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150 NORTH MICHIGAN AVENUE
CHICAGO, ILLINOIS 60601-7567

312-558-1000

WRITER'S DIRECT LINE (312) 750-8655
WRITER'S DIRECT FAX (312) 920-6161
WRITER'S EMAIL susan.lichtenfeld@rosshardies.com

PARK AVENUE TOWER
65 EAST 55TH STREET
NEW YORK, NEW YORK 10022-3219
212-421-8555

888 SIXTEENTH STREET, N.W.
WASHINGTON, D.C. 20006-4103
202-296-8600

FAX
312-750-8600

SUSAN G. LICHTENFELD

January 10, 2000

Via Messenger Delivery

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Suite 700
Washington, D.C. 20423

RECORDATION NO. 22698 FILED

JAN 10 00 9-51 AM

SURFACE TRANSPORTATION BOARD

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two original executed copies and two photostatic copies of an Interim User Agreement (the "Agreement"), between Johnstown America Corporation and Georgia Power Company dated as of January 1, 2000, which Agreement is a primary document as defined in the Commissioner's Rules for the Recordation of Documents.

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

Owner: Johnstown America Corporation
17 Johns Street
Johnstown, PA 15901

User: Georgia Power Company
c/o Southern Company Services, Inc.
600 North 18th Street
Birmingham, Alabama 35202

The Agreement relates to 580 aluminum AutoFlood railcars marked HYWX 2121 through HYWX 2700 (both inclusive).

January 7, 2000
Page 2

Also enclosed is a check in the amount of \$26.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return one stamped original copy and two stamped photostatic copies of the enclosed document and the stamped photostatic copy of this letter to Susan G. Lichtenfeld at Ross & Hardies, 150 North Michigan Avenue, Suite 2500, Chicago, Illinois 60601.

Following is a short summary of the enclosed document:

Document to be Recorded

Interim User Agreement, dated as of January 1, 2000, between Johnstown America Corporation, Owner, and Georgia Power Company, User, relating to the 580 aluminum AutoFlood II railcars identified therein.

Sincerely,


Susan G. Lichtenfeld

SGL/vgc
Enclosures
cc: Robert W. Kleinman
Joseph A. McQuade

RECORDATION NO

22698

FILED

JAN 10 00

9-51 AM

SURFACE TRANSPORTATION BOARD

INTERIM USER AGREEMENT

Dated as of January 1, 2000

between

JOHNSTOWN AMERICA CORPORATION,

and

GEORGIA POWER COMPANY

580 Aluminum AutoFlood II Railcars

INTERIM USER AGREEMENT

THIS AGREEMENT, dated as of January 1, 2000 by and between JOHNSTOWN AMERICA CORPORATION, a Delaware corporation (the "Johnstown") and GEORGIA POWER COMPANY, a Georgia corporation ("User").

WITNESSETH:

WHEREAS, User desires to acquire the use of 580 Aluminum AutoFlood II railcars, to bear railroad road marks and numbers set forth in Schedule 1 hereto (collectively, the "Cars" and individually a "Car");

WHEREAS, Southern Company Services, Inc. ("Southern") and Johnstown previously contracted for the purchase and sale of the Cars pursuant to Southern's letter to Johnstown dated May 7, 1999 and the letter from Johnstown to Southern dated August 17, 1999, related to Purchase Order No. 1400-849 (collectively, the "Purchase Order");

WHEREAS, Southern assigned its right, title and interest in, and obligations under, the Purchase Order to User;

WHEREAS, User is attempting to obtain commitments to finance the purchase of the Cars pursuant to one or more permanent forms of financing (the "Financing"); and

WHEREAS, User desires that it be permitted to use the Cars pending the closing of such Financing, and Johnstown is willing to grant such temporary custody and possession to User, solely upon the terms and conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises, and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. Subject to the terms and conditions contained herein and in the Purchase Order, Johnstown agrees to deliver physical possession of the Cars to User, FOT Johnstown, Pennsylvania. The rights of User hereunder in respect of each Car shall commence on the date of acceptance of such Car by User from Johnstown (the "Acceptance") and, unless sooner terminated pursuant to the provision hereof, shall end on the date of payment of the purchase price of such Car by User, or by its designee under the Financing (the "Closing"). User understands that time is of the essence and it shall diligently pursue the Financing. Whether or not the Financing shall then have occurred, User, on February 29, 2000 (or on a later date mutually agreed to by Johnstown and User), shall purchase and pay for, in cash, all Cars previously accepted by User and not previously paid for by User or its designee, and the obligation of User so to do shall be absolute and unconditional,

regardless of the condition of such Cars or any other event or circumstance. At the Closing with respect to any Cars, Johnstown shall sell such Cars to User or such purchaser as User may provide, at the purchase price of ~~60,000~~* per Car, plus applicable taxes and other charges, if any, as set forth in the Purchase Order. Nothing in this Agreement shall relieve User of its obligation to take, purchase and pay for the Cars in accordance with the terms of the Purchase Order.

2. On Acceptance of any Car, User shall assume the responsibility and risk of loss with respect to such Car and will deliver to Johnstown a Certificate of Acceptance substantially in the form attached hereto as Exhibit A (the "Certificate and Acceptance"). Execution of the Certificate of Acceptance by User shall constitute acceptance by User of the Cars identified in the Certificate of Acceptance for all purposes of this Agreement and the Purchase Order. On Acceptance, Johnstown's warranty with respect to such Car, which is attached hereto as Exhibit C, will commence.

3. Full and complete title to the Cars shall remain in Johnstown until Closing and User's rights and interests therein shall be solely that of temporary possession, custody, and use under this Agreement. Neither User nor any person claiming by through or under User shall acquire any title to or ownership of the Cars, or any portion thereof, by virtue of this Agreement or the temporary possession and use of the Cars by User under or pursuant to this Agreement. Transfer of title to any Car to User or to any purchaser provided by User shall be effected only at Closing by delivery by Johnstown of a bill of sale to User or to such purchaser; provided, however, that title to different Cars may be transferred at different times and under separate bills of sale, to the extent that such Cars shall be subject to different financing arrangements. When the purchase price of any Car has been paid in full to Johnstown, together with all other amounts payable to Johnstown hereunder with respect to such Car, and Johnstown has delivered an appropriate bill of sale, this Agreement shall automatically be terminated with respect to such Car without further action by or notice to any party concerned. Prior to delivery of any Car, User shall do such acts as may be required by law, or requested by Johnstown, for the protection of Johnstown's title to and interest in the Cars, including, without limitation, recording, at User's expense, a fully signed counterpart of this Agreement with the Surface Transportation Board ("STB"), with the corresponding offices in Canada if any of the Cars will be used in Canada, and wherever else necessary to protect Johnstown's interest. Upon receipt of all payments required to be made hereunder and under the Purchase Order with respect to any Cars, Johnstown shall, at the request of User, deliver to User or its designee a release of Johnstown's right, title and interest in such Cars, in the form attached hereto as Exhibit B, and take such further action to transfer such right, title and interest as User may reasonably request.

4. This Agreement is an arrangement under which User will have temporary possession, custody, and use of the Cars to be purchased from Johnstown, and the risk of loss of the Cars after Acceptance is on User. User will, at all times while this Agreement is in effect and at its own expense, cause to be carried and maintained in full force and effect in such amounts and with such

* Dollar amount to be redacted before the document is filed with the STB.

terms (including co-insurance, deductibles, limits of liability and loss payment provisions) as are customary under User's risk management program and in keeping with risks assumed by corporations of established size and reputation engaged in the same businesses and similarly situated: (i) public liability insurance against loss or damage for personal injury, death or property damage occurring as a result of the ownership, maintenance, use or operation of any Car; and (ii) property damage insurance on the Cars; provided, however, that User may self-insure with respect to any or all of the above as is customary under User's risk management program; and provided, further, that any such self-insurance will be comparable to self-insurance provisions generally applicable to other comparable equipment owned or leased by User. Any liability insurance policies maintained by User while this Agreement is in effect shall name Johnstown as an additional insured and User agrees to provide Johnstown, upon Johnstown's reasonable request, with such information concerning any insurance policies maintained by User as Johnstown may reasonably request.

5. User agrees (i) to use the Cars exclusively in unit train service to deliver coal to or from one of its generating stations and (ii) that none of the Cars shall be shipped beyond the boundaries of the United States, except with the prior written consent of Johnstown.

6. In addition to any other rights or remedies which Johnstown may then have under law, upon the existence and continuation of a default by User in performing any term of this Agreement or the Purchase Order, Johnstown, without demand or notice, may, but shall not be obligated to, terminate this Agreement, and upon such termination, User shall, if requested by Johnstown, immediately assemble all of the Cars, make them available to Johnstown at such place or places as Johnstown may designate and store, protect, maintain and preserve the Cars pending receipt of further instructions from Johnstown, and shall thereafter transport all or any portion of the Cars to such place or places as Johnstown shall designate, all at the sole risk and cost of User.

7. User agrees that it will permit no liens of any kind to attach to the Cars, and that it will (a) indemnify, defend, and save harmless Johnstown from and against all claims, expenses, costs, or liabilities of whatsoever kind or nature arising out of the temporary possession, use and operation thereof by User during the period when title thereto remains in Johnstown, or otherwise out of this Agreement (including without limitation consequential damages and lost profits under the Purchase Order) and (b) pay any and all taxes, (other than income taxes imposed on Johnstown), fines, fees, charges, and penalties that may accrue or be assessed or imposed upon the Cars or Johnstown because of its retention of title to the Cars or because of any person's use, marking, operation, management or handling of the Cars after Acceptance and while title to such Cars remains in Johnstown pursuant to this Agreement. Each party agrees to indemnify and hold harmless the other, on an after tax basis, for any claims or costs imposed on the indemnifying party as a result of a breach of this Agreement by the indemnifying party.

8. User shall, at its own expense, keep and maintain the Cars in good order, repair and running condition and will, at its option, repair or replace or promptly pay to Johnstown the purchase price in cash of those Cars which may be damaged or destroyed by any cause during the term of this Agreement. The design, construction or specifications of any Car, or any part thereof, may not be

changed without the prior written approval of Johnstown. User shall maintain, use and operate the Cars in compliance with all applicable laws, rules and regulations, including, without limitation, the Interchange Rules of the Association of American Railroads.

9. Prior to the physical delivery of any Car to User it will be marked and numbered with its appropriate road designation; in addition, there shall be plainly, distinctly, permanently, and conspicuously marked and maintained by User upon both sides of each Car in letters not less than one inch in height the following words:

Ownership Subject to an Agreement filed with the STB

No road marks or numbers shall be placed on the Cars other than those specified on Schedule 1 hereto.

10. On the Closing of any Cars, in addition to the amounts to be paid to Johnstown for the purchase of such Cars pursuant to the provisions of Section 1 hereof, User agrees to pay Johnstown in United States funds, by wire transfer to an account specified by Johnstown, to compensate Johnstown for its agreement to allow User to take possession of and use such Cars prior to the Closing, the following:*

- (i) per Car per day for each day elapsed from the date of Acceptance of such Car to the date of the Closing; and
- (ii) all reasonable legal expenses incurred by Johnstown in connection with the negotiation, execution and delivery of this Agreement (not to exceed \$2,000), and all reasonable legal expenses incurred by Johnstown in connection with the enforcement of this Agreement, less any amounts previously paid by User to Johnstown on account of such expenses.

11. User hereby makes the following representations and warranties to Johnstown, the truth and accuracy of which shall be a condition precedent to the obligation of Johnstown to deliver any Cars to User hereunder:

- a. User is a corporation, duly organized, validly existing and in good standing under the laws of the State of Georgia, has all requisite power and authority to execute and deliver and to perform its obligations under this Agreement and any related documents delivered by User in connection herewith (hereinafter collectively referred to as the "User Documents"), to carry on its business as now conducted, and is duly

* Dollar amounts in clause (i) to be redacted before the document is filed with the STB.

qualified and in good standing in such other jurisdictions in which the failure to so qualify or be in good standing could adversely affect its ability to perform its obligations under the User Documents.

- b. The User Documents have been duly authorized, executed and delivered by User, and assuming the due authorization, execution and delivery of such documents by Johnstown, are legal, valid and binding instruments enforceable against User in accordance with their terms, except as enforcement may be limited by general principles of equity or by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to the enforcement of creditors' rights generally.
 - c. No authorization or approval from any governmental or public body or authority of the United States of America, or of any of the States thereof or the District of Columbia, is necessary for the execution, delivery and performance by User of the User Documents.
 - d. Neither the execution and delivery of the User Documents nor the consummation of the transaction therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of the organizational documents or the by-laws of User, or of any bond, debenture, note, mortgage, indenture, deed of trust, lien, agreement or other instrument to which User is a party or by which it or its property may be bound, or constitute (with or without the giving of notice or the passage of time or both) a default thereunder, or result in the creation of any lien on the Cars (other than any lien in favor of Johnstown) or upon any property of User.
 - e. Neither the execution and delivery by User of the User Documents nor the consummation of the transactions therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof will conflict with, or result in a breach or violation of, any of the terms, conditions or provisions of any law, or any regulation, rule, order, award, injunction or decree of any court or governmental instrumentality or arbitrator.
12. Johnstown shall have the right to assign its rights under this Agreement, with User's consent, which shall not be unreasonably withheld.
13. This Agreement shall be interpreted under, and its performance shall be governed by, the laws of the Commonwealth of Pennsylvania without regard to its conflicts of laws doctrine, and the applicable federal laws of the United States of America.
14. This Agreement shall be binding upon, and shall constitute the complete agreement between the parties and their respective successors and assigns, with respect to the subject matter hereof, and may be amended or modified only in a writing lawfully executed by the parties hereto.

Any provision of this Agreement determined to be unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof.

15. Any amounts payable to Johnstown hereunder which are not paid when due shall bear interest from the due date thereof until paid at the rate of ten percent (10%) per annum, but in no event greater than the maximum rate permitted by applicable law.

16. The delivery by Johnstown to the User or its designee of a bill or bills of sale for the Cars will discharge Johnstown's obligation under the Purchase Order to sell the Cars to Southern and, with respect to such Cars, User hereby indemnifies, on an after-tax basis, and holds harmless Johnstown from any liability, loss, cost or expense, including reasonable attorneys fees, relating to any claim by Southern against Johnstown.

17. All communications under this Agreement shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail and courier service, (b) five (5) days after the date on which it shall have been mailed by United States mail (by certified mail, postage prepaid, return receipt requested), or (c) in the case of notice by such a telecommunications device, when properly transmitted, addressed to each party at the following addresses or to such other address as the party to whom the same is intended shall specify in conformity with the foregoing:

If to JOHNSTOWN AMERICA CORPORATION:

Johnstown America Corporation
17 Johns Street
Johnstown, Pennsylvania 15901
Attention: Contract Administrator
Fax No. (814) 533-5010

With a copy to:

Susan G. Lichtenfeld
Ross & Hardies
150 North Michigan Avenue
Chicago, Illinois 60601
Fax No. (312) 920-6161

If to User:

c/o Southern Company Services, Inc.
600 North 18th Street
Birmingham, AL 35202
Attention: Mark H. Filkins
Fax No. (205) 257-5765

18. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto and have caused this Agreement to be executed by their respective officers thereunder duly authorized as of the day and year first above written.

JOHNSTOWN AMERICA CORPORATION

By *Jim Shope*

Name: *Jim Shope*

Its: *Product Line Manager*

USER

GEORGIA POWER COMPANY

By *CRawlin*

Name: *Charles O. Rawlins*

Its: *Assistant Treasurer*

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF CAMBRIA)

On this 10th day of January, 2000, before me personally appeared Grim Shope, to me personally known, who, being by me duly sworn, says that he is the Contract Administrator of JOHNSTOWN AMERICA CORPORATION, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged before me that the execution of the foregoing instrument was the free act and deed of said corporation.

Carolyn A. Phillips
Notary Public

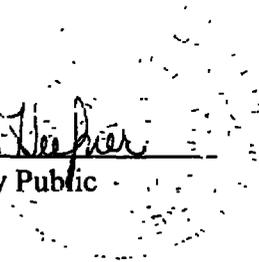
My commission expires: _____

NOTARIAL SEAL
CAROLYN A. PHILLIPS, Notary Public
Johnstown, Cambria County, PA
My Commission Expires June 7, 2001

STATE OF GEORGIA)
) SS:
COUNTY OF FULTON)

On this 5th day of January, 2000, before me personally appeared C. O. Gault to me personally known, who, being by me duly sworn, says that he is ^{agent} ~~owner~~ of GEORGIA POWER COMPANY that said instrument was executed on behalf of said corporation by authority of its Board of Directors, and he acknowledged before me that the execution of the foregoing instrument was the free act and deed of said corporation.

Connie D. Hepler
Notary Public



My commission expires: July 20, 2002

EXHIBIT "A"
TO
INTERIM USER AGREEMENT

CERTIFICATE OF ACCEPTANCE

I have been appointed as the duly authorized representative of GEORGIA POWER COMPANY SERVICES, INC. ("User") for the purpose of inspecting, accepting, and receiving delivery of the units of railroad equipment described below (the "Cars"), which are referred to in the Interim User Agreement dated as of January 1, 2000 (the "Agreement"), between Johnstown America Corporation ("Builder") and User. Title to the Cars does not pass upon such acceptance, but only passes to User or its assigns upon payment of the purchase price therefore and delivery of title to the Cars at the Closing of such Cars, as described in the Agreement. Capitalized terms used herein and not otherwise defined herein shall have the meanings as defined in the Agreement.

I hereby certify that with respect to the Cars:

1. Each Car has been inspected and is in good order.
2. Based on my determination that each Car is in compliance with all applicable specifications, each Car is hereby accepted for all purposes of the Agreement and the Purchase Order.

Type of Equipment:

Place Accepted:

Date Accepted:

Number of Cars:

Reporting Marks:

Car Numbers

Car Weights

THE UNDERSIGNED further certifies that there was plainly, distinctly, permanently and conspicuously marked in stencil on both sides of each Car the following legend in letters not less than one inch in height:

OWNERSHIP SUBJECT TO AN AGREEMENT FILED WITH THE STB

Authorized Representative of User

Date: _____, 2000

**SCHEDULE 1
TO
INTERIM USER AGREEMENT**

580 Aluminum AutoFlood II railcars bearing the following road marks and numbers (both inclusive):

HYWX 2121 through HYWX 2700

EXHIBIT "B"
TO
INTERIM USER AGREEMENT

TERMINATION OF AGREEMENT

THIS TERMINATION OF AGREEMENT (this "Termination"), is made this ___ day of _____, 2000, by and between Johnstown America Corporation, a Delaware corporation ("Johnstown"), and GEORGIA POWER COMPANY, a Georgia corporation ("User").

WHEREAS, Johnstown and User are parties to an Interim User Agreement, dated as of January 1, 2000 (the "Agreement"); and

WHEREAS, the Agreement was duly filed for recordation with the Surface Transportation Board (the "STB") pursuant to 49 U.S.C. Section 11301, on _____, 2000, at _____.m. and given Recordation Number _____; and

WHEREAS, Johnstown and User desire to terminate and cancel the Agreement with respect to the equipment described herein and to record such termination and cancellation with the STB;

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is acknowledged, User and Johnstown, intending to be legally bound, agree as follows:

1. User and Johnstown hereby terminate and cancel the Agreement, effective as of the date this Termination is filed with the STB with respect to the equipment described on Schedule 1 attached hereto (hereinafter, the "Terminated Equipment"), and User and Johnstown hereby agree that no rights, duties or liabilities under the Agreement with respect to such Terminated Equipment shall survive such termination and cancellation of the Agreement, except with respect to acts, events, or omissions under the Agreement occurring on or prior to the date hereof.

2. The parties agree to record this Termination with the STB so as to release any lien against the Terminated Equipment created by or arising out of the Agreement.

3. Nothing herein contained shall be construed to terminate and cancel the Agreement with respect to any equipment other than the Terminated Equipment hereinabove specifically described.

4. This Termination may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one Termination of Agreement.

IN WITNESS WHEREOF, Johnstown and User have caused this Termination to be executed as of the day and year first above written.

JOHNSTOWN AMERICA CORPORATION, a
Delaware corporation

By _____
Its

GEORGIA POWER COMPANY,
a Georgia corporation

By _____
Its

**SCHEDULE 1
TO TERMINATION OF AGREEMENT**

EXHIBIT "C"
TO
INTERIM USER AGREEMENT

WARRANTY

1. Johnstown expressly warrants , subject to Section 2 hereof, to User that the Cars will be of the kind and quality described in the Interim User Agreement to which this Exhibit C is attached, free of defects in design, workmanship and material and shall conform to and perform in accordance with the characteristics and specifications (the "Specifications") to which the Cars are manufactured. With respect to parts and materials manufactured by others and incorporated by Johnstown in the Cars, such parts and material shall be covered only by the warranty if any, of the manufacturer thereof, and Johnstown shall assign to User any such warranty, to the extent assignable by Johnstown, and Johnstown shall not provide any other relief or warranty with respect to such parts and materials. Johnstown hereby warrants to User that upon delivery to User of any Car, such Car shall be free of any and all liens, charges, security, interests or other encumbrances resulting from claims against Johnstown. The foregoing warranties shall be in lieu of all statutory warranties except for the warranty of title and warranty against infringement set forth in the Purchase Order.

THE FOREGOING WARRANTIES ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES

2. Johnstown, at its sole expense, shall promptly make all adjustment, repairs or replacements necessary to remedy any failure or deficiency in the Cars furnished hereunder (other than with respect to parts and materials manufactured by others and incorporated by Johnstown in the Cars, the remedy for which is provided for above in Section 1) resulting from defects in the design, workmanship or materials used in producing the Cars or any failure to meet the Specifications which shall appear within a maximum of six (6) years from the date of acceptance of such Car by User. Johnstown shall be responsible to User for the cost of repair or replacement of any component or material not supplied by Johnstown when the same is damaged as a result of the failure of the Cars purchased hereunder to comply with the aforementioned warranties. User shall give reasonable assistance in minimizing the expense of the repair work performed under this warranty. In addition, Johnstown shall, at its own expense, make such tests as User or the American Association of Railroads may reasonably require to show the effect of such repair or replacement on the Cars and its performance. The Cars, or parts thereof, repaired or replaced under the six (6) year warranty shall be further warranted from the date such repair or replacement is completed for the remaining balance of the six-year warranty. The obligations of Johnstown set forth in this warranty shall be User's sole and exclusive remedy with respect to any Car that is defective in any respect or that fails

to conform to the Specifications or to any express or implied warranty, and Johnstown will not in any event be liable for the cost of any labor or transportation charges expended on or in connection with the repair, replacement or return of any component (or Car) or for any special, indirect, incidental or consequential damages relating thereto.

JOHNSTOWN'S WARRANTIES SET FORTH IN SECTIONS 1 AND 2 ABOVE ARE CONDITIONED UPON COMPLIANCE BY USER AND ALL OTHER OPERATORS OF THE CARS WITH OPERATION, LOADING, USE, HANDLING, MAINTENANCE AND STORAGE IN ACCORDANCE WITH GOOD COMMERCIAL PRACTICES OF THE RAILROAD INDUSTRY. JOHNSTOWN SHALL NOT BE RESPONSIBLE FOR FAILURES CAUSED BY MISLOADING, OVERLOADING, OVERHEATING, IMPROPER CLEANING, PHYSICAL ABUSE, ACCIDENT, DERAILMENT OR FOR OTHER DAMAGE CAUSED BY FIRE, FLOOD OR OTHER EXTERNAL CONDITIONS UNRELATED TO THE MANUFACTURE OF THE CARS, OR FOR NORMAL WEAR AND TEAR.