrak is entitled to possession of the railcars, and that Amtrak has no further obligations under the parties' agreements.

2. Amtrak also seeks a judgment for unpaid obligations and liquidated damages pursuant to the terms of the agreements at issue in this action.

## **PARTIES**

3. Plaintiff Amtrak is a corporation organized under the Rail Passenger Service Act, 49 U.S.C. § 24301, and the laws of the District of Columbia with its principal place of business at 60 Massachusetts Avenue, N.E., Washington, D.C. 20002.

4. On information and belief, Defendant ExpressTrak is a limited liability company organized under Delaware law with its principal place of business at 3400 East Lafayette Boulevard, Detroit, Michigan 48207.

## **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the parties are citizens of different states and the amount in controversy exceeds the value of \$75,000, exclusive of interests and costs, and pursuant to 28 U.S.C. §§ 1331 and 1349 because Amtrak was incorporated under an Act of Congress and the United States owns more than one-half of its capital stock.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to this claim occurred in this district. In addition, the parties have consented to the jurisdiction of this Court in the agreements at issue in this action.

## **FACTS**

### **The Operating Agreement**

7. On or about October 27, 1999, Amtrak and ExpressTrak entered into an agreement to commence transportation of temperature controlled perishable goods by attaching refrigerated train cars to Amtrak's intercity passenger trains. The Operating Agreement was

amended on three separate occasions. (The Operating Agreement as amended shall hereinafter be referred to as the "Operating Agreement.")

8. The Operating Agreement contemplated the creation of a fleet of mechanical temperature controlled express cars ("Cars") to be operated by Amtrak. ExpressTrak was required to acquire the Cars and to enter into a contract with a vendor to have the Cars refurbished.

9. The Operating Agreement contemplated that ExpressTrak would cause the refurbished Cars to be conveyed to a third-party lessor. The third-party lessor would in turn lease the Cars to Amtrak, and Amtrak would sublease the Cars to ExpressTrak. Under this arrangement, Amtrak would make the lease payments to the third-party lessor and ExpressTrak would simultaneously pay an equal amount to Amtrak.

10. On or about October 16, 2000, Amtrak secured financing for an initial 110 Cars in a commitment letter from ORIX Financial Services, Inc. ("Orix"). The commitment letter was amended pursuant to a letter from Orix to Amtrak dated December 27, 2000.

#### **The Sublease**

11. On or about May 15, 2001, Orix, as lessor, and Amtrak, as lessee, entered into a Lease of Railroad Equipment (Amtrak Lease No. 01-A) ("Headlease") for the Cars financed by Orix.

12. On or about May 15, 2001, Amtrak, as lessor, and ExpressTrak, as lessee, entered into a Sublease of Railroad Equipment (Amtrak Sublease No. 01-AS) ("Sublease") for the Cars financed by Orix. A true and accurate copy of the Sublease is attached hereto as Exhibit A and is incorporated herein by reference.

13. Fifty-five cars were delivered to ExpressTrak under the Sublease, commencing in June 2001 and ending in May 2002.

14. The Sublease requires ExpressTrak to make quarterly payments to Amtrak on the same date that Amtrak makes payments to Orix.

15. Section 5.2(i) of the Sublease provides in pertinent part as follows:

Each of Lessee's obligations to pay Rent hereunder shall be absolute and unconditional, and Lessee shall not be entitled to any abatement, deferral or suspension of Rent, reduction thereof or setoff against Rent, including abatements, reductions, deferrals, suspensions or setoffs due, or alleged to be due, by reason of any past, present or future claims of Lessee against Lessor . . . either under this Lease or otherwise . . . .

In addition, Section 4.3 requires that all payments must be made "by noon Washington, D.C. time on the date payment is due in United States Dollars in immediately available funds. Any payment not made on the date payment is due shall be payable with interest at the Overdue Rate as provided in Section 4.2."

16. Section 13.1 of the Sublease sets forth the events that constitute default under the Sublease. Section 13.1(i) provides that ExpressTrak defaults on the Sublease if it "fail[s] to make any payment of Base Rent, Casualty Value or Extension Rent within 5 days after the same shall become due."

17. While Section 13.1(iv) provides that ExpressTrak may cure other defaults, the Sublease specifically excludes the failure to pay from this cure provision. Thus, the Sublease provides no cure period for ExpressTrak's failure to pay rent.

18. Section 13.2 sets forth the remedies that Amtrak may pursue upon default by ExpressTrak. Among other remedies, Section 13.2(ii) provides that Amtrak may "by notice in writing to Lessee, cancel or terminate this Lease, whereupon all right of Lessee to the possession and use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but Lessee shall remain liable as hereinafter provided; and thereupon, Lessor may demand that Lessee, and Lessee shall, upon written demand of Lessor and at Lessee's expense

forthwith return all of the Equipment to Lessor. . . .” The Sublease defines “Equipment” to include the Cars leased by Amtrak to ExpressTrak in Section 1.1.

19. Section 13.2(v) of the Sublease provides that ExpressTrak shall, at Amtrak’s option, pay liquidated damages in the event of a default.

#### **The Direct Lease**

20. On or about November 16, 2001, Orix refused to finance any additional Cars beyond the fifty-five cars already set to be delivered under the Headlease. Thereafter, Amtrak purchased Cars directly from the refurbishing vendor in order to make additional Cars available to ExpressTrak.

21. On or about November 30, 2001, Amtrak and ExpressTrak entered into a letter agreement by which Amtrak agreed to lease to ExpressTrak the Cars it had purchased directly from the vendor. The letter agreement provides that “it is the intention of the parties that this Letter Agreement constitutes the Direct Lease . . . pending execution and delivery of a more formal document,” under which formal document the parties were to have “substantially the same rights and obligations with respect to the railcars made the subject thereto as each currently holds with respect to the railcars subject to the Sublease.” Although a later document was never executed, the parties thereafter operated under the letter agreement as a direct lease incorporating the terms and conditions of the Sublease. A true and accurate copy of the letter agreement (“Direct Lease”) is attached hereto as Exhibit B and is incorporated herein by reference. (The Sublease and Direct Lease shall hereinafter sometimes be collectively referred to as the “Leases.”)

#### **ExpressTrak’s Defaults Under the Leases**

22. ExpressTrak failed to make the lease payments due to Amtrak under the Sublease, in the amount of \$208,665.09, on the due date of January 2, 2002, or within five days thereafter.

23. ExpressTrak failed to make the lease payments due to Amtrak under the Sublease, in the amount of \$229,153.91, on the due date of April 1, 2002, or within five days thereafter. In addition, ExpressTrak has failed to timely make additional lease payments due to Amtrak on Cars leased to ExpressTrak under the Direct Lease.

24. ExpressTrak's failure to make the required lease payments to Amtrak created independent Events of Default under the Leases.

25. By letters dated April 15, 2002, Amtrak notified ExpressTrak of its defaults under the Leases, and exercised its right to cancel the Leases and to demand return of all Cars leased to ExpressTrak thereunder.

26. On or about April 17, 2002, ExpressTrak made payments to Amtrak in the amount of \$437,819.00. However, this payment did not include the interest at the Overdue Rate as required by the Leases. By letter dated April 22, 2002, Amtrak advised ExpressTrak that Amtrak was applying the payments to the overdue amounts, but that the payments did not cure the existing Events of Default.

27. By letter to Amtrak dated April 25, 2002, ExpressTrak stated that ExpressTrak was not in default under its lease obligations, that Amtrak's April 15, 2002 notices of default and cancellation were "ineffective and unenforceable," and that "Amtrak does not have the unilateral right to demand return of the express cars."

28. During the period that ExpressTrak failed to make any lease payments to Amtrak, Amtrak continued to meet its payment obligations to Orix as required under the Headlease. Thus, ExpressTrak, with full knowledge of Amtrak's concurrent obligations to Orix under the Headlease, conducted its business at Amtrak's expense and with free use of the Cars.

29. The cancellation of the Leases resulting from ExpressTrak's defaults operates to discharge Amtrak from any further obligations under the Operating Agreement.

30. On May 3, 2002, the parties entered into a standstill agreement whereby Amtrak agreed to take no steps to enforce Amtrak's right to take possession of the Cars while the parties attempted to negotiate their differences. During the period of the standstill, Amtrak has continued to operate the Cars to carry ExpressTrak freight and held in abeyance its right to possession of them. The standstill agreement remained in effect through September 8, 2002.

**COUNT I – DECLARATORY JUDGMENT (28 U.S.C. § 2201)**

31. Amtrak adopts and incorporates by reference each of the allegations in Paragraphs 1 through 30 above as though fully set forth herein.

32. There is an actual, concrete, and substantial dispute between ExpressTrak and Amtrak regarding whether ExpressTrak's defaults under the Leases entitle Amtrak to possession of the Cars and discharge Amtrak's remaining obligations under the Operating Agreement. Amtrak's legal rights are directly and substantially affected by this dispute. The declaratory relief Amtrak seeks will settle the controversy between the parties, and no better or more effective remedy exists.

33. The issues in dispute between the parties require a speedy hearing. By continuing to operate the Cars under the parties' agreements, Amtrak estimates that it will sustain operating losses of approximately \$250,000 to \$315,000 per month.

34. As of the filing of this Complaint, Amtrak is not aware of any other case or proceeding pending in any court or other forum with respect to this dispute.

**COUNT II – BREACH OF CONTRACT**

35. Amtrak adopts and incorporates by reference each of the allegations in Paragraphs 1 through 34 above as though fully set forth herein.

36. ExpressTrak materially breached the Leases by failing to make the lease payments due to Amtrak on January 2, 2002 and April 1, 2002, or within five business days thereof.

37. ExpressTrak materially breached the Leases by failing to make interest payments to Amtrak at the Overdue Rate as required by the Leases.

38. ExpressTrak's material breaches have caused injury to Amtrak, and entitle Amtrak to possession of the Cars and to recover liquidated damages as provided in the Leases.

**PRAYER FOR RELIEF**

WHEREFORE, Amtrak respectfully requests that this Court award the following relief against ExpressTrak:

- a. A declaration that ExpressTrak is in default under the Sublease and Direct Lease and that the Sublease and Direct Lease have been cancelled and are of no further effect;
- b. A declaration that Amtrak is entitled to immediate possession of the Cars;
- c. A declaration that Amtrak has no further obligations under the Operating Agreement;
- d. A money judgment for liquidated damages in an amount to be proved at trial, but believed to be approximately \$15 million;
- e. A money judgment for the interest at the Overdue Rate on all late lease payments by ExpressTrak;
- f. Reasonable attorneys' fees and costs;
- g. Interest on the above amounts; and
- h. Such other appropriate relief as the Court deems just and proper in law or in equity.

Pursuant to F.R.C.P. 57, Amtrak requests a hearing on its request for declaratory judgment be advanced on the calendar and be held at the earliest possible time.

DATED: September 9, 2002

Respectfully submitted,

JACK MCKAY / JWG  
Jack McKay (D.C. Bar No. 159335)  
Jonathan W. Gannon (D.C. Bar No. 475488)  
SHAW PITTMAN LLP  
2300 N Street, N.W.  
Washington, D.C. 20037  
Telephone: (202) 663-8000  
Facsimile: (202) 663-8007

Attorneys for Plaintiff National Railroad  
Passenger Corporation

Exhibit A

---

SUBLEASE OF RAILROAD EQUIPMENT  
(AMTRAK SUBLEASE NO. 01-AS)

Dated as of May 15, 2001

Between

NATIONAL RAILROAD PASSENGER CORPORATION,  
Lessor

and

EXPRESSTRAK, L.L.C.,  
Lessee

---

Express Refrigerated Railcars

---

NOTICE IS HEREBY GIVEN TO ALL CONTRACTORS, SUBCONTRACTORS, LABORERS, MATERIALMEN AND OTHER PERSONS THAT LESSOR WILL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED TO LESSEE AND THAT NO LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH OR AFFECT LESSOR'S INTEREST IN THE UNITS.

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SUBLEASE OF RAILROAD EQUIPMENT  
(AMTRAK SUBLEASE NO. 01-AS)

THIS SUBLEASE OF RAILROAD EQUIPMENT (AMTRAK SUBLEASE NO. 01-AS) is dated as of May 15, 2001 between NATIONAL RAILROAD PASSENGER CORPORATION, a corporation organized under the Rail Passenger Service Act and the laws of the District of Columbia ("*Lessor*"), and EXPRESSTRAK, L.L.C., a Delaware limited liability company ("*Lessee*"). For good and valuable consideration, the adequacy and receipt of which is acknowledged, Lessor and Lessee hereby agree as follows:

W I T N E S S E T H :

SECTION 1. INTERPRETATION

1.1 Definitions. Capitalized terms and phrases used and not otherwise defined herein shall for all purposes of this Lease have the respective meanings specified therefor below:

"*AAR*" means Association of American Railroads.

"*Act*" means the Interstate Commerce Act (as codified in Title 49 of the United States Code).

"*Affiliate*", with respect to any Person, means any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such Person. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"*After-Tax Basis*" means with respect to any payment to be received (actually or constructively) by a Person, the amount of such payment plus a further payment or payments so that the net amount received (actually or constructively) by such Person, after deducting from such payments the amount of all Taxes imposed on the Person receiving (actually or constructively) such payments by any taxing authority with respect to such payments (net of any current credits, deductions or other Tax benefits arising from the payment by such Person of any amount, including Taxes, with respect to the payment received or arising by reason of the receipt or accrual by such Person of the payment received) is equal to the original payment required to be received (actually or constructively).

"*Aggregate Casualty Payment*" has the meaning specified in Section 7.3 hereof.

"*Base Lease Expiration Date* means with respect to any Unit delivered and accepted in any calendar quarter the tenth anniversary of the last day of such calendar quarter, as confirmed in the Lease Supplement for such Unit.

“*Base Lease Term*” with respect to any Unit means the period described in Section 3 hereof.

“*Base Rent*” means with respect to any Unit (i) as of any Rent Payment Date for such Unit during the Base Lease Term for such Unit, the sum of (x) the Equipment Cost of such Unit multiplied by the Rent Factor applicable to such Unit for such Rent Payment Date plus (y) the Incremental Amount and (ii) as of any Rent Payment Date for such Unit during the Extension Term for such Unit, the applicable Extension Rent then due.

“*Business Day*” means any day other than (i) a Saturday or Sunday and (ii) a day on which state, provincial or national banking institutions are authorized or obligated by law or executive order to remain closed in the City of New York or the District of Columbia.

“*Casualty Occurrence*” with respect to any Unit means any of the following events with respect to such Unit: (i) such Unit suffers an actual or constructive total loss or shall be or become worn out or shall be destroyed or irreparably damaged, or uneconomical to repair, or rendered unfit for commercial use from any cause whatsoever during the Lease Term or until such Unit is returned pursuant to Section 14 or Section 17 hereof (following the expiration of any applicable storage period), (ii) title to such Unit shall be taken by any Governmental Authority by condemnation or otherwise, (iii) use of such Unit shall be taken or requisitioned (a) by the United States Government for a period which shall exceed 12 months (or beyond the end of the remaining Lease Term, if it first occurs) or (b) by any other Governmental Authority for a period which shall exceed 180 days (or beyond the end of the remaining Lease Term, if it first occurs), (iv) such Unit shall be or become lost or stolen for a period in excess of 180 days (or to the end of the remaining term hereof, if it first occurs), or (v) as a result of any rule, regulation, order or other action by any instrumentality, the use of such Unit in a manner consistent with Lessee’s normal business activities shall have been prohibited for a period of 12 consecutive months (or beyond the end of the remaining Lease Term, if it first occurs).

“*Casualty Value*” during the Base Lease Term for a Unit as of any Casualty Value Determination Date shall be (i) the Equipment Cost of such Unit multiplied by (ii) the applicable Casualty Value Factor for such Casualty Value Determination Date. “*Casualty Value*” for a Unit during the Extension Term shall, in the event that (i) Lessor elects to exercise its right to purchase any or all of the Units then under the Headlease pursuant to Sections 16.1 or 16.2 of the Headlease, decrease on a straight-line basis from the Fair Market Value of such Unit on the first day of the Extension Term to the Fair Market Value of such Unit on the last Casualty Value Determination Date during such Extension Term as determined in accordance with Section 16.2, or (ii) the Headlease shall be renewed pursuant to Section 16.4 of the Headlease, be equal to the “*Casualty Value*” as determined in accordance the Headlease.

“*Casualty Value Determination Date*” means with respect to any Casualty Occurrence with respect to any Unit (i) during the Base Lease Term for such Unit, the earlier of (A) the Base Lease Expiration Date with respect to such Unit and (B) the first date listed as a Casualty Value Determination Date on the Schedule III to the Lease Supplement for such Unit that is at least 60 days after such Casualty Occurrence and (ii) during the Extension Term for such Unit, the earlier of (A) the last day of such Extension Term for such Unit and (B) the first

monthly anniversary of the Base Lease Expiration Date with respect to such Unit that is at least 60 days after such Casualty Occurrence.

“*Casualty Value Factor*” with respect to any Unit as of any Casualty Value Determination Date during the Base Lease Term means the applicable percentage set forth under the heading titled “Pro Forma Casualty Value Factors” as set forth in Schedule II to the Headlease, as such percentage may be increased or decreased for each Casualty Value Determination Date.

“*Claims*” has the meaning specified in Section 22 of hereof.

“*Closing Date*” with respect to any Unit means the date on or as of which such Unit is purchased by Headlessor, leased to Lessor, as lessee, under the Headlease and subleased by Lessor to Lessee under and subject to this Lease.

“*Closing Notice*” has the meaning specified in Section 2.1 hereof.

“*Code*” means the Internal Revenue Code of 1986, as amended.

“*Dollars*”, “*U.S. Dollars*”, and “*\$*” shall mean lawful money of the United States.

“*Equipment*” means the railcars described on Schedule I to the Lease Supplement to the extent and for so long as they are accepted under and subject to this Lease, together with related appliances, parts, accessories, appurtenances, additions, improvements and other equipment or components of any nature installed thereon, as specified in the Closing Notice and replacements thereof and substitutions therefor, including any Replacement Units substituted for Units in accordance with Section 7.2 hereof (individually, a “*Unit*” and, collectively, the “*Equipment*” or the “*Units*”).

“*Equipment Cost*” for any Unit means the amount paid by Lessor to purchase such Unit, as confirmed in the Lease Supplement for such Unit. Any Replacement Unit shall be deemed to have the Equipment Cost of the Unit for which it was substituted in accordance with Section 7.2 hereof.

“*Event of Default*” has the meaning specified in Section 13.1 of this Lease.

“*Extension Rent*” has the meaning specified in Section 16.1 hereof.

“*Extension Term*” has the meaning specified in Section 16.1 hereof.

“*Fair Market Rental*” for a Unit means the quarterly rent which would be obtained in an arm’s-length transaction between an informed and willing lessee and an informed and willing lessor, neither being under any compulsion to lease. In determining Fair Market Rental for a Unit, it shall be assumed that Lessee has complied with all of the terms, provisions and conditions hereof and that such Unit is in the condition and configuration required upon its return to Lessor as provided therein (provided that for purposes of Section 13.2 hereof, the determination of Fair Market Rental for such Unit shall be made on the basis of the actual condition of such Unit). In determining the Fair Market Rental of any Unit, the value of, and any

enhancement of value attributable to, any severable improvements to such Unit that are owned by Lessee pursuant to Section 12.2(i) hereof and are not required by or referred to in Section 12.2(ii) hereof shall be disregarded.

“*Fair Market Value*” for a Unit means the cash price which would be obtained in an arm’s-length transaction between an informed and willing buyer under no compulsion to buy, and an informed and willing seller under no compulsion to sell. In determining Fair Market Value for a Unit, it shall be assumed that Lessee has complied with all of the terms, provisions and conditions hereof and that such Unit is in the condition and configuration required upon its return to Lessor as provided therein (provided that for purposes of Section 13.2 hereof, the determination of Fair Market Value for such Unit shall be made on the basis of the actual condition of such Unit). In determining the Fair Market Value of any Unit the value of, and any enhancement of value attributable to, any severable improvements to such Unit that are owned by Lessee pursuant to Section 12.2(i) hereof and are not required by or referred to in Section 12.2(ii) hereof shall be disregarded.

“*Governmental Authority*” means any federal, state or local government or other governmental authority in the United States or any foreign government or any political subdivision or governmental authority thereof or any territory or possession of the United States or any international authority.

“*Headlease*” means that certain Lease of Railroad Equipment (Amtrak Lease No. 01-A), dated the date hereof, between Lessor, as lessee, and, Headlessor, as lessor, including all supplements thereto.

“*Headlessor*” means ORIX Financial Services, Inc., New York corporation.

“*Incremental Amount*” means with respect to any Unit the product of the Equipment Cost for such Unit and 0.003 (i.e. 3/10 of 1%), which amount shall be payable quarterly as a part of Base Rent and Extension Rent for such Unit; provided such amount shall not be due to the extent the Incremental Amount in any calendar year exceed \$500,000 in the aggregate for all Units.

“*Indemnified Parties*” means for purposes of Sections 22.1 and 23.1 hereof, Lessor and Headlessor and their respective successors and assigns and the agents, officers, directors, servants and employees of any thereof. “*Indemnified Party*” means any such Person individually.

“*Lease*” means this Sublease.

“*Lease Supplement*” means each supplement to the Lease in substantially the form of Exhibit A to this Lease, entered into between Lessor and Lessee (collectively, the “*Lease Supplements*”).

“*Lease Term*” with respect to any Unit means the period commencing on the Closing Date therefor and continuing to and including the Base Lease Expiration Date for such Unit, or if this Lease shall be extended pursuant to Section 16.1 hereof with respect to such Unit,

the last day of the Extension Term for such Unit, in each case unless earlier terminated pursuant to the terms hereof.

“*Lessee*” means ExpressTrak, L.L.C., a Delaware limited liability company.

“*Lessor*” means National Railroad Passenger Corporation, a corporation organized under the Rail Passenger Service Act and the laws of the District of Columbia, also known as Amtrak.

“*Lessor’s Liens*” means any Lien, except as expressly permitted herein, affecting or in respect of the Equipment or the Lease arising as a result of (i) claims by or against Lessor unrelated to the transactions contemplated by the Operative Documents or (ii) any breach of any covenant or agreement of Lessor set forth in any of the Operative Documents, or (iii) Taxes imposed against Lessor which are not indemnified against by Lessee pursuant to this Lease.

“*Liability Insurance*” has the meaning specified in Section 8.1(i)(b) hereof.

“*Lien*” means any mortgage, pledge, lien, charge, claim, encumbrance, lease, sublease, sub-sublease or security interest.

“*Manufacturer*” means Ebenezer Rail Car Services, Inc., a New York corporation.

“*Operating Agreement*” means that certain Agreement, dated October 27, 1999, between Lessee and Lessor for temperature controlled perishables express transportation, as amended.

“*Operative Documents*” means, collectively, the Headlease, this Lease, any Lease Supplement, the Purchase Agreement Assignment and the Operating Agreement.

“*Overall Transaction*” means the arrangements and transactions contemplated by and reflected in the Operative Documents.

“*Overdue Rate*” shall mean the rate of interest announced from time to time by Citibank, N.A. as its “prime” rate, plus 3.0%, calculated on the basis of a 365 or 366 day year, actual days elapsed (provided, however, that if such rate exceeds the highest rate permitted by applicable law, then the Overdue Rate shall be the highest rate permitted by applicable law).

“*Permitted Liens*” means (i) Liens for taxes, assessments or governmental charges or levies in each case not due and delinquent, (ii) inchoate materialmen’s, mechanics’, workmen’s, repairmen’s or other like Liens arising in the ordinary course of Lessee’s business and in each case not delinquent, (iii) Lessor’s Liens, and (iv) the rights of Headlessor under the Headlease.

“*Person*” or “*Persons*” means any individual, firm, partnership, corporation, limited liability company, trust, unincorporated association, joint venture or other entity, a government or any department or agency thereof, or any other entity.

"*Prime Rate*" shall mean the rate of interest announced from time to time by Citibank, N.A. as its "prime" rate.

"*Property Insurance*" has the meaning specified in Section 8.1(i)(a) hereof.

"*Purchase Agreement*" means that certain Temperature Controlled Express Car Refurbishment Contract dated January 15, 2001 between the Manufacturer and Lessee including all modifications and supplements thereto pertaining to the Units.

"*Purchase Agreement Assignment*" means the Purchase Agreement Assignment (Amtrak Lease No. 01-A) dated as of the first Closing Date between Lessee and Headlessor whereby Lessee assigns warranty provisions under the Purchase Agreement to Headlessor and the Manufacturer consents and agrees to the terms and conditions of such assignment pursuant to the Consent and Agreement.

"*Rail Passenger Service Act*" means the Rail Passenger Service Act (formerly 49 U.S.C. § 501 et seq. recodified at 49 U.S.C. § 24301 et seq. pursuant to Public Law No. 103-272, July 5, 1994).

"*Recognition and Attornment Agreement*" means a Subordination, Recognition and Attornment Agreement between Lessor and ExpressTrak, dated the first Closing Date, pursuant to which ExpressTrak agrees, in the event of a termination of the Headlease by reason of an Event of Default, to certain recognition and attornment rights with respect to the ExpressTrak Sublease.

"*Redelivery Location*" has the meaning specified in Section 17.1 hereof.

"*Renewal Rent*" has the meaning specified in Section 16.4 of the Headlease.

"*Renewal Term*" has the meaning specified in Section 16.4 of the Headlease.

"*Rent*" means Base Rent, Extension Rent and Supplemental Rent, collectively.

"*Rent Factor*" for any Unit on any Rent Payment Date during the Base Lease Term means the applicable percentage set forth under the heading titled "Rent Factor" as set forth in Schedule II to the Headlease, as such percentage may be increased or decreased for each Rent Payment Date in accordance with Schedule II to the Headlease.

"*Rent Payment Date*" means for any Unit each January 1, April 1, July 1 and October 1. The initial Rent Payment Date for a Unit shall be the first of such dates first occurring after the Closing Date for such Unit.

"*Responsible Officer*" of an entity means any corporate officer or other responsible official of such entity who is designated as the recipient of a notice pursuant to the provisions of any Operative Document or who, in the normal performance of such official's operational responsibilities, would have knowledge of the matter at issue and the relevant provisions of any applicable Operative Document.

"STB" means the United States Surface Transportation Board or any successor agency thereto.

"*Supplemental Rent*" means any and all amounts, liabilities and obligations (other than Base Rent or Extension Rent) which Lessee assumes or agrees to pay to any Person under the Lease, or under any other Operative Document, including, without limitation, payments of Casualty Value and amounts measured by reference thereto indemnity payments.

"*Taxes*" has the meaning specified in Section 23.1 hereof.

"*Termination Date*" has the meaning specified in Section 26.1 hereof.

"*Transaction Expense*" has the meaning specified in Section 28 hereof.

"*UCC*" means the Uniform Commercial Code, as adopted in the relevant jurisdiction.

"*Unit*" and "*Units*" have the meanings set forth under "*Equipment*".

1.2 **Rules of Interpretation.** The following rules apply to this Lease:

- (i) the singular includes the plural and the plural includes the singular;
- (ii) "*or*" is not exclusive and "*include*" and "*including*" are not limiting;
- (iii) a reference to any agreement or other contract includes permitted supplements and amendments;
- (iv) a reference to a law includes any amendment or modification to such law and any rules or regulations issued thereunder or any law enacted in substitution or replacement therefor;
- (v) a reference to a Person includes its permitted successors and assigns;
- (vi) a reference herein to an Article, Section, Exhibit, Schedule or Appendix without further reference is to the relevant Article, Section, Exhibit, Schedule or Appendix of this Lease;
- (vii) any right may be exercised at any time and from time to time;
- (viii) all obligations are continuing obligations; and
- (ix) the heading of the Articles, Sections and subsections are for convenience and shall not affect the meaning of this Lease.

## SECTION 2. PURCHASE AND LEASE; DELIVERY AND ACCEPTANCE

2.1 **Purchase and Lease.** Lessor and Lessee acknowledge that on each Closing Date, subject to satisfaction of the terms and conditions set forth in the Headlease,

Headlessor shall purchase the Units subject to such Closing directly from Lessee, in the case of the first Unit, and directly from Manufacturer, in the case of all other Units, and simultaneously lease them to Lessor under the Headlease. Simultaneously therewith, Lessor shall sublease such Units to Lessee hereunder. Each Closing Date shall be on a Business Day as may be designated by Lessor (or by Lessee on behalf of Lessor) in a written notice (a "Closing Notice") given to the other party and to Headlessor at least 5 Business Days, in the case of the first Closing Date, and 2 Business Days, in the case of all other Closing Dates, prior to such designated Closing Date. Such written notice (A) shall specify (i) the Units to be subjected to the Headlease and the Lease on such Closing Date, (ii) the corresponding reporting marks, (iii) the Equipment Cost of each of such Units, (iv) the portion of such Equipment Cost to be paid to the Manufacturer on behalf of ExpressTrak and the portions of the remainder to be paid to ExpressTrak and to Lessor, and (v) payment instructions and (B) be accompanied by all documents listed in Section 2.3(ii) of the Headlease, duly executed by the relevant parties thereto.

2.2 Delivery and Acceptance. Upon delivery by Lessor and Lessee of a fully executed Lease Supplement, the Units described therein shall be deemed to have been delivered to and accepted by Lessee for all purposes of this Lease and thereupon shall be subject to all the terms and conditions of this Lease. Lessee's execution and delivery of a Lease Supplement shall be conclusive proof that the Units listed therein have been subjected to this Lease on the terms hereof, notwithstanding any defect with respect to the design, manufacture, condition or any other matter or the failure of any of the Units to comply with the specifications applicable thereto or with any applicable United States Department of Transportation or STB requirements and specifications or AAR Rule 88 Full Status Rebuild standards for railroad equipment of the character of the Equipment as of the date hereof, and that as between Lessor and Lessee, such Unit is in good order and condition.

2.3 Conditions to Obligations of Lessor on each Closing Date. The obligation of Lessor to perform its obligations set forth in Section 2.1 on each Closing Date is subject to the satisfaction or waiver by Lessor prior to or on such Closing Date of each of the following conditions precedent:

(i) Satisfaction of Headlease Conditions. All conditions to the performance by Headlessor under Section 2.3 and 2.4 of the Headlease shall have been satisfied or waived by Headlessor.

(ii) Documents. Together with the Closing Notice, Lessor shall have received fully executed copies of the Lease Supplement relating to the Units subject to such Closing.

(iii) No Default or Casualty Occurrence. On such Closing Date, no event shall have occurred and be continuing, or would result from the purchase, sale, lease or sublease of such Units, that constitutes an Event of Default or a Casualty Occurrence, all as confirmed by Lessee in the Lease Supplement delivered on such Closing Date.

(iv) Representations and Warranties. On such Closing Date, the representations and warranties of Lessee contained herein shall be true and correct on such date as though made on and as of such date except to the extent that such representations and

warranties relate solely to an earlier date (in which case such representations and warranties shall be true and correct on and as of such earlier date), all as confirmed by Lessee in the Lease Supplement delivered on such Closing Date.

(v) Payment of Taxes. All sales taxes and duties, if applicable, related to the consummation of the transactions contemplated by the Operative Documents on such Closing Date shall, if then due, have been duly paid in full by Lessee, to the extent not included in the Equipment Cost of the Equipment.

2.4 Conditions to Obligations of Lessor on the First Closing Date. In addition to conditions set forth in Section 2.3, the obligation of Lessor to perform its obligations set forth in Section 2.1 on the first Closing Date is subject to the satisfaction or waiver by Lessor prior to or on the first Closing Date of each of the following conditions precedent:

(i) Operative and Other Documents. On or prior to the first Closing Date, Lessor shall have received fully executed copies of the following documents (each in form and substance satisfactory to Lessor):

- (a) this Lease;
- (b) the Headlease;
- (c) the Purchase Agreement Assignment;
- (d) the Consent and Agreement; and
- (e) the Recognition and Attornment Agreement.

(ii) Filings and Financing Statements. This Lease, (or other appropriate memoranda) relating to all of the Units intended to be made subject to this Lease, shall have filed with the STB, pursuant to Section 11301 of the Act and the Registrar General of Canada pursuant to Section 105 of the Canada Transportation Act, as appropriate. A UCC financing statement or statements describing the Lease and such Units shall have been executed and delivered by Lessor, as "secured party", and by Lessee, as "debtor", and shall have been duly filed in all places listed on Schedule I, copies of which shall have been delivered to Lessor.

(iii) Corporate Documents. Lessor shall have received the following, in each case in form and substance reasonably satisfactory to it:

- (a) a current and complete copy of the organizational documents of Lessee;
- (b) a copy of resolutions of the board of directors of Lessee, duly authorizing the execution and delivery by Lessee of the Operative Documents to which it is or will be a party;
- (c) an incumbency certificate of Lessee as to the Person or Persons being authorized to execute and deliver such Operative Documents and such other

documents on behalf of Lessee and including specimens of the signatures of such Person or Persons, each certified as of the first Closing Date by the Secretary or an Assistant Secretary of Lessee; and (d) each other document required to be executed and delivered by Lessee on the first Closing Date in accordance with the provisions hereof and the performance by Lessee of its obligations thereunder.

(iv) Lessee Counsel Opinions.

(a) Lessor shall have received an opinion addressed to Lessor and Headlessor and dated such Closing Date from Foley & Landner, special counsel for Lessee, in form, scope and substance satisfactory to Lessor.

(b) Lessor shall have received an opinion concerning STB matters addressed to Lessor and Lessee and dated such Closing Date from Alvord and Alvord, STB counsel for Lessee, in form, scope and substance satisfactory to Lessor and Lessee.

(c) Lessor shall have received an opinion concerning Canadian filings and related matters addressed to Lessor and Lessee and dated such Closing Date from McCarthy Tétrault, Canadian counsel to Lessee, in form, scope and substance satisfactory to Lessor and Lessee.

(v) Insurance. Lessor shall have received a certificate of insurance evidencing compliance by Lessee with the terms of this Lease relating to all required insurance with respect to the Units.

### SECTION 3. BASE LEASE

The Base Lease Term for any Unit shall commence on the Closing Date for such Unit and end on the Base Lease Expiration Date for such Unit, or such earlier date on which this Lease shall be terminated pursuant to the terms hereof with respect to such Unit.

### SECTION 4. RENT

#### 4.1 Base Rent.

(i) Base Rent During Base Lease Term. Lessee shall pay to Lessor, as Base Rent for each Unit, one installment of Interim Rent (as defined below) and 40 installments of Base Rent on each Rent Payment Date for such Unit during the Base Lease Term for such Unit, payable quarterly in arrears on each Rent Payment Date. Base Rent due on a Rent Payment Date with respect to any Unit is equal to the product of (a) the applicable Rent Factor for such Rent Payment Date and (b) Equipment Cost for such Unit provided, however, that the Base Rent payable on the initial Rent Payment Date ("*Interim Rent*") shall be adjusted on a pro rata basis based on the number of days such Unit was leased by Lessor in the quarter immediately prior to the initial Rent Payment Date. If any Rent Payment Date is also a Casualty Value Determination Date or a Termination Date with respect to a Unit, such Unit shall be deemed to be subject to this Lease within the meaning of the definition of "Equipment Cost" for purposes of determining any Base Rent due on such date.

(ii) Base Rent during Extension Term. During the Extension Term for any Unit, Lessee shall pay to Lessor Extension Rent for such Unit on each Rent Payment Date.

4.2 Supplemental Rent. In addition to its obligation to pay Base Rent or Extension Rent hereunder, Lessee shall pay (or cause to be paid) Supplemental Rent to Lessor or to whomever shall be entitled thereto, as and when the same shall become due and owing in accordance with the provisions of the Operative Document that requires such payment. Lessee also agrees to pay to Lessor or such other Person as shall be entitled thereto with the payment to which it relates, without necessity of demand, as Supplemental Rent to the extent permitted by applicable law, interest at the Overdue Rate on (a) any part of any installment of Base Rent or Extension Rent, as the case may be, not paid when due for each day for which the same shall be overdue and (b) any payment of Supplemental Rent (other than such interest) not paid when due for each day for which the same shall be overdue, until the same shall be received by the party entitled thereto.

4.3 Manner of Making Payments. All payments pursuant to this Lease shall be made by noon Washington, D.C. time on the date payment is due in United States Dollars in immediately available funds. Any payment not made on the date payment is due shall be payable with interest at the Overdue Rate as provided in Section 4.2. If any such date is not a Business Day, then payment shall be due on the next succeeding Business Day and if paid by noon Washington, D.C. time on such Business Day, such payment shall be without interest or penalty. All payments of Rent for any Unit (other than Supplemental Rent, which shall be paid to the Person entitled thereto) shall be paid by Lessee to Lessor at the address set forth in the Lease Supplement for such Unit or as Lessor may otherwise direct from time to time in writing.

## SECTION 5. NET LEASE; NONTERMINABILITY

5.1 Net Lease. This Lease is a net lease, and, as between Lessee and Lessor, it is intended that Lessee shall pay all costs and expenses of every character, whether foreseen or unforeseen, ordinary or extraordinary, in connection with the Units, whether with respect to construction, delivery, ownership, use, possession, control, operation, maintenance, repair, insurance, improvement and return of the Units, or otherwise, including the costs and expenses particularly set forth in this Lease. All obligations of Lessee in this Lease shall be done, performed or complied with at Lessee's cost and expense, unless otherwise expressly stated in writing herein or in an Operative Document.

### 5.2 Nonterminability.

(i) Each of Lessee's obligations to pay Rent hereunder shall be absolute and unconditional, and Lessee shall not be entitled to any abatement, deferral or suspension of Rent, reduction thereof or setoff against Rent, including abatements, reductions, deferrals, suspensions or setoffs due, or alleged to be due, by reason of any past, present or future claims of Lessee against Lessor, Manufacturer or any other Person, either under this Lease or otherwise; nor, except as otherwise expressly provided herein and on the terms hereof, shall this Lease terminate, or the obligations of 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 or rights of others with respect to any of the Units, the prohibition

of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any Person (including confiscation, requisition or other taking by any governmental authority, any Person acting under governmental authority or otherwise, or action of any public or private Person, whether by eviction by paramount title or for any other reason whatsoever), the invalidity or unenforceability or lack of due authorization of this Lease or any other Operative Document, any action or inaction by Lessor as lessor under this Lease, any defect in the title to, compliance with plans or specifications for, condition, design or fitness for use of all or any of the Units, any insolvency of or any bankruptcy, reorganization or other proceeding against Lessee, Lessor or any other Person, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. To the extent permitted by applicable law, Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel or quit this Lease or surrender any of the Units except in accordance with the express terms hereof.

(ii) Nothing in this Section 5.2 or in any other provision of this Lease shall preclude any separate, independent claim (other than by way of abatement or reduction of any amount at any time payable by Lessee hereunder) by Lessee for the breach of any representation, covenant, undertaking or agreement made herein and in any other Operative Document for the benefit of Lessee by Lessor.

#### SECTION 6. IDENTIFICATION MARKS

Lessee will cause each Unit to be kept numbered with Lessor's reporting marks and the road number and serial number assigned to them by Lessor, as shall be set forth in any Lease Supplement hereto extending this Lease to cover such Unit. Lessee shall not allow the name of any other Person to be placed on any Unit as a designation that might be identified as a claim of ownership or any other interest therein. Lessee shall not place its name, insignia or any other markings on any Unit except as expressly permitted by Lessor. Lessee will not change the reporting marks or identification number of any Unit.

#### SECTION 7. CASUALTY

7.1 Notice; Elections. Each party shall notify the other within 10 Business Days after a determination that a Casualty Occurrence has occurred with respect to a Unit. Within 30 days after such determination, Lessor, after consultation with Lessee, shall notify Lessee whether Lessor intends to proceed in accordance with Section 7.2 or 7.3 of the Headlease.

#### 7.2 Substitution.

(i) If, pursuant to Section 7.2 of the Headlease, Lessor effects a substitution of a Replacement Unit (as defined in the Headlease) for the Unit which suffered the Casualty Occurrence, such Replacement Unit shall be substituted hereunder for such affected Unit and subleased hereunder to Lessee.

(ii) Prior to or at the time of any substitution under Section 7.2(i), Lessee, at its own cost and expense, shall (a) cause a Lease Supplement covering the Replacement Unit to be prepared and, promptly upon execution thereof by Lessor, filed for recording with the STB

and in all other public offices where evidence of this Lease shall have been filed, recorded or deposited, and (b) cause a UCC financing statement or statements covering the Replacement Unit to be filed in such place or places as are deemed necessary or desirable by Lessor to perfect its interest therein under the Operative Documents.

(iii) Upon compliance by Lessee with the foregoing provisions of this Section 7.2, for all purposes hereof and the other Operative Documents, the Replacement Unit shall be deemed part of the property leased hereunder and shall be deemed a "Unit" as defined herein.

7.3 Payment of Casualty Value. If, pursuant to Section 7.1 of the Headlease, Lessor shall have elected or have been deemed to have elected to proceed in accordance with Section 7.3 with respect to a Unit that has suffered a Casualty Occurrence, Lessee shall pay to Lessor, on the Casualty Value Determination Date with respect to such Unit or Units suffering a Casualty Occurrence, (A) the Casualty Value for such Unit as of such Casualty Value Determination Date, (B) any Supplemental Rent due on such Casualty Value Determination Date in respect of such Unit and (C) all other amounts due hereunder with respect to such Unit, including Base Rent due on or before such Casualty Value Determination Date. The sum of the amounts described in clauses (A), (B) and (C) of the immediately preceding sentence, is hereinafter referred to as an "Aggregate Casualty Payment". The foregoing Lessee payment obligations shall not be triggered to the extent that Lessor is responsible for the Casualty Occurrence under the terms of the Operating Agreement. Upon the making of such Aggregate Casualty Payment, the Base Rent for the applicable Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and Lessee shall be entitled to recover possession of such Unit.

7.4 Requisition Not Constituting a Casualty Occurrence. In the event of the requisition for use of any Unit which does not, or does not yet, constitute a Casualty Occurrence hereunder, all of Lessee's obligations under this Lease with respect to such Unit (including the obligation to make all payments of Base Rent, Extension Rent and Supplemental Rent) shall continue to the same extent as if such requisition had not occurred. All payments received by Lessor or Lessee from the United States Government or any other governmental entity for the use of such Unit during the term of this Lease (other than a use of such Unit constituting a Casualty Occurrence) shall be paid over to, or retained by, Lessee if no Event of Default shall have occurred and be continuing, and if an Event of Default shall have occurred and be continuing all such payments shall be paid to Lessor to be held as security for Lessee's obligations hereunder.

7.5 No Release. Except as provided in Section 7.3 with respect to the payment of Base Rent and Section 17, 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 thereof by Lessee hereunder.

## SECTION 8. INSURANCE

### 8.1 Insurance To Be Maintained.

(i) Lessee will, at all times prior to the return to Lessor of the Units pursuant to the terms hereof (and in any event while the Units are being collected for delivery to Lessor and as provided in Sections 14 and 17) and at Lessee's own expense, maintain the insurance required by Section 5.5 of the Operating Agreement. Such insurance shall:

- (a) require 30 days' prior written notice to Lessor of cancellation for any reason or material change in the types or limits of coverage;
- (b) not require contributions from other policies held by Lessor;
- (c) waive any right of subrogation of the insurers against Lessor;
- (d) name Lessor (1) as an additional insured, as its interests may appear, in the case of liability insurance, and (2) as additional insured and loss payees, as its respective interests may appear, in the case of property insurance;
- (e) continue to insure Lessor regardless of any breach or violation of any warranty, declaration or condition contained in such policy by Lessee or any Person; and
- (f) waive any right to claim any premium or commissions against Lessor.
- (g) be issued by insurers of recognized standing who provide insurance to the railroad industry.

(ii) If Lessee is in default of its obligation to maintain the insurance coverages specified herein when such coverages are available on a commercially reasonable basis, Lessor may, at its option, but shall not be required to, provide such insurance (but without duplication of any such insurance obtained by Lessee), and in such event, Lessee shall, upon demand from time to time, reimburse such Lessor for the cost to such Lessor of such insurance which Lessee shall have failed to maintain and which such Lessor shall have obtained in accordance herewith together with interest thereon at the Overdue Rate, from the date of payment thereof to but excluding the date of receipt of such reimbursement.

(iii) Nothing in this Section 8.1 shall prohibit Lessor from obtaining insurance for its own account and any proceeds payable thereunder shall be as provided in the insurance policy relating thereto.

(iv) From time to time, but not more than once in any 12-month period, upon the request of Lessor, Lessee shall provide certificates of insurance evidencing that the insurance required by Section 8.1 is in effect.

**8.2 Insurance Proceeds.** All property Insurance proceeds or third party payments in respect of any Unit not suffering a Casualty Occurrence shall be held by Lessor, and paid to Lessee upon a written application signed by Lessee to reimburse Lessee for the costs of repairing, restoring or replacing the damaged Unit. All liability insurance proceeds shall be paid to or for the account of Lessee and Lessor as their interests may appear.

SECTION 9. INSPECTION

At all times, Lessor, and its authorized representatives shall each have the right at its own risk and expense (except as set forth below) to inspect any Unit and inspect Lessee's maintenance and other records with respect thereto; provided, that no exercise of such inspection right shall interfere with the normal operation or maintenance of such Unit by, or the business of, Lessee. None of Lessor or any other Person shall have any duty to make any such inspection nor shall any of them incur any liability or obligation by reason of not making any such inspection. During the continuance of an Event of Default, such inspection shall be at Lessee's expense.

SECTION 10. LESSOR'S REPRESENTATIONS AND WARRANTIES;  
DISCLAIMER OF WARRANTIES; QUIET ENJOYMENT.

10.1 Disclaimer FOR PURPOSES OF THIS LEASE ONLY, (x) LESSEE AGREES THAT IT LEASES THE EQUIPMENT AS-IS, WHERE-IS, WITH ALL FAULTS, AND IN WHATEVER CONDITION IT MAY BE AND (y) LESSOR HEREBY DISCLAIMS, AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE VALUE, QUALITY, DURABILITY, COMPLIANCE WITH SPECIFICATIONS, CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE OR PURPOSE OF THE UNITS, OR ANY OTHER REPRESENTATION OR WARRANTY (EXCEPT AS SET FORTH HEREIN), EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO LESSEE OR OTHERWISE UNDER THIS LEASE, (which Units, for purposes of this Lease only, were selected by Lessee on the basis of its own judgment without reliance upon any statements, representations, or warranties made by Lessor); it being agreed that all such risks, as between Lessor and Lessee, are to be borne by Lessee hereunder. Lessee's delivery of a Lease Supplement relating to a Unit shall be conclusive evidence as between Lessee and Lessor that such Unit is in all respects satisfactory to Lessee for purposes of this Lease only, and Lessee will not assert any claim hereunder of any nature whatsoever against Lessor based on any of the foregoing matters. Provided that the foregoing does not modify in any respect the parties' rights and obligations to each other under the Operating Agreement.

10.2 Representations and Warranties of Lessee. Lessee hereby represents and warrants as of the date hereof to, and agrees with, Lessor that:

(i) Lessee is a limited liability company duly organized under the laws of the Delaware has full power, and authority to carry on its business as currently being conducted, to own or hold under lease all properties owned or leased by it and to enter into and perform its obligations under this Lease and the other Operative Documents to which it is or is to become a party and Lessee is qualified to do business in each state that Lessee carries out an activity.

(ii) The execution and delivery by Lessee of, and the performance by Lessee of its obligations under this Lease, each Lease Supplement and all other Operative Documents to which Lessee is or is to become a party, have been duly authorized by all necessary action on the part of Lessee, and each of such agreements or instruments constitutes, or when executed and

delivered by Lessee will constitute, a legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms.

(iii) Neither the execution and delivery by Lessee of this Lease or any of the other Operative Documents to which it is or is to become a party, nor the performance by Lessee of its obligations hereunder or thereunder, (a) conflicts or will conflict with or violate in any respect any currently existing law or governmental rule, regulation, judgment or order or any judicial or administrative order or decree applicable to or binding upon Lessee or on any of its properties, (b) conflicts or will conflict with the organizational documents of Lessee, (c) conflicts or will conflict with, or contravene, violate or result in a breach of, any indenture, mortgage, loan agreement or any other agreement or instrument to which Lessee is a party or by which any of its properties is bound, in any such case which does or will materially adversely affect the financial condition or the business or assets of Lessee or its ability to perform its obligations under any Operative Document to which it is a party, (d) results or will result in the creation or imposition of any Lien (other than Permitted Liens) upon any Unit or any material properties, real, personal or mixed, tangible or intangible, of Lessee, (e) requires or will require, on the part of Lessee, the consent or approval of, the giving of notice to, the registration with, or the taking of any other action in respect of, any federal, state or local governmental or public commission, board, authority or agency or (f) requires or will require the consent or approval of its shareholders or any trustee or holders of any currently existing indebtedness or obligations of Lessee.

(iv) With respect to Units to be purchased on any Closing Date, except for the filing of the Lease, the Lease Supplement (or other appropriate memoranda) covering the Units to be purchased on such Closing Date with the STB pursuant to Section 11301 of the Act and the Registrar General of Canada, as appropriate (all of which filings shall have been duly made on or prior to such Closing Date), and publication of an appropriate notice in *The Canada Gazette*, no filing, recording, publication or registration of any financing statement or other document or instrument or other action is or will be necessary or advisable in order to establish and protect the right, title and interest of Lessor in and to such Units, subject only to Permitted Liens.

(v) There are no actions, suits or proceedings pending or, to the best knowledge of Lessee, threatened before any court or by or before any other federal, state or local governmental or public commission, board, authority or agency, or any arbitrator, domestic or foreign, which if adversely determined could reasonably be expected to have a materially adverse effect on Lessee's business, condition (financial or other) or results of operations, property or assets, or ability to perform its obligations under this Lease or any other Operative Document to which it is, or is to become, a party, or which call into question the validity of any such Operative Document.

(vi) All licenses, permits, rights of way and other authorizations, consents and other filings required by law to be obtained or made in order to permit the use and operation of the Equipment in the manner contemplated by the Operative Documents have been obtained or made, where the failure to obtain any such license, permit, authorization or consent or make any such filing might have a material adverse effect on Lessee's ability to perform its obligations under this Lease and each of the other Operative Documents to which Lessee is or is to become a party.

(vii) Lessee is not an "investment company" or an "affiliated person" of an "investment company" within the meaning of the Investment Company Act of 1940.

(viii) Lessee is not in default under any of the Operative Documents to which it is a party.

(ix) The chief executive office or chief place of business (as either of such terms is used in Article 9 of the UCC) of Lessee is located at Detroit, Michigan.

10.3 Representations and Warranties of Lessor. Lessor hereby represents and warrants as of the date hereof to, and agrees with, Lessee that:

(i) Lessor is a corporation duly organized under the Rail Passenger Service Act and the laws of the District of Columbia, is validly existing and in good standing under 49 U.S.C. §24301 and the laws of the District of Columbia, has full power, corporate and otherwise, and authority to carry on its business as currently being conducted, to own or hold under lease all properties owned or leased by it and to enter into and perform its obligations under this Lease and the other Operative Documents to which it is or is to become a party, is a "Class I Railroad" within the meaning of 49 C.F.R. Part 1201, is operating pursuant to 49 U.S.C. §24301, et seq. and Lessor is deemed, thereunder, qualified to do business in each state that Lessor carries out an activity authorized under said section.

(ii) The execution and delivery by Lessor of, and the performance by Lessor of its obligations under this Lease, each Lease Supplement and all other Operative Documents to which Lessor is or is to become a party, have been duly authorized by all necessary corporate action on the part of Lessor, and each of such agreements or instruments constitutes, or when executed and delivered by Lessor will constitute, a legal, valid and binding obligation of Lessor, enforceable against Lessor in accordance with its terms.

(iii) Neither the execution and delivery by Lessor of this Lease or any of the other Operative Documents to which it is or is to become a party, nor the performance by Lessor of its obligations hereunder or thereunder, (a) conflicts or will conflict with or violate in any respect any currently existing law or governmental rule, regulation, judgment or order or any judicial or administrative order or decree applicable to or binding upon Lessor or on any of its properties, (b) conflicts or will conflict with the articles of incorporation or by-laws of Lessor, (c) conflicts or will conflict with, or contravene, violate or result in a breach of, any indenture, mortgage, loan agreement or any other agreement or instrument to which Lessor is a party or by which any of its properties is bound, in any such case which does or will materially adversely affect the financial condition or the business or assets of Lessor or its ability to perform its obligations under any Operative Document to which it is a party, (d) results or will result in the creation or imposition of any Lien (other than Permitted Liens) upon any Unit or any material properties, real, personal or mixed, tangible or intangible, of Lessor, (e) requires or will require, on the part of Lessor, the consent or approval of, the giving of notice to, the registration with, or the taking of any other action in respect of, any federal, state or local governmental or public commission, board, authority or agency or (f) requires or will require the consent or approval of its shareholders or any trustee or holders of any currently existing indebtedness or obligations of Lessor.

(iv) The Equipment is free of Lessor's Liens.

(v) There are no actions, suits or proceedings pending, or to the best knowledge of Lessor, threatened before any court or by or before any other federal, state or local government or public commission, board, authority or agency, or any arbitrator, domestic or foreign, which can reasonably be expected to have a materially adverse effect on Lessor's ability to perform its obligations under this Lease and each Operative Document to which Lessor is a party or which call into question the validity of this Lease and each Operative Document to which Lessor is a party.

10.4 Quiet Enjoyment. Lessor covenants that so long as no Event of Default shall have occurred and be continuing, neither it nor any Person acting through it will take or cause to be taken any action contrary to Lessee's rights under the Lease or otherwise in any way interfere with the right to the use, possession and quiet enjoyment of the Units by Lessee.

10.5 Assignment of Warranties. Unless and until a Default shall have occurred and be continuing, Lessor hereby assigns to Lessee the Assigned Warranties (as defined in the Purchase Agreement Assignment), which assignment shall be null and void upon and during the continuance of any Default.

## SECTION 11. LAWS AND RULES

11.1 Compliance. Lessee agrees, for the benefit of Lessor, to comply in all material respects with all laws, rules or regulations of the United States and any jurisdictions into which its operations involving the Units may extend, the AAR, the United States Department of Transportation, the Federal Railroad Administration, the Environmental Protection Agency, the STB, and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, in each case to the extent such laws, rules or regulations are applicable to the Units. If such laws, rules or regulations require any alteration, replacement or addition of or to any part on any Unit, Lessee will conform therewith at its own expense; provided, however, that Lessee may at its own, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not in the opinion of Lessor, adversely affect the property or rights of Lessor under this Lease or Headlessor under the Headlease or would have a possibility of resulting in any criminal liability or a material possibility of any civil liability on the part of Lessor or Headlessor or involve any material risk of loss, forfeiture or sale of the Equipment.

11.2 Reports by Lessee. Lessee hereby agrees to deliver or cause to be delivered to Lessor the following financial statements and other information at the respective times specified below:

(i) Notice of Default. Within 5 days of a Responsible Officer of Lessee becoming aware of the existence thereof, notice specifying any condition that constitutes an Event of Default; and

(ii) Requested Information. With reasonable promptness, such other data and information relating to the use of the Units as from time to time may be reasonably requested by Lessor.

## SECTION 12. USE AND MAINTENANCE

12.1 Use and Maintenance. Lessee (and any permitted sublessee) shall use the Equipment in any manner consistent with the design and intended use of the Equipment. Lessee agrees that, at its own cost and expense, it will (i) maintain and service each Unit subject to scheduling in the ordinary course of Lessee's maintenance program, so that each Unit is (a) in as good condition as when delivered (ordinary wear and tear excepted), (b) in compliance with Section 11 and the requirements of any insurance policies required pursuant to Section 8, and (c) eligible under any Manufacturer's warranties and (ii) maintain all records, logs and other materials required by the AAR or the United States Department of Transportation, or any other Governmental Authority having jurisdiction over the Units or Lessee, to be maintained in respect of each Unit. In no event shall any Unit be maintained with less care or scheduled for maintenance on a basis less frequent than either the maintenance or maintenance scheduling basis employed by Lessee for other railcars owned by or operated for or by Lessee. Subject to the preceding sentence and without relieving Lessee of any obligation relating to the physical condition of Units to be returned under Section 17, Lessee may take a Unit out of service while awaiting repair so long as Lessee takes reasonable care to prevent deterioration of the condition of such Unit beyond that attributable to the circumstances necessitating such repair and keeps such Unit otherwise eligible for applicable Manufacturer's warranties and in compliance with Section 11.

12.2 Additions and Accessions.

(i) Lessee, at its sole cost and expense, shall make any and all additions, modifications and improvements required by Section 11 or 12.1. Lessor, at its sole cost and expense, may make any other additions, modifications and improvements to the extent permitted by the Headlease. Subject in all events to Sections 11 and 12.1, Lessee shall not make additions, modifications and improvements to the Units during the Lease Term without the prior written consent of Lessor. In all events, any such additions, modifications and improvements shall not diminish the value, utility or remaining useful life of the Units or cause the Units to become "limited use property" within the meaning of Revenue Procedure 76-30, 1976-2 C.B. 647 (or such other successor tax provision), as interpreted as of the Closing Date or the time of such addition, modification or improvement. The additions, modifications and improvements made by Lessor under the preceding sentence which are readily severable without causing damage to such Units (other than to a *de minimis* extent) and without adversely affecting the value, utility or remaining useful life of the Units (other than to a *de minimis* extent), except to the extent such additions, modifications or improvements are made in order to comply with Section 11.1 and 12.2(ii) or are described in or otherwise subject to Section 12.2(ii), shall be owned by Lessor. All such additions, modifications and improvements shall be properly maintained and serviced by Lessee, and Lessee shall promptly repair any damage to any Unit resulting from the removal of any addition, improvement or modification.

(ii) Any and all parts installed on and additions, modifications and improvements made to any Units (a) which are replacements of existing parts constituting part of the Units owned by Headlessor or Lessor, (b) which are not readily removable without causing damage to such Unit (other than to a *de minimis* extent), (c) the cost of which is included in the Equipment Cost of such Unit, (d) in the course of ordinary and proper maintenance of the Units,

or (e) which are required by applicable law or by the regulations of the STB, the United States Department of Transportation, any agency thereof, or any other applicable regulatory body, for the operation or use of such Unit, shall constitute accessions to such Unit shall immediately, and without further act or instrument, be deemed subject to this Lease, and title thereto shall immediately, without further act or instrument, vest in Headlessor (or Lessor, in the case of severable modifications and improvements made by Lessor), and Lessee shall comply with all provisions of this Lease, including Section 18, applicable to such accessions.

### SECTION 13. EVENT OF DEFAULT

13.1 Events of Default. The following events shall constitute a Lease Event of Default and each such event shall continue to be an Event of Default (whether any such event shall be voluntary or involuntary or shall come about or be effected by operation of law or pursuant to or in compliance with judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) so long as, but only as long as, it shall not have been remedied:

(i) Lessee shall fail to make any payment of Base Rent, Casualty Value or Extension Rent within 5 days after the same shall become due;

(ii) Lessee shall fail to make any payment of Supplemental Rent (other than any failure to make a payment specified in clause (i) above) when due and such failure shall continue for 10 days after Lessee shall have received written notice from the Person entitled to such Supplemental Rent;

(iii) any written representation or warranty made by Lessee herein or in any other Operative Document to which it is a party or made by Lessee or any other Person in any certificate or other document delivered by Lessee in connection herewith or therewith shall prove at any time to have been in error in any material respect when made and such error shall be material at the time when the notice referred to below shall have been given to Lessee and shall not have been cured within 30 days after written notice thereof to Lessee by Lessor, or, if such error is curable but is not capable of being cured within such 30-day period, such longer period not to exceed 90 additional days during which Lessee shall be diligently attempting to cure such error;

(iv) Lessee shall fail to perform or observe any covenant (other than covenants relating to matters covered by subsections (i) and (ii) above), condition or agreement to be performed or observed by it hereunder or in any other Operative Document to which it is a party and such failure shall not have been cured within 30 days (60 days in the case of a breach under the Operating Agreement) after written notice thereof to Lessee by Lessor, or (other than in the case of a breach under the Operating Agreement) if such failure is curable but not capable of being cured within such 30-day period such longer period not to exceed 150 days during which Lessee shall be diligently attempting to cure such failure;

(v) Lessee shall consent to the appointment of a custodian, receiver, trustee or liquidator (or other similar official) of itself, any Unit or of a substantial part of its property, or shall admit in writing its inability to pay its debts generally as they come due, or a court of competent jurisdiction shall determine that Lessee is generally not paying its debts as such debts become due, or Lessee shall make a general assignment for the benefit of creditors;

(vi) Lessee shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any bankruptcy laws (as now or hereafter in effect) or an answer admitting the material allegations of a petition filed against Lessee in any such proceeding, or Lessee shall, by voluntary petition, answer or consent, seek relief under the provisions of any now existing or future bankruptcy or other similar law providing for the reorganization or winding-up of debtors, or providing for an agreement, composition, extension or adjustment with its creditors;

(vii) an order, judgment or decree shall be entered in any proceeding by any court of competent jurisdiction appointing, without the consent (express or legally implied) of Lessee, a custodian, receiver, trustee or liquidator (or other similar official) of Lessee, any Unit or any substantial part of its property, or sequestering any Unit or any substantial part of the property of Lessee, and any such order, judgment or decree or appointment or sequestration shall remain in force undismitted, unstayed or unvacated for a period of 60 days after the date of entry thereof;

(viii) a petition against Lessee in a proceeding under applicable bankruptcy laws or other insolvency laws, as now or hereafter in effect, shall be filed and shall not be stayed, withdrawn or dismissed within 60 days thereafter, or if, under the provisions of any law providing for reorganization or winding-up of debtors which may apply to Lessee, any court of competent jurisdiction shall assume jurisdiction, custody or control of Lessee, any Unit or any substantial part of its property and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or unterminated for a period of 90 days; or

(ix) any additional procedure similar to those referred to in subsections (v), (vi), (vii) or (viii) above, for the relief of financially distressed debtors under applicable laws is entered into by Lessee voluntarily or involuntarily and, if such procedure shall have been entered into involuntarily, shall be unstayed and remain in effect for a period of 90 consecutive days.

13.2 **Remedies.** If an Event of Default shall have occurred and be continuing, then, in any such case, Lessor, at its option, may declare this Lease in default by a written notice to Lessee and, at any time thereafter so long as such Event of Default is continuing, Lessor may exercise one or more of the following rights, powers or remedies as Lessor in its sole discretion shall determine to the extent not prohibited by, and subject to compliance with any mandatory requirements of, applicable law then in effect. For purposes of this Section 13.2, the

determination of Fair Market Value for such Unit shall be made on the basis of the actual condition of such Unit by an appraiser designated by Amtrak:

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

(ii) by notice in writing to Lessee, cancel or terminate this Lease, whereupon all right of Lessee to the possession and use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but Lessee shall remain liable as hereinafter provided; and thereupon, Lessor may demand that Lessee, and Lessee shall, upon written demand of Lessor and at Lessee's expense forthwith return all of the Equipment to Lessor or its order in the manner and condition required by, and otherwise in accordance with all of the provisions of, Section 14, in which event Lessee's obligation to pay Base Rent and other Rent with respect to such Unit hereunder due for any periods subsequent to the date of such return shall terminate (except to the extent that Base Rent and other Rent are to be included in computations under paragraph (v) or (vi) below if Lessor elects to exercise its rights under either of said paragraphs);

(iii) sell any Unit at public sale in a commercially reasonable manner, free and clear of any rights of Lessee but subject to the duty to account to Lessee with respect to such sale or for the proceeds thereof as required by paragraph (vi) below, in which event Lessee's obligation to pay Base Rent and other Rent with respect to such Unit hereunder due for any periods subsequent to the date of such sale shall terminate (except to the extent that Base Rent and other Rent are to be included in computations under paragraph (v) or (vi) below if Lessor elects to exercise its rights under either of said paragraphs);

(iv) hold, keep idle or lease to others any Unit as Lessor in its sole discretion may determine, free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or inaction or for any proceeds with respect thereto, except that Lessee's obligation to pay Base Rent and other Rent with respect to such Unit due for any periods subsequent to the date upon which Lessee shall have been deprived of possession and use of such Unit pursuant to this Section 13 shall terminate (except to the extent that Base Rent and other Rent are to be included in computations under paragraph (v) or (vi) below if Lessor elects to exercise its rights under either of said paragraphs);

(v) whether or not Lessor shall have exercised, or shall thereafter at any time exercise, any of its rights under paragraph (i), (ii), (iii) or (iv) above with respect to any Unit, Lessor, by written notice to Lessee specifying a payment date (which date shall be a Casualty Value Determination Date for the purposes of computing Casualty Value) which shall be not earlier than 30 days after the date of such notice, may demand that Lessee pay to Lessor, and Lessee shall pay to Lessor, on the payment date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Base Rent and other Rent for such Unit due for periods after the payment date specified in such notice), whichever of the following amounts Lessor, in its sole discretion, shall specify in such notice, any unpaid Rent for such Unit arising in any period up to and including the payment date specified in such notice, plus either:  
(a) an amount equal to the excess, if any, of the Casualty Value for such Unit, over the present

value of the Fair Market Rental of such Unit or, if Lessor has leased such Unit to others pursuant to paragraph (iv) above, for the period of such lease the periodic rent payable thereunder, in each case for the remainder of the Base Lease Term or the Extension Term then in effect, as the case may be, as of the payment date specified in such notice, such present values to be computed on the basis of a per annum rate of discount equal to the Overdue Rate, compounded quarterly, from the respective dates upon which such rents would be paid; or (b) an amount equal to the excess, if any, of the Casualty Value for such Unit computed as of the payment date specified in such notice over the Fair Market Value of such Unit as of the payment date specified in such notice;

(vi) if Lessor shall have sold any Unit pursuant to paragraph (iii) above, Lessor, in lieu of exercising its rights under paragraph (v) above with respect to such Unit may, if it shall so elect, demand that Lessee pay to Lessor, and Lessee shall pay to Lessor, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Base Rent and any other Rent for such Unit due for periods subsequent to the Rent Payment Date next preceding such sale), (a) any unpaid Rent for such Unit arising in any period up to and including the Rent Payment Date next preceding the date of such sale or, if earlier that on which Lessee was deprived of possession of such Unit, and, if that date is a Rent Payment Date, the Base Rent due on that date, plus (b) the amount, if any, by which the Casualty Value of such Unit computed as of the Rent Payment Date next preceding the date of such sale or loss of possession or, if such sale or loss of possession occurs on a Rent Payment Date, then computed as of such Rent Payment Date, exceeds the net proceeds of such sale, plus (c) interest on the amounts specified in clause (a) of this paragraph (vi) at the Overdue Rate from and including the date on which any such amount was due to the date of payment of such amount in full, plus (d) interest on the amounts specified in clause (b) of this paragraph (vi) at the Overdue Rate from and including the Rent Payment Date as of which such Casualty Value is computed to the date of payment of such amount in full;

(vii) except as otherwise expressly agreed herein, exercise any other right, power or remedy which may then be available under any of the Operative Documents or which may be available to Lessor under applicable law or proceed by court action to enforce the terms hereof or to recover damages for the breach hereof or to rescind this Lease.

In addition, Lessee shall be liable, except as otherwise provided above, for any and all unpaid Base Rent, Extension Rent and Supplemental Rent due hereunder before or during the exercise of any of the foregoing rights, powers or remedies and for all reasonable legal fees and other costs and expenses incurred by Lessor by reason of the occurrence of any Event of Default or the exercise of any of Lessor's rights, powers or remedies with respect thereto, including all costs and expenses incurred in connection with the surrender of the Units or in placing the Units in the condition required hereby, together, in each case, with interest thereon at the Overdue Rate.

13.3 **Remedies Not Exclusive.** Except as otherwise expressly agreed herein, the remedies provided in this Lease in favor of 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 failure of Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall

not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies, or upon the occurrence of any similar contingencies.

13.4 Waivers. Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is effective under applicable law. Lessee hereby waives any and all existing or future claims to any offset against the Rent payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by Lessee or on its behalf. Except as otherwise provided in this Lease, Lessee, to the full extent effective under applicable law, hereby waives all statutory or other legal requirements for any notice of any kind, any other requirements with respect to the enforcement of Lessor's rights under this Lease and any and all rights of redemption.

#### SECTION 14. RETURN OF UNITS UPON DEFAULT

Upon the date of notice of cancellation or termination by Lessor pursuant to Section 13.2(ii), Lessee shall, without expense to Lessor, promptly redeliver the Units, or cause the Units to be redelivered, to Lessor with all reasonable dispatch, in the same manner and in the same condition as if such Units were being redelivered on the Base Lease Expiration Date in accordance with the provisions of Section 17, and all obligations of Lessee under Section 17 shall apply to such redelivery. Lessor, without further notice, may, but shall be under no obligation to, retake such Units wherever found and take immediate possession of and remove the same by *ex parte* summary proceedings or otherwise without Lessor incurring any liability by reason of such retaking, whether for the restoration of damage to property caused by such retaking or otherwise; provided, however, that nothing herein shall be deemed or construed to constitute a waiver by Lessee of rights accorded to debtors under the UCC insofar as it relates to proceeding without judicial process.

#### SECTION 15. POSSESSION AND USE

15.1 No Liens. Lessee (a) will not, directly or indirectly, create, incur, assume or suffer to exist any Lien (other than Permitted Liens) on or with respect to any Unit, any additions, modification or improvement thereto, any part thereof, the title thereto or any interest therein and (b) at its own expense will promptly discharge any such Lien which arises; provided, that Lessee may at its own expense in good faith, contest the validity or application of any such Liens in any manner which does not materially and adversely affect the property or rights of Lessor under this Lease or Headlessor under the Headlease or create any risk of any criminal liability or material risk of civil liability on the part of Lessor or Headlessor or involve any material risk of loss, forfeiture or sale of the Equipment.

15.2 Sublease. Lessee shall not sublease any Unit or assign its rights in this Lease without the prior written consent of Lessor.

15.3 Location. Lessee agrees not to operate or locate any Unit, or to suffer any Unit, by sublease or otherwise, to be operated or located, (i) outside of the United States, Mexico or Canada or (ii) so as to cause a violation of Section 12.1 or any area excluded from coverage by any insurance policy required by the terms of Section 8 hereof, except in the case of a

requisition for use by the United States Government where Lessee has obtained, prior to the operation or location of the Unit in such area, indemnification or insurance in lieu of such indemnification from the United States Government against the risks and in the amounts required by, and in compliance with, Section 8 hereof covering such area. Lessee further agrees not to operate or locate more than 20% of the Units at any time in Mexico.

15.4 Use. Lessee shall not use or operate any Unit except as permitted by Operating Agreement.

## SECTION 16. EXTENSION TERM

### 16.1 Extension Term.

So long as this Lease has not been earlier terminated and no Event of Default shall be continuing on the effective date of the extension, and, in the event that:

(i) Lessor elects to exercise its right to purchase any or all of the Units then under the Headlease pursuant to Sections 16.1 or 16.2 of the Headlease, this Lease shall automatically extend with respect to any or all of the Units then under this Lease until expiration or termination of the Operating Agreement, at a Base Rent payable quarterly in arrears equal to (x) for any portion of the Extension Term up to the second anniversary of the Base Lease Expiration Date, the Base Rent which would have been payable under the Headlease had the term of the Headlease been renewed, plus the Incremental Amount and (y) for any period after the second anniversary of the Base Lease Expiration Date through the expiration or termination of the Operating Agreement, Fair Market Rental, plus the Incremental Amount; or

(ii) the Headlease shall be renewed pursuant to Section 16.4 of the Headlease, this Lease shall automatically extend with respect to any or all of the Units then under this Lease until the expiration of any Renewal Term then in effect under the Headlease at a Base Rent payable quarterly in arrears equal to the Renewal Rent payable under the Headlease plus the Incremental Amount,

(each such period and the Base Rent under clauses (i) and (ii) payable in respect thereof above, an "*Extension Term*" and the "*Extension Rent*", respectively).

### 16.2 Purchase Options.

So long as neither this Lease nor the Operating Agreement has been earlier terminated and so long as no Event of Default has occurred and is continuing hereunder or thereunder, Lessee may give notice to Lessor and Headlessor (i) 30 days prior to the earliest occurring Special Purchase Date under the Headlease for any of the Units of Lessee's desire to purchase all of the Units then subject to the Lease on the Special Purchase Date applicable to the Unit and (ii) not later than 120 days prior to the expiration of the Base Lease Term or any Extension Term for any of the Units which coincides with the expiration of any Renewal Term under the Headlease, of Lessee's desire to purchase any or all of such Units sharing such Headlease expiration date. In such event, unless Lessor shall give to Headlessor notice of

Lessor's election to purchase such Units for Lessor own account (which notice by Lessor shall in all event take precedence over any notice by Lessee), such notice by Lessee shall constitute notice by Lessor to Headlessor under Section 16.1 or 16.2, as the case may be, of the Headlease to purchase such Units and Lessor shall direct Headlessor to sell such Units directly to Lessee on the terms and conditions of the Headlease. Each of Lessor and Lessee agree to respond promptly and in good faith to any request by the other regarding the status of its decision to elect to exercise any purchase option under the Headlease.

**16.3 Determination of Fair Market Rental.**

(i) At any time within 15 months prior to the earliest occurring Base Lease Expiration Date for any of the Units or the earliest expiration date of the Extension Term for any of the Units, as the case may be, at Lessee's request, Lessor and Lessee shall negotiate in good faith to determine the Fair Market Value and Fair Market Rental of the Units within 45 days after such request has been given. If after such 45-day period, Lessor and Lessee are unable to agree upon a determination of the Fair Market Value or Fair Market Rental, as the case may be, of the Units, the Fair Market Value or Fair Market Rental, as the case may be, shall be determined in accordance with the appraisal procedure set forth in this Section 16.3. If either party shall have given written notice to the other requesting determination of such Fair Market Value or Fair Market Rental by such appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is appointed within 15 days after such notice is given, such determinations shall be made by a panel of three independent appraisers, one of whom shall be selected by Lessee and another of whom shall be selected by Lessor, both selections to be made within 10 days after the end of such 15-day period, and the third of whom shall be selected by the two appraisers so selected. If Lessor or Lessee fails to appoint an appraiser within such 10-day period, no other appraiser shall be appointed and the appraisal shall be made solely by the appraiser appointed by the other party. If the two appraisers so selected cannot agree upon such third appraiser, such third appraiser shall be selected by the American Arbitration Association (or any successor organization) from a pool of arbitrators having experience in the railroad industry and a familiarity with railcars comparable to the Units.

(ii) If a single appraiser shall have been appointed by the parties, the determination of such appraiser shall be final and binding upon the parties. If three appraisers shall have been appointed, the average of the appraisals of the two of the three appraisers whose appraisals are the closest shall constitute the determination of the appraisers (unless one appraisal is equally close to two different appraisals, in which case the average of the three appraisals shall constitute such determination) and be final and binding upon the parties.

(iii) The appraiser or appraisers shall be provided with, and instructed to appraise in accordance with, the definitions of all terms appearing in the Operative Documents and having a bearing on the determinations subject to appraisal.

(iv) The fees and expenses of each appraiser (a) selected by Lessee shall be paid by Lessee, (b) selected by Lessor shall be paid by Lessor and (c) selected jointly by Lessee and Lessor or selected by the appraisers selected by Lessee and Lessor or selected by the American Arbitration Association (or any successor organization) shall be paid one-half by

Lessee and one-half by Lessor; provided, that the expenses of any appraisal carried out pursuant to Section 13 shall be paid in their entirety by Lessee.

#### SECTION 17. RETURN OF UNITS UPON EXPIRATION OF TERM

17.1 Redelivery. When the Units are to be redelivered at the expiration of any applicable Extension Term with respect thereto or, if Lessor shall have requested storage with respect to the Units as provided herein below, at the termination of any applicable storage period or at one earlier time during such a storage period as Lessor may specify on at least 30 days' notice, Lessee shall assemble and deliver possession of the Units in accordance with the terms of this Lease, at Lessee's cost and expense, to not more than 3 of Lessor's terminals, maintenance facilities or other interchange locations selected by Lessor. Not later than 90 days' notice prior to return, Lessor shall specify such redelivery locations (each, a "Redelivery Location") and the approximate number of Units returnable at each location.

17.2 Return. At the time of any return, the Units shall be free and clear of all liens, security interests, charges and encumbrances and rights of others (other than Lessor's Liens) and shall be in the condition required by Section 12 (without regard to the scheduling of maintenance) and this Section 17.2. Each Unit returned to Lessor pursuant to this Section 17 shall (a) be in compliance with Section 11, and (b) have attached or affixed thereto any addition, modification or improvement considered an accession thereto as provided in Section 12.2(ii).

17.3 Continuing Obligations. Any Unit not delivered on the date of expiration of the term hereof for such Unit in accordance with Section 14 or this Section 17, or not in the condition required by Section 17.2 as the case may be, shall continue to be subject to all of the obligations of Lessee set forth in this Lease. If Lessee shall, for any reason whatsoever, fail to return any Unit at the time specified herein and in the condition required hereby, the obligations of Lessee as provided in this Lease shall continue in effect with respect to such Unit and Lessee agrees to pay Lessor rent, in advance for each quarter or any part of a quarter in an amount equal to 110% of the Base Rent with respect to such Equipment until such Unit is returned to Lessor or restored to such condition; provided, however, that this Section 17.3 shall not be construed as permitting Lessee to fail to meet its obligations to return any Unit in accordance with the requirements of this Lease or constitute a waiver of an Event of Default.

#### SECTION 18. RECORDING

18.1 Recordings. Lessee, at its own expense will cause appropriate evidence of this Lease, each Lease Supplement relating to the Units being delivered on any Closing Date, or other appropriate memoranda, to be filed pursuant to Section 11301 of the Act and, in addition, with the Registrar General of Canada pursuant to Section 105 of the Canada Transportation Act, prior to the delivery and acceptance of any Unit and shall cause to be so filed promptly after execution and delivery thereof by all parties thereto any Lease Supplement, or other appropriate memoranda, entered into in accordance with the Operative Documents. Lessee, at its own expense, will also cause appropriate notice to be published in *The Canada Gazette* without delay. Lessee, at its own expense, will further cause appropriate evidence of this Lease, any Lease Supplements, and/or appropriate financing statements or continuation

statements to be filed and recorded and, from time to time when required, refiled and rerecorded, in accordance with the applicable provisions of the UCC.

18.2 Continuing Obligations. Lessee, in addition to the requirements of Section 18.1 above, will at its own expense from time to time do and perform in a timely manner any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, re-register, rerecord or redeposit whenever required) any and all further instruments required by law (including without limitation continuation statements) or reasonably requested by Lessor for the purpose of proper protection, to its satisfaction, of its respective interests in the Units, or for the purpose of carrying out the intention of this Lease. Lessor agrees, at the request of Lessee, to execute, acknowledge and deliver any further instruments necessary to correct or amend the recordings and filings referenced in Section 18.1 hereof.

**SECTION 19. LESSOR'S RIGHT TO PERFORM FOR LESSEE**

If Lessee fails to perform or comply with any of its agreements contained herein, Lessor may upon notice to Lessee (but shall be under no obligation to) perform or comply with such agreement, and the amount of the reasonable costs and expenses of Lessor incurred in connection with such performance or compliance, together with interest on such amount at the Overdue Rate shall be payable by Lessee upon demand. No such performance or compliance by Lessor shall be deemed a waiver of the rights and remedies of Lessor or any assignee of Lessor against Lessee hereunder.

**SECTION 20. NOTICES**

Unless otherwise expressly specified or permitted by the terms hereof, notices and other communications required or permitted to be given or made under the terms hereof shall be in writing. Any such communication or notice shall be deemed to have been duly made or given (i) when delivered personally, (ii) in the case of mail delivery, upon receipt, refusal of delivery or return for failure of the intended recipient to retrieve such communication or (iii) in the case of transmission by facsimile, upon telephone and return facsimile confirmation of receipt and, in each case, if addressed to the intended recipient as follows (subject to the next sentence of this Section 20):

Name of Party	Address
Lessee	ExpressTrak, L.L.C. 3400 East Lafayette Boulevard Detroit, MI 48207 Attention: R. Franklin Unger Facsimile No.: (313) 567-8934
Lessor	National Railroad Passenger Corporation 60 Massachusetts Avenue, N.E. Washington, D.C. 20002 Attention: Treasurer Facsimile No.: (202) 906-2174

Each party hereto may from time to time designate by notice in writing to the other parties hereto a different address for communications and notices.

SECTION 21. SEVERABILITY; EFFECT AND MODIFICATION OF THIS LEASE

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

21.2 Effect and Modification of this Lease. Except for the other Operative Documents, this Lease exclusively and completely states the rights of Lessor and 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 Lessor and Lessee.

21.3 True Lease. Notwithstanding any provision herein to the contrary, it is intended, as between Lessor and Lessee that this Lease constitute a "true lease" for federal income tax purpose. Lessee further acknowledges and agrees that so long as the Headlease is in effect, Headlessor shall be treated as the owner of the Units for all purposes and that Lessee shall not take any action inconsistent with such ownership.

SECTION 22. GENERAL INDEMNITY

22.1 Indemnity. Whether or not any of the transactions contemplated by the Operative Documents are consummated, Lessee hereby agrees to assume liability for, and does hereby agree to indemnify, protect, defend, and keep harmless each Indemnified Party, on an After-Tax Basis, from and against any and all liabilities, obligations, losses, damages, penalties, claims (including claims involving strict or absolute liability in tort or ordinary negligence), actions, suits, demands, judgments, costs, expenses and disbursements (including reasonable legal fees and expenses), of any kind and nature whatsoever ("*Claims*") which may be imposed on, incurred by or asserted against an Indemnified Party, whether or not such Indemnified Party shall also be indemnified as to any such Claim by any other Person, in any way relating to or arising or alleged to arise out of:

(a) this Lease, any Lease Supplement, any other Operative Document, any transactions contemplated hereby or thereby, any payments made pursuant thereto or the performance or enforcement of any of the terms hereof or thereof;

(b) the manufacture, construction, modification, purchase, acceptance, rejection, ownership, documenting, mortgaging, delivery, nondelivery, lease, sublease, possession, use, operation, maintenance, condition, registration, sale, return, storage (other than storage pursuant to Section 17.1 hereof), transfer of title, or other disposition of the Equipment or any Unit thereof, or any accident in connection therewith;

(c) patent, trademark or copyright infringement relating to the transactions contemplated by the Operative Documents;

(d) any injury to or the death of any Person or any damage to or loss of property on or near the Equipment or in any manner arising out of or connected with, or alleged to arise out of or be connected with, the ownership, use, replacement, operation or maintenance of the Equipment or of any other equipment in connection with the Equipment or resulting or alleged to result from the condition of any thereof;

(e) any violation, or alleged violation, by Lessee of any provision hereof or any other Operative Document, or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Equipment or the leasing, subleasing, ownership, use, replacement, operation or maintenance thereof;

(f) any official investigation or inquiry relating to any of the foregoing; and

(g) any Claim of indemnity arising under Section 22.1 of the Headlease.

provided, that Lessee shall not be required to indemnify an Indemnified Party under this Section 22.1 in respect of any Claim to the extent:

(i) attributable to acts or events occurring after Lessee tenders delivery of the Equipment pursuant to Section 17;

(ii) attributable to the gross negligence or willful misconduct of such Indemnified Party, or any Affiliates, agents, officers, directors, servants or employees thereof (other than gross negligence or willful misconduct imputed as a matter of law to such Indemnified Party solely by reason of its interest in the Equipment);

(iii) constituting or attributable to Taxes, whether or not Lessee is required to indemnify therefor pursuant to Section 23.1 hereof, except to the extent that any payments are required to be made on an After Taxes Basis (it being understood and agreed that indemnification for Taxes is addressed exclusively in Sections 23 and 24 hereof);

(iv) arising out of any sale, assignment, transfer or other disposition (whether voluntary or involuntary) of its interest in or any part of Units or this Lease by Lessor other than in connection with the exercise of rights or remedies following an Event of Default or the performance of an act required by any Operative Document;

(v) attributable to the incorrectness in any respect of any representation or warranty by such Indemnified Party in the Operative Documents;

(vi) attributable to the failure by such Indemnified Party to perform or observe in any respect any agreement, covenant or condition on its part required to be performed or observed in any of the Operative Documents including the creation or existence of a Lessor's Lien;

(vii) (x) Lessor is responsible for such Claims (including, for the avoidance of doubt, any indemnification obligations under the Operating Agreement) pursuant to the terms of the Operative Documents or (y) Indemnified Party shall have expressly agreed in any Operative Document to bear such Claim without right of reimbursement under any Operative Document provided that, for the avoidance of doubt the foregoing is not intended to modify in any respect the parties' rights and obligations to each other under the Operating Agreement; or

(viii) attributable to the use of any Unit to the extent such use was within the operational control of Lessor or to any "Event of Default" under the Headlease not resulting from an Event of Default hereunder.

22.2 Procedures, Etc. If any Claim is made against Lessee or any Indemnified Party, such party receiving notice of such Claim shall promptly notify Lessee or such Indemnified Party, as the case may be, but if an Indemnified Party fails to notify or delays in notifying Lessee, Lessee shall not be relieved from any liability it may have to such Indemnified Party or of any liability it may have to any other Indemnified Party with respect to such Claim except to the extent of any increase in the amount of such Claim resulting from such failure or delay. Subject to the rights of any insurer under any policy of insurance maintained pursuant to Section 8 hereof, Lessee shall have (so long as it shall have confirmed in writing to the affected Indemnified Parties its obligation to indemnify such Claim) the right, at its sole cost and expense, acting through counsel reasonably acceptable to the respective Indemnified Party, to investigate and defend or compromise any Claim for which it indemnifies under this Section and each Indemnified Party agrees to cooperate with all reasonable requests of Lessee in connection therewith; provided, however, that Lessee shall have no such right (a) during the continuation of any Event of Default, (b) if any such investigation, defense or compromise would create any danger of the sale, forfeiture or loss of, or the creation of any Lien (other than a Permitted Lien) upon, the Equipment which would not otherwise occur or (c) if such contest could, in the good faith opinion of the affected Indemnified Party, entail a significant risk to such Indemnified Party or an Affiliate thereof of (i) material civil liability or (ii) any criminal liability. Such Indemnified Party may participate at its own expense and with its own counsel in any proceeding controlled by Lessee pursuant to the preceding provisions; provided, however, that Lessee shall pay the fees and expenses of such counsel if (x) the employment of such counsel has been specifically requested by Lessee or (y) the named parties to such action (including any impleaded parties) include both such Indemnified Party and Lessee and representation of such Indemnified Party and Lessee by the same counsel would be inappropriate under applicable standards of professional conduct due to actual or potential conflicting interests between them. The Indemnified Party shall supply Lessee with such information as is available to the Indemnified

Party and is requested by Lessee as in the reasonable opinion of counsel to Lessee is necessary or advisable for Lessee to control or participate in any proceeding to the extent permitted by this Section 22. Unless such Indemnified Party waives its right to be indemnified with respect to a Claim under this Section or such claim, in the reasonable opinion of the Indemnified Party, exposes such Indemnified Party to a material risk of criminal liability, no Indemnified Party shall enter into a settlement or other compromise with respect to such Claim without the prior written consent of Lessee, which consent shall not be unreasonably withheld or delayed. Each Indemnified Party further agrees, in the case of any Claim covered by any policy of insurance maintained pursuant to Section 8 hereof, to cooperate with the insurers in the exercise of their rights to investigate, defend or compromise such Claim as may be required by such policy to maintain the insurance coverage provided. To the extent that any Indemnified Party in fact receives complete and full indemnification payments from or on behalf of Lessee under the indemnification provisions of this Section 22, Lessee (or its insurers), without any further action, shall be subrogated, to the extent of such Indemnified Party's rights with respect to the transaction or event requiring or giving rise to such indemnity (other than with respect to such Indemnified Party's rights in respect of insurance policies maintained by such Indemnified Party).

22.3 Tax Benefits. If any Indemnified Party is entitled to a tax benefit (whether by way of deduction, credit or otherwise) as a result of the matter for which an indemnity has been paid pursuant to this Section 22 that was not taken into account in determining the amount of such payment, such tax benefit shall be treated as an amount payable pursuant to, and subject to the provisions of, the third paragraph of Section 23.2. If it is subsequently determined that any such tax benefit is not allowable, the amount of such benefit shall be treated as a Tax subject to indemnification pursuant to Section 23 without regard to the exclusions or contest set forth therein. Without limiting the foregoing obligations of Lessee, at Lessee's request, any Indemnified Party claiming a payment or indemnity from Lessee under this Section 22.3 will, to the extent such payment or indemnity included a "gross-up" for Taxes or takes into account any tax benefits of such Indemnified Party, and to the extent such Indemnified Party is required by the terms of this Section 22.3 to pay to Lessee any additional tax benefit attributable to the matter indemnified against under this Section 22.3, have the reasonableness of the calculation by such Indemnified Party of the amount of any such "gross-up" for Taxes or the amount of any such additional tax benefit payable to Lessee verified in accordance with the procedures set forth in Section 23.9. In no event shall an Indemnified Party be obligated to pay Lessee any amount pursuant to this paragraph that exceeds the amount of the indemnity paid by Lessee in respect of the matters that gave rise to the tax benefit.

22.4 Survival. The indemnities contained in this Section 22 shall survive the expiration or termination of this Lease.

### SECTION 23. GENERAL TAX INDEMNITY

23.1 Tax Indemnity. Lessee agrees to pay and assume the liability for, and does hereby agree to indemnify, protect, defend and hold harmless on an After-Tax Basis each Indemnified Party from and against, any and all taxes (including income, franchise, doing business, capital, excise, sales, use, value-added, gross receipts, ad valorem property and stamp taxes), duties, assessments, fees (including documentation, license, filing, recording and

registration fees) withholdings and charges, together with any penalties, fines, additions to tax and interest in respect thereof, however imposed, whether levied or imposed upon such Indemnified Party, Lessee or the Equipment or any Unit thereof or any user thereof by any federal, state or local government or other taxing authority of or in the United States, any territory or possession of the United States, any international authority or any foreign country or political subdivision or taxing authority thereof or therein (all such taxes, duties, assessments, fees, withholdings, charges, penalties, fines, additions to tax and interest or other charges imposed as aforesaid, whether now existing or hereafter enacted or adopted, being hereinafter referred to as "Taxes") upon or with respect to: each Unit or any part thereof; the manufacture, financing, refinancing, construction, acceptance, rejection, transfer, control, operation, condition, occupancy, servicing, maintenance, repair, abandonment, substitution, replacement, acquisition, purchase, sale, ownership, delivery, nondelivery, registration, reregistration, leasing, subleasing, insuring, possession, repossession, redelivery, return, use, interchange, storage or the imposition of any lien, modification, improvement, transfer of title, return or other disposition thereof; any indebtedness with respect thereto; the rentals, receipts or earnings arising therefrom; the execution or delivery of the Operative Documents; the payment or receipt of any amounts pursuant to the Operative Documents or otherwise in connection with the transactions contemplated by the Operative Documents, including any Taxes indemnified by Lessor under Section 23.1 of the Headlease, excluding, however:

(a) Taxes imposed on any Indemnified Party to the extent that such Taxes result from the gross negligence or willful misconduct of such Indemnified Party, or from the breach by such Indemnified Party of any of its representations, covenants or obligations under the Operative Documents unless attributable to a breach by Lessee;

(b) Taxes imposed on Lessor as a result of a voluntary sale, assignment, transfer or other disposition by Lessor of any interest in the Equipment or any part thereof, or any Operative Document, or of an involuntary sale, assignment, transfer or other disposition in connection with any bankruptcy or other proceedings for the relief of debtors in which Lessor is the debtor, or any foreclosure by a creditor of Lessor, unless, in each case, such sale, assignment, transfer or other disposition results from or is attributable to (i) a transfer or disposition made as a result of, or pursuant to an exercise of remedies following an Event of Default, (ii) the purchase of the Equipment by Lessee pursuant to Section 16 hereof, (iii) the substitution of any Replacement Unit pursuant to Section 7 hereof or (iv) a termination hereof with respect to any Unit under Section 26 hereof;

(c) Taxes imposed on an Indemnified Party with respect to any period commencing after the later of (i) the expiration or earlier termination hereof and (ii) possession of the Equipment has been redelivered to Lessor in accordance with the terms hereof, unless such Taxes relate to events or matters occurring prior to or coincident with such expiration, termination or redelivery;

(d) Taxes (without regard to whether such Taxes are collected by withholding or otherwise) imposed on an Indemnified Party by any state or local

government or taxing authority in the United States (and any interest, additions to tax, penalties, fines or other charges in respect thereof) (1) that are imposed on, based on or measured by gross or net income or gross or net receipts (including without limitation, to the extent so based or measured, capital gains taxes, excess profits tax, minimum taxes, alternative minimum taxes and taxes on tax preference items) or (2) that are, capital, net worth, franchise, doing business, accumulated earnings tax, personal holding company tax or similar taxes; provided, however, that the exclusion provided in this clause (d) shall not apply to property, sales, use, rental, license, excise, ad valorem, stamp, luxury or similar Taxes or value added Taxes (other than value added taxes which are imposed in clear and direct substitution for income taxes;

(e) Taxes (without regard to whether such Taxes are collected by withholding or otherwise) imposed by any foreign government or political subdivision or taxing authority thereof or any territory or possession of the United States or any international authority (and any interest, additions to tax, penalties, fines or other charges in respect thereof) on an Indemnified Party that are imposed on, based on or measured by gross or net income or gross or net receipts, capital gains taxes, excess profits tax, minimum taxes, alternative minimum taxes and taxes on tax preference items or that are capital, net worth, franchise, doing business, accumulated earnings tax, personal holding company tax or similar taxes that are imposed as a direct result of such Indemnified Party's being organized in or having any presence or activities in such jurisdiction unrelated to the transactions contemplated by the Operative Documents; provided, however, that the exclusion provided in this clause (e) shall not apply to (1) property, sales, use, rental, license, excise, ad valorem or stamp Taxes or Taxes imposed under section 4975 of the Code or (2) such Taxes that would not have been imposed but for the location or use of a Unit in such jurisdiction or the identity, activities or presence of Lessee, any sublessee, user or person in possession of any Unit or any Affiliate of the foregoing in such jurisdiction;

(f) Taxes (without regard to whether such Taxes are collected by withholding or otherwise) imposed on an Indemnified Party and their respective successors and assigns and the Affiliates, agents, officers, directors, servants and employees of any thereof) by the United States Government (and any interest, additions to tax, penalties, fines or charges in respect thereof), that are imposed on, based on or measured by gross or net income or receipts, or accumulated earnings taxes, personal holding company taxes, capital, net worth excise taxes, capital gains taxes, minimum taxes, taxes imposed by section 59A of the Code and taxes on or measured by tax preference items; provided, however, the exclusion provided in this clause (f) shall not apply to property, sales, use, rental, license, excise, ad valorem, stamp Taxes or Taxes imposed under section 4975 of the Code;

(g) Taxes imposed on Lessor by any taxing authority to the extent that such Taxes would not have been imposed, or to the extent that such Taxes are greater than the Taxes that would have been imposed, (1) if the only contact of

such Indemnified Party with such taxing authority had been with respect to the transactions contemplated by the Operative Documents or (2) absent such Indemnified Party's being organized in or having any presence or activities in such jurisdiction unrelated to the transactions contemplated by the Operative Documents; provided, however, that the exclusion provided in this clause (g) shall not apply to property, sales, use, rental, license, excise, ad valorem, stamp Taxes or Taxes imposed under section 4975 of the Code;

(h) Taxes imposed on any Indemnified Party in the nature of penalties, additions to tax, interest or fines in connection with the performance of, or failure to perform, any requirement imposed on such Indemnified Party under this Section 23 if such Indemnified Party failed to use reasonable care in performing such requirement provided that such failure is not attributable to the failure of Lessee to exercise reasonable care, or, with respect to any return otherwise required to be filed by such Indemnified Party without regard to the transactions contemplated by the Operative Documents, in connection with the preparation or filing of such tax returns by such Indemnified Party or the payment of such Indemnified Party's taxes required to be shown in such returns or the conduct of any proceeding in respect thereof;

(i) Taxes imposed on an Indemnified Party to the extent they exceed the amount of Taxes that would have been imposed had that Indemnified Party been the original Indemnified Party from which such Indemnified Party's interest was directly or indirectly derived of any interest of such Indemnified Party in any Unit, any interest in or under any Operative Documents or any proceeds thereunder; provided, however, the exclusion provided in this clause (i) shall not apply to any transferee that acquired its interest during the continuance of an Event of Default);

(j) Taxes imposed on Lessor resulting from, or that would not have been imposed but for, a Lessor's Lien;

(k) Taxes that are being contested as provided in Section 23.2, but only for so long as Lessee is complying with its obligations under Section 23.2;

(l) Taxes included in Equipment Cost and paid by Lessee to the proper taxing authority;

(m) Any Taxes imposed on an Indemnified Party to the extent such Taxes are actually utilized by such Indemnified Party as determined in good faith in the same taxable year (or, if the Taxes are imposed on Lessor, to the extent they are actually utilized by Lessor) as a credit against Taxes not indemnified under this Section 23.1; provided, however, that the exclusion under this clause (m) shall not apply to the extent such credit has already been taken into account by such Indemnified Party;

(n) Taxes that would not have been imposed but for any failure of an Indemnified Party to comply with (1) certification, information, documentation, reporting or other similar requirements concerning the nationality, residence, identity or connection with the jurisdiction imposing such Taxes, or (2) any other certification, information, documentation, reporting or other similar requirements under the Tax laws or regulations of the jurisdiction imposing such Taxes that would establish entitlement to otherwise applicable relief or exemption from such taxes, if in either case, such Indemnified Party was eligible to comply with such requirement and this exclusion (n) will not apply if such failure results from the failure of Lessee to notify the Indemnified Party of such requirements with respect to taxes or the Indemnified Party determines in good faith that such compliance would expose it or any Affiliate to any adverse consequence or risk thereof;

(o) Taxes imposed on an Indemnified Party that result from such Indemnified Party engaging in transactions prohibited by or inconsistent with the Operative Documents; and

(p) Taxes which are imposed on an Indemnified Party which are value-added Taxes if such value added Taxes are reflected in the statute or legislative history as being in lieu of or in clear and direct substitution for income taxes.

23.2 Contest. Lessee shall be entitled, at its expense, to require the imposition of any Tax for which it is obligated to indemnify hereunder to be contested and to forbear from payment during pendency of such contest (if such forbearance is permitted by law) unless prior payment is a condition to such contest. At Lessee's election, such contest shall be conducted by it in its name, but only if Lessee is permitted as a matter of law to so contest such Taxes, the Indemnified Party has determined in good faith that its interests will not be materially adversely affected by Lessee contesting in its own name, and such contest does not involve any Taxes not indemnified by Lessee under Section 23 which cannot be severed and separately contested by the Indemnified Party. Lessee may conduct and control any other contest contemplated herein if such contest is consented to by the Indemnified Party (contests other than those permitted in Lessee's name or consented to be contested by Lessee referred to as an "*Indemnified Party Controlled Contest*"). Lessor agrees to cooperate in good faith to assist Lessee in claiming the benefit of any applicable statutory exemptions, available to Lessor from taxation, to a Tax which is indemnifiable by Lessee hereunder. If any written claim is made or any proceeding is commenced against any Indemnified Party for any Taxes as to which Lessee has an indemnity obligation pursuant to subsection (i) of this Section 23, such Indemnified Party shall promptly notify Lessee of any such claim or proceeding, but the failure to provide such notice shall not release Lessee from its indemnity obligation hereunder except to the extent that the contest is materially adversely affected thereby. If an Indemnified Party is requested by Lessee in writing to contest an indemnifiable Tax and provided Lessee is not contesting such Tax in its own name, the Indemnified Party shall, in good faith, with due diligence and at Lessee's expense, contest the validity, applicability or amount of such Taxes by, in Lessee's sole discretion (or in the case of an Indemnified Party Controlled Contest, in such Indemnified Party's sole discretion), (a) resisting payment thereof, as may be provided by applicable law, (b) not paying the same

except under protest, if protest is necessary and proper, or (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings; provided, however, that the Indemnified Party shall not be required to take any action pursuant to this sentence unless and until Lessee shall have agreed to pay on an After-Tax Basis to such Indemnified Party all reasonable costs and expenses that such Indemnified Party may incur in contesting such claim (including, without limitation, all costs, expenses, losses, reasonable legal and accounting fees, disbursement, penalties, fines, additions to tax or interest thereon). In addition to any other conditions set forth herein, Lessee shall be entitled to contest or to cause an Indemnified Party to contest a Tax pursuant to the foregoing provisions only if such Indemnified Party shall have determined that the action to be taken will not result in a sale, forfeiture or loss of, or the creation of any Lien (other than a Permitted Lien) (unless Lessee shall have adequately bonded such Lien or otherwise made provision to protect the interests of the Indemnified Party and, if different, the interests of Lessor, such other provision to be reasonably satisfactory to the applicable Indemnified Party) on, the Equipment or any Unit. If any such contest involves payment of the Tax in question, Lessee shall either make such required payment directly to the appropriate authority in a timely manner or furnish to such Indemnified Party sufficient funds on an After-Tax Basis and interest free to make such payment (an "Advance").

In the case of any contest, other than an Indemnified Party Controlled Contest, Lessee shall conduct and control such contest (including, without limitation, selecting the forum for such contest and tax advisors), provided in the case of any contest in the name of an Indemnified Party, such Indemnified Party shall have, upon request, the right to participate (including its counsel) in all proceedings and Lessee shall (a) keep the Indemnified Party informed as to all material developments in such contest and afford the Indemnified Party a reasonable opportunity to discuss with Lessee the Indemnified Party's interests with respect to such contest and (b) if requested by such Indemnified Party provide the Indemnified Party with an opinion addressed to such Indemnified Party of tax counsel for Lessee, which counsel shall be reasonably acceptable to such Indemnified Party, to the effect that there is a reasonable basis for contesting such claim. In the case of an Indemnified Party Controlled Contest, the Indemnified Party, shall conduct and control such contest, provided the Indemnified Party shall keep Lessee informed as to all material developments in such contest and afford Lessee a reasonable opportunity to discuss with such Indemnified Party, Lessee's interests with respect to such contest. In the case of an Indemnified Party Controlled Contest, in addition to any other conditions set forth herein, the Indemnified Party shall not be required to contest any such claim unless the Indemnified Party has been provided with an opinion of tax counsel for Lessee, which counsel shall be reasonably acceptable to such Indemnified Party, to the effect that there is a reasonable basis for contesting such claims. In no event shall an Indemnified Party be required (and Lessee shall not have the right) to appeal any adverse determination to the United States Supreme Court.

If any Indemnified Party shall actually obtain or realize a refund of any Tax paid or indemnified against by Lessee, or shall obtain a refund, credit, or other tax benefit (whether by way of deduction, offsets, allocation or apportionment of income or otherwise) in respect of Taxes not indemnified against under Section 23.1 as a result of any Tax paid or indemnified by Lessee (which refund, credit or other tax benefit was not taken into account in computing the amount of the indemnity payable by Lessee), such Indemnified Party shall pay Lessee an amount equal to the amount of such refund, credit or tax benefit, including interest received attributable thereto, reduced by reasonable out of pocket expenses incurred in connection with obtaining such refund,

credit or tax benefit not previously reimbursed, for which reasonable and customary documentation of such payment has been provided to Lessee, plus any net tax benefit (and minus any net tax detriment) realized (or sustained) by such Indemnified Party as a result of any refund received, credits, tax benefit or interest and payment by such Indemnified Party made pursuant to this sentence; provided, however, that (a) the amount of any such payment by the Indemnified Party to Lessee shall not exceed the aggregate amounts previously paid by Lessee to such Indemnified Party pursuant to this Section 23 plus the interest thereon received or credited by such Indemnified Party as described above, but any such excess shall be carried forward and reduce Lessee's obligations to make subsequent payments to such Indemnified Party pursuant to Section 23.1 hereof and (b) such amount shall not be payable so long as an Event of Default has occurred and is continuing. Such amount shall be payable not later than 30 days after such refund, credit or benefit is received, realized or allowed. If any such Tax refund, credit or benefit is subsequently disallowed, the amount so disallowed shall be treated as a Tax subject to indemnification under this Section 23 without regard to the exclusions or contest provisions in this Section 23.

Nothing contained in this Section 23 shall require any Indemnified Party to contest or permit Lessee to contest a claim which it would otherwise be required to contest pursuant to this Section 23 if such Indemnified Party shall (a) waive payment by Lessee of any amount that might otherwise be payable by Lessee under this Section 23 by way of indemnity in respect of such claim and (b) repay to Lessee any amounts paid by Lessee as an Advance pursuant to the last sentence of the first paragraph of this Section 23.2.

**23.3 Payments.** All Taxes shall be paid when due and payable and all amounts payable as indemnities pursuant to this Section 23 shall be payable to the extent not theretofore paid, promptly on written demand by the appropriate Indemnified Party; provided, however, that in the case of Taxes which are being contested pursuant to Section 23.2, any amount payable by Lessee pursuant to Section 23.1, shall, unless otherwise required by Section 23.2, not be required to be paid, until 30 days after the time such contest is finally resolved.

**23.4 Reports and Returns.** In case any report or return shall be required to be made with respect to any Tax which is indemnifiable by Lessee under or arising out of this Section 23, Lessee shall (a) to the extent required or permitted by law, timely make and file in its own name such return, statement or report, and in the case of any other such return, statement or report required to be made in the name of any Indemnified Party, advise such Indemnified Party of such fact and prepare such return, statement or report for filing by such Indemnified Party or (b) where such return, statement or report shall be required to reflect items in addition to any obligation of Lessee under or arising out of this Section 23 and such Indemnified Party elects to file such return, statement or report, provide such Indemnified Party with information sufficient to permit such return, statement or report to be properly made with respect to any obligations of Lessee under or arising out of this Section 23.

**23.5 Payments on After-Tax Basis.** Lessee agrees that, with respect to any payment or indemnity under Section 23.1, Lessee's indemnity obligation shall include any amount necessary to hold the Indemnified Party harmless on an After-Tax Basis.

23.6 Interest. Lessee will pay as Supplemental Rent to each Indemnified Party, with the payment to which it relates without the necessity of demand to the extent permitted by applicable law, interest at the Overdue Rate on the amount of any indemnity not paid when due pursuant to Section 23.1 until the same shall be paid. Each Indemnified Party shall pay interest to Lessee, to the extent permitted by applicable law, at the Overdue Rate, on the amount of any payment due from such Indemnified Party to Lessee from the due date until paid. Such interest shall be paid in the same manner as the unpaid amount in respect of which such interest is due.

23.7 Affiliated Group. For purposes of this Section 23, the term "Lessor" shall include any combined, consolidated or affiliated group (and any member thereof) of which Lessor is or shall become a member if combined or consolidated returns are or shall be filed for such affiliated group for foreign, federal, state or local Tax purposes.

23.8 Survival. All indemnities, obligations, adjustments and payments provided for in this Section 23 shall survive, and remain in full force and effect, notwithstanding the expiration or other termination of this Lease, the Lease or any other Operative Document. The obligations of Lessee in respect of all such indemnities, obligations, adjustments and payments are expressly made for the benefit of, and shall be enforceable by, the Indemnified Party entitled thereto, without declaring the Lease to be in default or taking other action thereunder.

23.9 Verification. The computations required to be made under this Section 23 shall, at Lessee's expense and written request, be verified in writing by any nationally recognized firm of certified public accountants selected by Lessee and reasonably acceptable to the Indemnified Party; provided that, the costs of such verification shall be borne by the Indemnified Party if, according to such verification, the Indemnified Party's computation should be reduced by 5% or more in the case of an indemnity payment or increase by 5% or more in the case of a tax benefit payment. Such determination shall be final and binding, absent manifest error on the part of the certified public accountants. Indemnified Parties hereby agree to provide the accountants with all information and materials as shall be reasonably necessary or desirable in connection therewith. Any information provided to such accountants by any Person shall be deemed by the parties to be (and the accountants will confirm that they will treat such information as) the private, proprietary and confidential property of such Person, and no Person other than such Person and the accountants shall be entitled thereto, other than as required by law.

#### SECTION 24. FEDERAL TAX INDEMNITY

Lessee shall indemnify and hold Lessor harmless from any loss or payment due to Headlessor under Section 24 of the Headlease to the extent such loss or payment was attributable to any breach by Lessee of its obligations hereunder.

#### SECTION 25. EXECUTION; LAW GOVERNING; UCC ARTICLE 2-A

This Lease may be executed in any number of counterparts and by the different parties hereto on separate counterparts (or upon separate signature pages bound together into one

or more counterparts), each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. To the extent, if any, that this Lease or any Lease Supplement constitutes chattel paper or other collateral within the meaning of the Uniform Commercial Code (or other law respecting security interests) as in effect in any applicable jurisdiction, no security interest in Lessor's interest under this Lease or any such Lease Supplement may be created through the transfer or possession of any counterpart of this Lease or such Lease Supplement other than the original executed counterpart No. 1 hereof or thereof, which shall be identified as the counterpart containing the receipt therefor executed by Lessor on the signature page hereof or thereof.

The terms of this Lease and all rights and obligations hereunder shall be governed by the law of the District of Columbia; provided, that the parties shall be entitled to all rights conferred by Section 11301 of the Act. LESSOR AND LESSEE AGREE THAT THIS LEASE IS A "FINANCE LEASE" FOR PURPOSES OF ARTICLE 2-A OF, AND AS DEFINED BY SECTION 2-A-103 OF, THE UCC. LESSEE AGREES THAT NO RIGHT OR REMEDY GRANTED SOLELY BY REASON OF ARTICLE 2-A OF THE UCC SHALL BE AVAILABLE TO LESSEE AS AGAINST LESSOR UNLESS EXPRESSLY SET FORTH IN THIS LEASE.

#### SECTION 26. TERMINATION OF HEADLEASE

So long as this Lease is in effect, Lessor shall not, without the prior consent of Lessee, terminate the Headlease pursuant to Section thereof.

#### SECTION 27. ASSIGNMENT

27.1 Assignment by Lessee. Lessee may not assign its rights and obligations under this Lease and the other Operative Documents without the prior written consent of Lessor.

#### 27.2 Assignment by Lessor.

Lessor shall assign its rights and obligations under this Lease to any successor of Lessor's rights under the Headlease.

#### SECTION 28. TRANSACTION EXPENSES

Lessee and Lessor agree that all reasonable actual out-of-pocket costs and expenses of Lessor arising in connection with the negotiation, preparation, execution, delivery and closings of the transactions contemplated by the Operative Documents shall be paid as specified in Amendment No. 1 to the Operating Agreement. All expenses incurred in connection with the STB and Registrar General of Canada filings, required pursuant to Section 2.4(ii) hereof and the rendering of opinions by Alvord and Alvord and McCarthy Tétrault required pursuant to Sections 2.4(iv)(c) and (d) hereof shall be allocated equally between the Lessor and Lessee.

#### SECTION 29. NO MERGER

There shall be no merger of this Lease or of the leasehold interest hereby created with the title to the Units, or any portion thereof or interest therein by reason of the fact that the

same Person may acquire or hold directly or indirectly this Lease or the leasehold interest created hereby or any interest in this Lease or in any such leasehold interest as well as the title to the Units.

SECTION 30. JURY TRIAL WAIVER AND JURISDICTION

LESSOR AND LESSEE EACH WAIVE ALL RIGHTS TO A TRIAL BY JURY IN THE EVENT OF ANY LITIGATION WITH RESPECT TO ANY MATTER RELATED TO THIS LEASE OR THE OPERATIVE DOCUMENTS, AND LESSOR AND LESSEE EACH IRREVOCABLY CONSENT TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA AND IN THE EVENT SUCH FEDERAL COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION THE COURTS OF THE DISTRICT OF COLUMBIA IN CONNECTION WITH ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS LEASE OR THE OPERATIVE DOCUMENTS.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease to be executed in their respective corporate names as of the day and year first above written.

NATIONAL RAILROAD PASSENGER  
CORPORATION, as Lessor

By: Dale M. Stein  
Name: Dale M. Stein  
Title: Treasurer

EXPRESSTRAK, L.L.C., as Lessee

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

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease to be executed in their respective corporate names as of the day and year first above written.

NATIONAL RAILROAD PASSENGER  
CORPORATION, as Lessor

By: \_\_\_\_\_  
Name: Dale M. Stein  
Title: Treasurer

EXPRESSTRAK, L.L.C., as Lessee

By: R. F. Unger  
Name: R. F. UNGER  
Title: CEO

TO THE EXTENT, IF ANY, THAT THIS LEASE CONSTITUTES CHATTEL PAPER OR OTHER COLLATERAL WITHIN THE MEANING OF THE UNIFORM COMMERCIAL CODE (OR OTHER LAW RESPECTING SECURITY INTERESTS) AS IN EFFECT IN ANY APPLICABLE JURISDICTION, NO SECURITY INTEREST IN LESSOR'S INTEREST UNDER THIS LEASE MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL EXECUTED COUNTERPART NO. 1 HEREOF WHICH SHALL BE IDENTIFIED AS THE COUNTERPART CONTAINING THE RECEIPT THEREFOR EXECUTED BY AMTRAK, AS LESSOR IMMEDIATELY FOLLOWING THIS LEGEND.

This counterpart is the only counterpart of the Lease that contains this legend.

Receipt of this original counterpart No. 1 of the foregoing Lease is hereby acknowledged this 8<sup>th</sup> day of June, 2001.

NATIONAL RAILROAD PASSENGER  
CORPORATION, as Lessor

By: Dale M. Stein

Name: Dale M. Stein

Title: Treasurer

DISTRICT OF COLUMBIA )  
 ) ss.:  
 )

On this 23 day of May, 2001, before me personally appeared Dale N. Stein of NATIONAL RAILROAD PASSENGER CORPORATION, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and she/he acknowledges that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public Carla A. Jones  
My Commission Expires:

Carla A. Jones  
Notary Public, District of Columbia  
My Commission Expires 04-30-2006



SCHEDULE I

List of Jurisdictions Where UCC Financing Statements Shall Be Filed

1. District of Columbia against Lessee, as Debtor
2. Delaware against Lessee, as Debtor
3. Michigan against Lessee, as Debtor

SCHEDULE II

Determination of Rent Factors and Casualty Value Factors

EXHIBIT A TO LEASE OF  
RAILROAD EQUIPMENT

LEASE SUPPLEMENT NO. \_\_

(AMTRAK SUBLEASE NO. 01-AS)

THIS LEASE SUPPLEMENT NO. \_\_ dated as of \_\_\_\_\_, 200\_\_ (this "Lease Supplement") between NATIONAL RAILROAD PASSENGER CORPORATION, a corporation organized under the Rail Passenger Service Act and the laws of the District of Columbia, as lessor, and EXPRESSTRAK, L.L.C., as lessee, pursuant to and in accordance with the Lease of Railroad Equipment (Amtrak Sublease No. 01-AS) dated as of May 15, 2001 between Lessor and Lessee (as amended and supplemented to the date hereof, the "Lease").

1. Capitalized terms and phrases used and not otherwise defined herein shall for all purposes of this Lease Supplement have the respective meanings specified therefor in Section 1 to the Lease and the rules of interpretation set forth in Section 1 shall apply, as originally executed or as modified, amended or supplemented in accordance with the applicable provisions thereof.

2. The Units covered by this Lease Supplement are described in Schedule I attached hereto.

3. The Equipment Cost for each Unit covered by this Lease Supplement is \$ \_\_\_\_\_ and the total Equipment Cost for all Units covered by this Lease Supplement is \$ \_\_\_\_\_.

4. The Base Lease Term for the Units covered by this Lease Supplement shall commence on the date hereof and shall terminate on \_\_\_\_\_ (the "Base Lease Expiration Date") unless earlier terminated or extended pursuant to the terms of the Lease. If the Lease shall be extended in accordance with Section 16.1 of the Lease, the Extension Term for the Units covered by this Lease Supplement shall commence on the day immediately succeeding the Base Lease Expiration Date and shall terminate on the expiration of the Extension Term unless earlier terminated or extended pursuant to the terms of the Lease.

5. By the execution and delivery of this Lease Supplement, Lessee and Lessor reaffirm all of the terms, provisions and conditions hereof.

6. This Supplement may be executed in several counterparts (or upon separate signature pages bound together into one or more counterparts), such counterparts together constituting but one and the same instrument. To the extent, if any, that this Lease Supplement constitutes chattel paper or other collateral within the meaning of the Uniform Commercial Code (or other law respecting security interests) as in effect in any applicable jurisdiction, no security interest in Lessor's interest under this Lease Supplement may be created through the transfer or possession of any counterpart of this Lease Supplement other than the

original executed counterpart No. 1 hereof which shall be identified as the counterpart containing the receipt therefor executed by Lessor on or immediately following the signature page hereof.

7. Lessee hereby represents and warrants to Lessor that, effective on the date hereof, the Units described in Schedule I hereto have been delivered to Lessee, have been duly accepted by Lessee and that said Schedule I contains a correct and complete description of said Units sufficient for the purposes hereof.

8. The Rent Factors applicable to the Units being made subject to the Lease pursuant to this Lease Supplement shall be determined in accordance with the Lease.

9. The Casualty Value Factors applicable to the Units being made subject to the Lease pursuant to this Lease Supplement shall be determined in accordance with the Lease.

10. Lessee confirms that the representations and warranties Lessee set forth in Section 10.2 of the Lease are true and correct on and as of the date hereof as though made on and as of the date hereof, except to the extent that such representations and warranties relate solely to an earlier date (in which case such representations and warranties were true and correct on and as of such earlier date).

11. No Event of Default has occurred and is continuing or results from the purchase, sale or lease of the Units.

12. No Casualty Occurrence has occurred with respect to any Unit subject to this Lease Supplement.

EXPRESSTRAK SUBLEASE NO. \_\_\_\_\_

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease Supplement to be executed in their respective corporate names as of the day and year first above written.

NATIONAL RAILROAD PASSENGER  
CORPORATION, as Lessor

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

EXPRESSTRAK, L.L.C., as Lessee

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

TO THE EXTENT, IF ANY, THAT THIS LEASE SUPPLEMENT CONSTITUTES CHATTEL PAPER OR OTHER COLLATERAL WITHIN THE MEANING OF THE UNIFORM COMMERCIAL CODE (OR OTHER LAW RESPECTING SECURITY INTERESTS) AS IN EFFECT IN ANY APPLICABLE JURISDICTION, NO SECURITY INTEREST IN LESSOR'S INTEREST UNDER THIS LEASE MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL EXECUTED COUNTERPART NO. 1 HEREOF WHICH SHALL BE IDENTIFIED AS THE COUNTERPART CONTAINING THE RECEIPT THEREFOR EXECUTED BY AMTRAK, AS LESSOR IMMEDIATELY FOLLOWING THIS LEGEND.

This counterpart is the only counterpart of the Lease Supplement that contains this legend.

Receipt of this original counterpart No. 1 of the foregoing Lease Supplement is hereby acknowledged this \_\_\_\_ day of \_\_\_\_\_, 2001.

NATIONAL RAILROAD PASSENGER  
CORPORATION, as Lessor

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

Name:

Title:





SCHEDULE I TO LEASE  
SUPPLEMENT NO. \_

DESCRIPTION OF UNITS

<u>EQUIPMENT TYPE</u>	AMTRAK <u>EQUIPMENT NUMBERS</u>
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**Exhibit B**



November 30, 2001

VIA FACSIMILE AND OVERNIGHT MAIL

EXPRESSTRAK, L.L.C.  
3400 East Lafayette Boulevard  
Detroit, Michigan 48207  
Attention: R. Franklin Unger, President & CEO

RE: Agreement between National Railroad Passenger Corporation ("Amtrak")  
and ExpressTrak, L.L.C. ("ExpressTrak") for the Lease of Railroad Equipment

Gentlemen:

Reference is made to that certain Sublease of Railroad Equipment (Amtrak Sublease No. 01-AS) between Amtrak as Lessor and ExpressTrak as Lessee dated as of May 15, 2001 (the "Sublease"). Capitalized terms used in this letter agreement (the "Letter Agreement") and not otherwise defined herein shall have the respective meanings provided for such terms in the Sublease.

This Letter Agreement memorializes the agreement between Amtrak and ExpressTrak to enter into a direct lease (the "Direct Lease") of those certain railcars to be delivered by Manufacturer and purchased by Amtrak and which are not leased under the Sublease. Under the Direct Lease, Amtrak and ExpressTrak shall have substantially the same rights and obligations with respect to the railcars made subject thereto as each currently holds with respect to the railcars subject to the Sublease, with such exceptions as ExpressTrak may agree to. Subject to the following two sentences, Amtrak and ExpressTrak agree that the Equipment Cost for purposes of the Direct Lease shall be the original Manufacturer's invoice cost of \$122,911.50. Amtrak and ExpressTrak acknowledge that there is an outstanding issue regarding which party is responsible for the payment of certain modifications to the Equipment, which payment is in the amount of approximately \$590 per railcar. Amtrak and ExpressTrak agree to work in good faith to resolve such issue and acknowledge that such resolution may require an adjustment to the invoice cost payable to Manufacturer.

Amtrak and ExpressTrak acknowledge that it is Amtrak's intention to enter into a sale and leaseback of the railcars subject or to be made subject to the Direct Lease, and thereby causing the Direct Lease to become a sublease. ExpressTrak agrees to cooperate with such sale and leaseback and to agree to such amendments to the Direct Lease as may be necessary to give effect thereto; provided that after giving effect to the amendments, the rights and obligations of ExpressTrak under the Direct Lease are substantially the same as its rights under the transactions contemplated by the Sublease (including the

EXPRESSTRAK, L.L.C.  
Attention: R. Franklin Unger, President & CEO  
November 30, 2001  
Page Two



Recognition and Attachment Agreement). Amtrak and ExpressTrak agree that for purposes of any sale and leaseback of the railcars, and any on-going deliveries of such railcars to the new headlessor, the Equipment Cost of the railcars shall be \$126,000 per car. Any excess of such Equipment Cost over invoice cost shall be allocated between Amtrak and ExpressTrak as the same would have been allocated if such railcars had been subject to the Sublease.

It is the intention of the parties that this Letter Agreement constitutes the Direct Lease between Amtrak and ExpressTrak pending execution and delivery of a more formal document. Amtrak and ExpressTrak shall diligently work toward consummation of such more formal document which shall have an effective date of November 30, 2001.

In reliance on the foregoing and pursuant to Amtrak's Guarantee Letter to ExpressTrak dated December 28, 2000, Amtrak shall undertake to pay the Manufacturer the invoice price of the railcars to be delivered under the Purchase Agreement and shall lease such railcars to ExpressTrak.

Please acknowledge your agreement with the foregoing by executing in the space provided for such purpose below.

Sincerely,

NATIONAL RAILROAD PASSENGER  
CORPORATION

By: Dale M. Stein  
Dale M. Stein  
Treasurer

ACCEPTED AND AGREED TO:

EXPRESSTRAK L.L.C.

By: R. Franklin Unger  
R. Franklin Unger  
President & CEO