

Fill in this information to identify the case:

Debtor D & I Silica, LLC

United States Bankruptcy Court for the: Southern District of Texas
(State)

Case number 20-33501

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor? Bridge Funding Group, Inc.
Name of the current creditor (the person or entity to be paid for this claim)
Other names the creditor used with the debtor Bridge Capital Leasing, Inc.

2. Has this claim been acquired from someone else? No
 Yes. From whom? _____

3. Where should notices and payments to the creditor be sent?
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
See summary page	See summary page

Contact phone 305-379-3121 Contact phone 305-698-4150
Contact email arice@rprslaw.com Contact email smilchuk@bankunited.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. Does this claim amend one already filed? No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____
MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim? No
 Yes. Who made the earlier filing? _____



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 990,899.08. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.

Lease Rejection Claim Schedules No. 2 and No. 3

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature or property:
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ 990,899.08

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 08/14/2020
MM / DD / YYYY

/s/Arthur Halsey Rice
Signature

Print the name of the person who is completing and signing this claim:

Name Arthur Halsey Rice
First name Middle name Last name

Title Esquire

Company Rice Pugatch Robinson Storfer and Cohen, PLLC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____ Email _____



KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (866) 554-5810 | International (781) 575-2032

Debtor: 20-33501 - D & I Silica, LLC		
District: Southern District of Texas, Houston Division		
Creditor: Bridge Funding Group, Inc. c/o Arthur Halsey Rice, Esq. 101 Northeast Third Avenue Suite 1800 Fort Lauderdale, Florida, 33301 United States Phone: 305-379-3121 Phone 2: Fax: 954-462-4300 Email: arice@rprslaw.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement:	
	Has Related Claim: No Related Claim Filed By:	
	Filing Party: Authorized agent	
Disbursement/Notice Parties: BankUnited, N.A. Attention: Scott Milchuk, Senior Vice President 7765 NW 148th Street Miami Lakes, Florida , 33016 United States Phone: 305-698-4150 Phone 2: Fax: E-mail: smilchuk@bankunited.com DISBURSEMENT ADDRESS		
Other Names Used with Debtor: Bridge Capital Leasing, Inc.	Amends Claim: No Acquired Claim: No	
Basis of Claim: Lease Rejection Claim Schedules No. 2 and No. 3	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: 990,899.08	Includes Interest or Charges: No	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: Yes, 990,899.08 Subject to Right of Setoff: No	Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:	
Submitted By: Arthur Halsey Rice on 14-Aug-2020 5:21:10 p.m. Eastern Time Title: Esquire Company: Rice Pugatch Robinson Storfer and Cohen, PLLC		

SCHEDULE NO. 2

THIS SCHEDULE NO. 2 dated as of April 1, 2014 (this "Schedule") to that certain Lease Agreement dated as of April 1, 2014 (the "Agreement") is by and between Greenbrier Leasing Company LLC, or its assignee, as lessor ("Lessor"), and D & I Silica, LLC, as lessee ("Lessee"). The terms of the Agreement are hereby incorporated into this Schedule in their entirety as though fully set forth herein. In the event of a conflict between the terms of the Agreement and this Schedule, the terms of this Schedule will govern. This Schedule is separate and severable from all other Schedules executed under the Agreement.

Lessor and Lessee agree as follows:

1. All capitalized terms defined in the Agreement will have the meanings defined therein when used in this Schedule, except that the term "Cars" as used herein will only refer to the equipment described in this Schedule unless otherwise indicated.
2. Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule: 100 3,250 cf cement covered hopper railcars, 286,000 lbs. GRL with three 30" circular loading hatches and two low profile discharge gates. The reporting marks and numbers of the Cars will be reflected in one or more Certificate(s) of Acceptance to be issued by Lessor following Delivery. Lessee has determined the Cars will be used to transport sand, and has determined such commodity is appropriate for loading, unloading, and transport in the Cars.
3. Delivery will commence in August 2014. The Cars will be delivered to Lessee at a BNSF interchange point in Wisconsin. Each Car will be subject to this Schedule upon Delivery or otherwise in accordance with the Agreement. Lessor has the right to first-load and otherwise place the Cars in service prior to delivery to Lessee.
4. The Term of the Agreement with respect to each Car described in this Schedule is 72 months (the "Initial Term"). The Initial Term will commence (the "Commencement Date") on the first of the month following the date the last Car is Delivered. Lessee will perform its obligations under this Schedule as to each Car as it is Delivered.
5. Lessor will be the record-keeper and will perform all of the registration and record keeping required for the Cars, as described in Section 5 of the Agreement.
6. Lessor will be the Maintaining Party with respect to this Schedule, and in response to reported maintenance concerns and/or in connection with preventive maintenance programs, Lessor shall arrange for performance of Maintenance, with the exception of AAR running repairs made in the ordinary course. Lessee will promptly forward to Lessor any notices it receives with respect to car maintenance, as well as safety concerns including but not limited to notices relating to Car reflectorization. In addition to any maintenance responsibilities Lessee may have pursuant to the provisions of Section 7 of the Agreement (Maintenance), Lessee will be responsible for all maintenance, repair and replacement costs associated with Cars' appurtenances and equipment used for loading and unloading, including without limitation all outlets, hatches, dome covers, and special fittings on the Cars leased herein. Lessee will also be responsible for the costs of inspection and cleaning of the operating mechanisms of the outlets, hatches, dome covers, and special fittings on the Cars leased herein, and for the costs of repair or replacement of such operating mechanisms. Removal of commodity to perform necessary repairs will be for Lessee's account.
7. Rent.
 - (a) The Basic Rent ("Basic Rent") is five hundred fifty and no/100 dollars (\$550.00 USD) per Car per month during the Initial Term, provided that Lessor shall credit Lessee \$550.00 USD per Car against the Basic Rent for the first full calendar month of the Initial Term. Interim rent will accrue from Delivery of each Car

through the Commencement Date, and will be equal to the daily equivalent of the Basic Rent ("Interim Rent"), and will be payable monthly. Periods of less than a full calendar month will be prorated based on a 30-day month. Basic Rent and Interim Rent payments are due and payable in advance, without any demand, notice, abatement, reduction, counterclaim or offset, except as otherwise expressly provided in the Agreement or herein.

(b) Mileage and Per Diem payments (as defined below) paid or allowed by railroads with respect to the Cars will be the property of Lessee. Mileage and Per Diem, sometimes referred to together herein as Car Hire, are defined at all times to be the sum of the hourly per diem ("Per Diem") and mileage earnings ("Mileage") of the Cars, in accordance with the Code of Car Hire Rules of the AAR then in effect and all Mileage earned as private mileage allowance under the provisions of published tariffs. Without Lessor's prior written consent, Lessee will not enter into any agreement with any party or modify any existing agreement that would affect the Car Hire revenue of the Cars.

(c) Lessor shall adjust the monthly rent, up or down, by \$0.80 per Car per month for each \$100.00 per Car Lessor is required to spend on material, components and freight, and scrap and material surcharges, as compared to the amount anticipated as of March 19, 2014.

(d) The amount of the monthly Basic Rent applicable during the Initial Term shall be adjusted based on changes in the 7-year Nominal Treasury Rates published by the Board of Governors of the Federal Reserve System in the Federal Reserve Statistical Release H.15 (the "Treasury Rate") between March 19, 2014 and the average delivery date for the Cars. The base rate ("Base Rate") shall be 2.31%. There will be a corresponding increase or decrease in Basic Rent of \$0.50 per Car per month for each basis point change above or below 25 basis points from the Base Rate.

(e) In the event any Car travels in excess of 45,000 miles in a calendar year (or a prorated number of miles if the Car is covered by this Agreement during only a portion of a calendar year), Lessee will pay Lessor \$0.050 USD per mile for each such excess mile. Lessor will invoice Lessee for excess mileage annually, and Lessee will pay Lessor's invoice within fifteen (15) days of the invoice date.

(f) Any amounts payable pursuant to applicable tariffs for mileage equalization with respect to the Cars shall be for the account of Lessee and if paid by Lessor shall be reimbursed by Lessee when invoiced by Lessor.

8. Lessee will remit all amounts due or reimbursable to Lessor to:

Greenbrier Leasing Company LLC
13799 Collections Center Drive
Chicago, IL 60693

or to such other address as Lessor may from time to time designate, or the same may be wired using the following instructions:

Bank of America, Oregon
ABA # 026 009 593
ACCOUNT #: 00454 229 4561
Credit to Greenbrier Leasing Company LLC

or such other instructions as Lessor may from time to time designate.

9. Whenever approval of the originating line haul carrier is required in order that Cars may be placed in service pursuant to AAR Circular OT-5 and any revisions or successors thereto, Lessee will obtain such approval in writing prior to Car delivery, and the Agreement and this Schedule will continue in full force and effect notwithstanding any withdrawal or modifications of such approval or failure to obtain such approval.

10. Settlement for any lost, stolen, or destroyed Car will occur in accordance with Section 11 of the Agreement. The Loss Value will be the AAR Rule 107 depreciated value of the Car.

11. Upon the expiration or termination of the Agreement with respect to the Car(s) described in this Schedule, without demand by Lessor, Lessee, at its sole expense, will return such Car(s) to Lessor, pursuant to and meeting the requirements of this paragraph and Section 14 of the Agreement. The Cars will be free of liens arising by, through or under Lessee, and Lessee will deliver the Cars to Lessor at a maintenance, storage or terminal facility or a Class I railroad interchange point(s) designated by Lessor to Lessee in writing. Rent for each Car will cease only when each such Car is returned in the required condition to the point referenced above.

12. Except as expressly modified by this or any other Schedule, all terms and provisions of the Agreement will remain in full force and effect.


13. This Schedule may be executed by the parties hereto in any number of counterparts, and all counterparts taken together constitute one instrument.

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IN WITNESS WHEREOF, the parties hereto have executed this Schedule as of the date first written above.

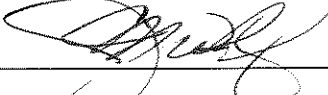
LESSOR:

GREENBRIER LEASING COMPANY LLC

BY: 
NAME: J. T. Stapp
TITLE: President

LESSEE:

D & I SILICA, LLC

BY: 
NAME: JAMES M. WHISKEY
TITLE: Co-CEO & President

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SCHEDULE NO. 3

THIS SCHEDULE NO. 3 dated as of April 1, 2014 (this "Schedule") to that certain Lease Agreement dated as of April 1, 2014 (the "Agreement") is by and between Greenbrier Leasing Company LLC, or its assignee, as lessor ("Lessor"), and D & I Silica, LLC, as lessee ("Lessee"). The terms of the Agreement are hereby incorporated into this Schedule in their entirety as though fully set forth herein. In the event of a conflict between the terms of the Agreement and this Schedule, the terms of this Schedule will govern. This Schedule is separate and severable from all other Schedules executed under the Agreement.

Lessor and Lessee agree as follows:

1. All capitalized terms defined in the Agreement will have the meanings defined therein when used in this Schedule, except that the term "Cars" as used herein will only refer to the equipment described in this Schedule unless otherwise indicated.

2. Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule: 100 3,250 cf cement covered hopper railcars, 286,000 lbs. GRL with three 30" circular loading hatches and two low profile discharge gates. The reporting marks and numbers of the Cars will be reflected in one or more Certificate(s) of Acceptance to be issued by Lessor following Delivery. Lessee has determined the Cars will be used to transport sand, and has determined such commodity is appropriate for loading, unloading, and transport in the Cars.

3. Delivery will commence in October 2014. The Cars will be delivered to Lessee at a BNSF interchange point in Wisconsin. Each Car will be subject to this Schedule upon Delivery or otherwise in accordance with the Agreement. Lessor has the right to first-load and otherwise place the Cars in service prior to delivery to Lessee.

4. The Term of the Agreement with respect to each Car described in this Schedule is 84 months (the "Initial Term"). The Initial Term will commence (the "Commencement Date") on the first of the month following the date the last Car is Delivered. Lessee will perform its obligations under this Schedule as to each Car as it is Delivered.

5. Lessor will be the record-keeper and will perform all of the registration and record keeping required for the Cars, as described in Section 5 of the Agreement.

6. Lessor will be the Maintaining Party with respect to this Schedule, and in response to reported maintenance concerns and/or in connection with preventive maintenance programs, Lessor shall arrange for performance of Maintenance, with the exception of AAR running repairs made in the ordinary course. Lessee will promptly forward to Lessor any notices it receives with respect to car maintenance, as well as safety concerns including but not limited to notices relating to Car reflectorization. In addition to any maintenance responsibilities Lessee may have pursuant to the provisions of Section 7 of the Agreement (Maintenance), Lessee will be responsible for all maintenance, repair and replacement costs associated with Cars' appurtenances and equipment used for loading and unloading, including without limitation all outlets, hatches, dome covers, and special fittings on the Cars leased herein. Lessee will also be responsible for the costs of inspection and cleaning of the operating mechanisms of the outlets, hatches, dome covers, and special fittings on the Cars leased herein, and for the costs of repair or replacement of such operating mechanisms. Removal of commodity to perform necessary repairs will be for Lessee's account.

7. Rent.

(a) The Basic Rent ("Basic Rent") is five hundred fifty and no/100 dollars (\$550.00 USD) per Car per month during the Initial Term, provided that Lessor shall credit Lessee \$550.00 USD per Car against the Basic Rent for the first full calendar month of the Initial Term. Interim rent will accrue from Delivery of each Car

through the Commencement Date, and will be equal to the daily equivalent of the Basic Rent ("Interim Rent"), and will be payable monthly. Periods of less than a full calendar month will be prorated based on a 30-day month. Basic Rent and Interim Rent payments are due and payable in advance, without any demand, notice, abatement, reduction, counterclaim or offset, except as otherwise expressly provided in the Agreement or herein.

(b) Mileage and Per Diem payments (as defined below) paid or allowed by railroads with respect to the Cars will be the property of Lessee. Mileage and Per Diem, sometimes referred to together herein as Car Hire, are defined at all times to be the sum of the hourly per diem ("Per Diem") and mileage earnings ("Mileage") of the Cars, in accordance with the Code of Car Hire Rules of the AAR then in effect and all Mileage earned as private mileage allowance under the provisions of published tariffs. Without Lessor's prior written consent, Lessee will not enter into any agreement with any party or modify any existing agreement that would affect the Car Hire revenue of the Cars.

(c) Lessor shall adjust the monthly rent, up or down, by \$0.80 per Car per month for each \$100.00 per Car Lessor is required to spend on material, components and freight, and scrap and material surcharges, as compared to the amount anticipated as of March 19, 2014.

(d) The amount of the monthly Basic Rent applicable during the Initial Term shall be adjusted based on changes in the 7-year Nominal Treasury Rates published by the Board of Governors of the Federal Reserve System in the Federal Reserve Statistical Release H.15 (the "Treasury Rate") between March 19, 2014 and the average delivery date for the Cars. The base rate ("Base Rate") shall be 2.31%. There will be a corresponding increase or decrease in Basic Rent of \$0.50 per Car per month for each basis point change above or below 25 basis points from the Base Rate.

(e) In the event any Car travels in excess of 45,000 miles in a calendar year (or a prorated number of miles if the Car is covered by this Agreement during only a portion of a calendar year), Lessee will pay Lessor \$0.050 USD per mile for each such excess mile. Lessor will invoice Lessee for excess mileage annually, and Lessee will pay Lessor's invoice within fifteen (15) days of the invoice date.

(f) Any amounts payable pursuant to applicable tariffs for mileage equalization with respect to the Cars shall be for the account of Lessee and if paid by Lessor shall be reimbursed by Lessee when invoiced by Lessor.

8. Lessee will remit all amounts due or reimbursable to Lessor to:

Greenbrier Leasing Company LLC
13799 Collections Center Drive
Chicago, IL 60693

or to such other address as Lessor may from time to time designate, or the same may be wired using the following instructions:

Bank of America, Oregon
ABA # 026 009 593
ACCOUNT #: 00454 229 4561
Credit to Greenbrier Leasing Company LLC

or such other instructions as Lessor may from time to time designate.

9. Whenever approval of the originating line haul carrier is required in order that Cars may be placed in service pursuant to AAR Circular OT-5 and any revisions or successors thereto, Lessee will obtain such approval in writing prior to Car delivery, and the Agreement and this Schedule will continue in full force and effect notwithstanding any withdrawal or modifications of such approval or failure to obtain such approval.

10. Settlement for any lost, stolen, or destroyed Car will occur in accordance with Section 11 of the Agreement. The Loss Value will be the AAR Rule 107 depreciated value of the Car.

11. Upon the expiration or termination of the Agreement with respect to the Car(s) described in this Schedule, without demand by Lessor, Lessee, at its sole expense, will return such Car(s) to Lessor, pursuant to and meeting the requirements of this paragraph and Section 14 of the Agreement. The Cars will be free of liens arising by, through or under Lessee, and Lessee will deliver the Cars to Lessor at a maintenance, storage or terminal facility or a Class I railroad interchange point(s) designated by Lessor to Lessee in writing. Rent for each Car will cease only when each such Car is returned in the required condition to the point referenced above.

12. Except as expressly modified by this or any other Schedule, all terms and provisions of the Agreement will remain in full force and effect.

13. This Schedule may be executed by the parties hereto in any number of counterparts, and all counterparts taken together constitute one instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Schedule as of the date first written above.

LESSOR:

GREENBRIER LEASING COMPANY LLC

BY:  _____

NAME: J.T. Sharp

TITLE: President

LESSEE:

D & I SILICA, LLC

BY:  _____

NAME: JAMES M. WHISKEY

TITLE: co-cto & President

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LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is made as of April 1, 2014, by and between Greenbrier Leasing Company LLC, an Oregon limited liability company, located at One Centerpointe Drive, Suite 200, Lake Oswego, Oregon 97035, or its permitted assignee ("Lessor"), and D & I Silica, LLC, a Delaware limited liability company with its principal offices located at Three Riverway, Suite 1550, Houston, Texas 77056 ("Lessee").

1. *Scope of This Agreement*

(A) Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor the railcars described in, and bearing the Association of American Railroads ("AAR") reporting marks set forth in each Schedule hereto (the "Cars" and each a "Car"), on the terms and conditions set forth herein and in the applicable Schedule. Each Schedule constitutes a separate lease of the railcars described therein.

(B) Lessor will at all times be and remain the owner (if applicable) and lessor of all Cars, and this Agreement conveys to Lessee no right, title or interest in any Car except as lessee. No agency, joint venture or partnership between Lessor and Lessee is being created. Lessee agrees it will at no time take any action or file any document which is inconsistent with the foregoing intent. Each party acknowledges and agrees that this Agreement will be treated as a lease for federal tax purposes.

2. *Term*

This Agreement will remain in full force until it is terminated. The term of Lessee's lease of each Car will be as set forth in the applicable Schedule.

3. *Supply Provisions*

(A) Lessee is responsible for ensuring the Cars are appropriate for Lessee's commodity and service. Lessee hereby approves any specifications for the Cars set forth in the applicable Schedule. Each Car will be subject to this Agreement on the date delivered to Lessee or its authorized agent at the point of tender as evidenced by railroad movement records ("Delivery" or "Delivered"); provided, however, that if within three (3) days of Delivery Lessee notifies Lessor in writing that a Car does not meet one or more of the specifications set forth in the Schedule, Delivery will not occur until such rejected Car is re-tendered in acceptable condition. Lessee will, after inspection and acceptance of each Car, execute and deliver to Lessor a certificate of acceptance form provided by Lessor. The loading of any Car by Lessee, or at its direction, will constitute acceptance thereof by Lessee.

(B) Lessee will, in connection with any lease of Cars hereunder, execute and deliver each of the following documents, in form, substance and manner satisfactory to Lessor: (1) a Schedule pertaining to the Cars then being leased; (2) a Certificate of Incumbency, if requested by Lessor; (3) a certificate of insurance or other evidence satisfactory to Lessor that the requirements of Section 8 have been complied with; and (4) such other documents as Lessor may reasonably request.

(C) Lessor will not be responsible for failure to deliver or delay in delivering any Car due to casualties, repairs or any other contingencies beyond its control, including, but not limited to, acts of God, labor disputes, defaults and delays of carriers or suppliers, and defaults and delays of the Lessee or any persons directed or controlled by the Lessee.

4. *Rent*

(A) Lessee will pay to Lessor for each Car, commencing on Delivery, Basic Rent and Interim Rent, or car hire, as applicable, as set forth in the applicable Schedule (sometimes referred to as "rent" or "rental"), without deduction, abatement, reduction, set-off, counterclaim, recoupment, defense, notice or demand, due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor, the manufacturer, or any other person or by reason of any circumstance whatsoever, including but not limited to taxes, duties or withholding (collectively "Offsets"), except to the extent any Offsets are required by applicable law, in which case Lessee's rent

payment shall be grossed up such that Lessor receives the amount of rent stated in the applicable Schedule after the Offsets have been deducted, to the maximum extent allowed by law. Except as otherwise expressly provided herein, this Agreement will not terminate, nor will the respective obligations of Lessor and Lessee be otherwise affected or Lessor have any liability to Lessee, by reason of any defect in the Cars, the condition, design, operation or fitness for use thereof, or any damage to, or any loss or destruction of, or any liens, encumbrances, security interests or rights of others with respect to, the Cars, or any prohibition or interruption of or other restriction against Lessee's use, operation or possession of the Cars for any reason whatsoever, it being the intention of the parties hereto that the rent payable by Lessee hereunder will continue to be payable in all events and in the manner and at the times herein provided unless the obligation to pay the same terminates pursuant to an express provision of this Agreement, provided that nothing in this Section 4(A) shall be construed as a waiver by Lessee of any claim Lessee may have against Lessor arising under this Agreement or otherwise be construed as a limitation on any rights of the Lessee to assert any claim in any proceeding at law, in equity or otherwise against the Lessor and to pursue such claim, and if awarded by a court of competent jurisdiction, obtain relief on such claim which relief is other than through an Offset.

(B) In the event any rental or other payment due Lessor hereunder is not paid within ten (10) days after the due date, Lessee will also pay interest on such amount from the due date at a rate equal to ten percent (10%) per annum, or at such lesser rate as is the highest rate permitted by applicable law, for the period from the due date until the rental or other payment is paid.

5. Record Keeping

(A) The party designated as the record keeper in the applicable Schedule will be responsible for the preparation and filing of all documents relating to the registration, maintenance and record-keeping functions normally performed with respect to the Cars, including but not limited to (1) preparation of appropriate AAR interchange agreements with respect to the Cars; (2) registration of the Cars in the Official Railway Equipment Register and the Universal Machine Language Equipment Register ("UMLER"); and (3) preparation of such reports as may be required from time to time by the Surface Transportation Board ("STB") and any other regulatory agencies with respect to the Cars.

(B) The record keeper will also perform record-keeping functions relating to the use of the Cars by Lessee and third parties, including but not limited to car hire reconciliation; receipt of revenues from railroad companies in accordance with applicable Car Hire Rules, the Car Service Rules and Interchange Rules; records pertaining to maintenance and repair; and billing in accordance with the AAR Interchange Rules adopted by the AAR Mechanical Division, Operations and Maintenance Department ("Interchange Rules"). Lessee hereby authorizes Lessor to receive the UMLER fleet tape with respect to Cars which bear a reporting mark controlled by Lessee. All records of payments, charges and correspondence related to the Cars will be recorded and maintained in a form suitable for reasonable inspection by the other party from time to time during regular business hours and upon reasonable notice. In the event Lessee is the record keeper, Lessee, or the party managing the Cars on behalf of Lessee if applicable, will provide Lessor with a complete maintenance history for the Cars upon the return of the Cars.

6. Warranties and Waiver

Lessee acknowledges, warrants and agrees that the Cars are of a size, capacity, specification and design selected by Lessee and that Lessee is satisfied that the Cars are suitable for its purposes. Lessor warrants and acknowledges that on the date of Delivery of each Car Lessor is the Owner of the Car or otherwise has the right to lease the Car to Lessee hereunder. LESSEE ACKNOWLEDGES AND AGREES THAT LESSOR IS NOT A MANUFACTURER OF THE CARS, AND THE CARS ARE LEASED "AS IS" AND, EXCEPT FOR LESSOR'S EXPRESS WARRANTY SPECIFICALLY SET FORTH ABOVE, LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED, AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR WILL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE CARS PURSUANT TO THIS AGREEMENT TO HAVE MADE, ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR THE QUALITY OF THE WORKMANSHIP IN, THE CARS, PARTS, MATERIALS, OR THE LIKE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. LESSOR WILL

NOT BE LIABLE IN CONTRACT, TORT, OR STRICT LIABILITY FOR ANY LOSS OF BUSINESS OR OTHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSS OR DAMAGES, WHETHER OR NOT RESULTING FROM ANY OF THE FOREGOING OR RESULTING FROM ANY REPAIRS OR MAINTENANCE TO ANY CARS, OR OTHERWISE, OR ON ACCOUNT OF ANY DEFECT, WHETHER HIDDEN, LATENT OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE, RESPECTING ANY CARS. LESSOR MAKES NO REPRESENTATION AS TO THE TREATMENT OF ANY LEASE, THE CARS OR THE RENT FOR FINANCIAL REPORTING OR TAX PURPOSES. During the Initial Term and any renewals of each Schedule, Lessor assigns to Lessee all the rights and benefits of the manufacturer's warranty, if any, subject to the terms and conditions thereof, with respect to the subject Cars, with the exception of any purchase price refund option that may be exercised by the manufacturer. Upon (x) an Event of Default and during the continuance thereof or (y) expiration or other termination of the Initial Term or any renewal term, all such rights and benefits will automatically, without notice or any further action, become the rights and benefits of Lessor.

7. *Maintenance*

(A) Each Schedule will indicate the party responsible for expenses incurred for inspections of, maintenance and repairs to, and servicing of the Cars as necessary to maintain the Cars in good operating condition and repair as specified in AAR Interchange Rules and Federal Railroad Administration ("FRA") Regulations ("Maintenance", with such party the "Maintaining Party"); provided, however, that in every case such Maintenance will be performed at Lessee's expense in the event (i) necessary due to abuse or unfair usage conditions, including but not limited to those conditions described in AAR Rule 95, if Lessee or its agent is unable to obtain proper protection from the responsible party; (ii) arising in connection with defects in Car materials, workmanship or parts; (iii) necessary due to overloading, corrosion, negligence, carelessness, accident or abuse, including but not limited to disfiguration of the Cars caused by impact, thaw heat, open flames, or other loading or unloading practices; or (iv) specifically made Lessee's responsibility in any Schedule. Lessee or its agent will, at Lessee's expense, inspect all Cars interchanged to Lessee or its agent to ensure that such Cars are in good working order and condition and will advise Lessor of any Maintenance required if Lessor is the Maintaining Party or if Maintenance is required due to wreck, accident or derailment pursuant to AAR Interchange Rule 107, or if the labor required to make permanent repairs exceeds twenty-five (25) hours (for example repairs contemplated by AAR Interchange Rule 108). Lessee or its agent may make Running Repairs, and such Running Repairs will be at the expense of the Maintaining Party. "Running Repairs" will be defined as repairs of the type required by the FRA or necessary for the safety of workers or safe movement to the home line or shop. In cases where Lessee is liable for Maintenance and repairs, all costs, including without limitation transportation costs and expenses arising or relating to placing any Car in or returning any Car from a private contract shop, will be at Lessee's sole expense. Any repairs performed on the Cars by Lessee or its agent at Lessor's expense will be at a labor rate not to exceed the then-prevailing AAR Labor Rate unless a different labor rate is mutually agreed in writing by the parties.

(B) In the event Lessor is the Maintaining Party, Lessor will have the right to perform repairs pursuant to any preventative maintenance program at Lessor's sole cost and expense; provided, however, that if such repairs are necessitated by conditions described in Subsections 7(A)(i) through (iv) above, such repairs will be at Lessee's sole cost and expense.

(C) In the event the Cars bear reporting marks not controlled by Lessor or its agent and Lessor is the Maintaining Party:

(i) Lessee will provide Lessor with a reasonable opportunity (in no event less than 120 days) to identify exceptions to AAR billing from the railroads and invoices received from contract repair shops in connection with the Cars, and will submit such exceptions in accordance with the AAR Rules. In the event Lessor does not have a reasonable opportunity to identify exceptions or Lessee does not submit the exceptions, Lessor will not be responsible for costs associated with any such repairs which would otherwise be Lessor's responsibility hereunder or under the applicable Schedule, to the extent Lessor would have taken exception.

(ii) Lessee agrees to notify Lessor in the event Lessee receives a request for bad order disposition or a wreck notification relating to any Car, and the parties agree Lessor will provide disposition for such Car and will direct the designated shop with respect to any required Maintenance.

(iii) In the event Lessee for any reason receives a private contract shop repair estimate relating to a Car for repairs which are Lessor's responsibility hereunder or under the applicable Schedule, Lessee will provide Lessor with a reasonable opportunity to review and approve or reject the estimate. In the event Lessor does not have a reasonable opportunity to review and approve or reject such estimate, or Lessee does not reject such estimate consistent with Lessor's directions, Lessor will not be responsible for costs associated with the repairs to the extent such costs exceed the amount Lessor would have approved in connection with such repairs.

(D) In the event the AAR, the FRA, the U.S. Department of Transportation, PHMSA, or any other agency or organization having jurisdiction over operation, safety or use of railroad equipment, requires that Lessor add, modify or in any manner whatsoever adjust the Cars (hereinafter referred to as "Modifications") or implements, through mandated rule change(s) or otherwise, additional or more frequent maintenance or inspection requirements (hereinafter referred to as "Additional Requirements"), whether prior to or after production of the Cars, (i) in the case where Lessee is the Maintaining Party, Lessee will pay all costs and expenses associated with such Modifications or Additional Requirements, and (ii) in the case where Lessor is the Maintaining Party, Lessee agrees (a) to pay an additional monthly charge of \$1.75 per Car for each \$100.00 expended by Lessor on the Modifications for such Car, commencing on the date the Car is released from the shop, and (b) to pay the increased costs associated with the Additional Requirements. No rental credit will be issued on Cars entering the shop for any such Modifications or Additional Requirements. In the event Lessor is the Maintaining Party and in its sole discretion determines that it would not be economical to make such Modification or perform such Additional Requirements in view of the estimated remaining useful life or condition of such Car, and Lessor therefore elects to permanently remove such Car from Lessee's service, the rental with respect to such Car shall terminate upon the date specified in writing by Lessor, which date will not be later than the date the Modification is so required to be made or the Additional Requirements are required to be performed.

(E) Regardless of which party is the Maintaining Party, Lessee will not improve, alter or add to the Cars without Lessor's prior written consent, and will be responsible for all costs, expenses, and liabilities associated with any Lessee improvements, alterations or additions. Title to any alteration, improvement or addition made, whether or not authorized, will be and remain with Lessor, except for such as may be removed without impairing the originally intended function, use, useful life or value of the Car, and provided Lessee assumes all financial responsibility for any damage associated with such removal and such damage is promptly repaired by Lessee. Where Lessor is the Maintaining Party, (i) Lessee will not repair the Cars without Lessor's prior written consent, except for Running Repairs, and (ii) Lessee will be responsible for all costs, expenses, and liabilities associated with any unauthorized Lessee repairs.

8. *Insurance*

(A) At all times while Car(s) are subject to this Agreement, Lessee shall, at its sole cost and expense, keep or cause to be kept with insurance companies with an AM Best rating of A- VII or higher: (i) comprehensive general liability insurance, including contractual coverage for the liabilities assumed herein, including bodily injury, death, environmental restoration and property damage, and without exclusions for punitive damages, hazardous materials transportation or otherwise, in a combined single limit of not less than \$5,000,000 per occurrence and \$20,000,000 in the aggregate; and (ii) all risk property damage insurance on the Cars in amounts not less than the loss value for such Cars, which will be calculated as indicated in each Schedule (as to each Car, the "Loss Value"). In no event will the minimum insurance requirements set forth in (i) above be construed as limits on amounts payable to Lessor by Lessee, by any insurer, or by any third party.

(B) In the event any Car is not covered by the insurance described in Subsections (A)(i) and (A)(ii) above, Lessor shall have the right, at its option, to purchase coverage and recover all premiums for such insurance from Lessee, and/or declare this Agreement in default and proceed in accordance with Section 13.

(C) Lessor shall be named as an additional insured on a primary and noncontributory basis under Lessee's general liability insurance and any excess or umbrella insurance. Lessor's additional insured status will not be limited by any minimum insurance requirements set forth above. Lessor shall be named as an additional insured and loss payee under Lessee's property insurance, which shall provide that losses shall be payable to Lessee and Lessor as their respective interests may appear. Lessee shall provide appropriate certificates of insurance to evidence Lessee's compliance with the insurance requirements of this Agreement, and shall provide copies of the

insurance policies upon Lessor's request. Lessee shall fully cooperate with Lessor in preparing and filing claims and proofs of loss.

(D) All insurance maintained pursuant to this Section shall provide that (i) the insurer thereunder waives all rights of subrogation against Lessor, and (ii) thirty (30) days' prior written notice of expiration or termination shall be given to Lessor. In no event shall Lessee maintain insurance in relation to the Cars in amounts less than, or containing provisions less favorable than, those maintained by Lessee with respect to comparable railcars owned or leased by Lessee.

9. *Taxes and Duties*

(A) Lessee shall be responsible to report and pay any and all applicable taxes in accordance with terms and conditions established by all relevant and applicable tax laws and regulations, including but not limited to, sales, use, value-added, withholding, GST, PST, HST, ad valorem property and gross receipts taxes, and any similar taxes, imposed upon the Cars, Basic Rent or Car Hire payments (as defined in each Schedule) (collectively, "Taxes"); provided, however, that Lessee will not be responsible for Taxes measured by Lessor's net income. In the event Lessor controls the reporting marks on the Cars, or on any other basis reports and pays ad valorem property or similar taxes with respect to the Cars, Lessee will reimburse Lessor for any such Taxes upon receipt of an invoice therefor from Lessor. The Basic Rent or Car Hire payment amounts due to Lessor from Lessee under each Schedule do not include any allocation for Taxes, and the Basic Rent or Car Hire amount stated in each Schedule is payable by Lessee to Lessor without offset or reduction for Taxes, except to the extent any such offsets or reductions for Taxes are required by applicable law, in which case Lessee's Basic Rent or Car Hire payment shall be grossed up such that Lessor receives the amount of Basic Rent or Car Hire stated in the applicable Schedule after the offsets or reductions for Taxes have been deducted, to the maximum extent allowed by law. Lessee acknowledges ad valorem taxes and certain other amounts pertaining to lease periods may not be assessed and payable until after expiration or termination of the applicable Schedule, provided, however, that Lessee shall have no responsibility for any Taxes attributable (x) to any periods prior to the commencement of this Agreement and the applicable Schedule or (y) to any periods after the return of the Cars pursuant to the applicable Schedule.

(B) Lessee shall be responsible for (i) reporting and paying any and all applicable duties applicable to the Cars in accordance with terms and conditions established by all relevant and applicable customs laws and regulations, (ii) completing proper export and import documentation associated with any cross-border movement of the Cars, and (iii) cancellation of such documentation if and when appropriate, in each case as a result of Car movements from the Delivery of the subject Car until its return to Lessor in accordance with this Agreement and the applicable Schedule. Lessee will provide Lessor with copies of all import and export documentation relating to the Cars at Lessor's request, and will be responsible for any Taxes, duties, fines, interest and penalties associated with any failure to meet import and export requirements.

(C) In order to avoid loss, disallowance, recapture, or other diminution of any tax benefits claimed by Lessor with respect to the Cars, including, but not limited to any accelerated depreciation deduction allowable under Section 168 and related sections of the Internal Revenue Code of 1986, as amended (the "Code" and such depreciation deduction a "Recovery Deduction"), Lessee represents and warrants it will not use, or permit the use of, the Cars (i) predominantly outside the United States under Section 168(g)(1)(A) of the Code as modified by Section 168(g)(4)(B), (ii) as tax-exempt use property within the meaning of Section 168(h) of the Code, "public utility property" within the meaning of Section 168(i)(10) of the Code, or (iii) otherwise inconsistent with the availability to Lessor of anticipated depreciation deductions. If as a result of a breach of any representation, warranty or covenant of the Lessee contained in this Agreement, (1) any such Recovery Deduction claimed on the federal income tax return of the Lessor is disallowed or adjusted by the Internal Revenue Service, or (2) any such Recovery Deduction is recomputed or recaptured (any such determination, disallowance, adjustment, recomputation or recapture being herein called a "Loss"), then upon written notice from Lessor Lessee shall pay to Lessor as an indemnity (a) with respect to prior rental periods, a single payment, and (b) with respect to future rental periods, a monthly amount in each case in such amount as shall cause Lessor's after-tax economic yields and cash flows, computed on the same assumptions, including tax rates, as were utilized by Lessor in originally evaluating this transaction (such economic yields and cash flows being hereinafter called the "Net Economic Return"), to equal the Net Economic Return that would have been realized by Lessor if such Loss had not occurred. The amounts payable to Lessor pursuant to this subsection shall be payable in the case of prior rental periods thirty (30) days after written

notice from Lessor, and in the case of future rental periods in conjunction with each subsequent monthly rental payment. Lessor will provide Lessee with a written statement describing in reasonable detail such Loss and the computation of the amounts so payable. Lessor's calculations shall give credit for any future tax benefits arising in connection with such claim attributable to the term of Lessee's lease of the subject Cars hereunder, and shall refund to Lessee the amount of any refunds realized in connection with such claim, or a change in use by Lessee that results in a restoration of any accelerated depreciation, in each case, to the extent attributable to the term of Lessee's lease of the subject Cars hereunder. Lessee shall have the right to have any such claims by Lessor verified by a third-party accounting firm reasonably acceptable to Lessor (with the cost of verification divided equally between the parties) and, at Lessee's expense, reasonable contest rights in connection with any such claim.

10. Transportation and Storage

Commencing upon Delivery, Lessee will be liable for all costs, charges and expenses on account of or relating to freight transportation, movement, interchange, demurrage and storage of the Cars. If Lessor is required to pay any such amount, Lessee will reimburse Lessor within thirty (30) days of receiving an invoice from Lessor. Any storage will be at a location acceptable to Lessor.

11. Risk of Loss and Payment of Casualty

(A) Lessee hereby assumes and will bear the entire risk of any loss, theft, destruction or damage to each Car following Delivery. In the event any Car is lost (or cannot be located for a period of more than forty-five (45) days), stolen, destroyed, irreparably damaged, or permanently rendered unfit for use for any reason or title thereto is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise (hereinafter referred to as an "Event of Loss"), Lessee will promptly (but in no event later than fifteen (15) days after the date Lessee has notice of the Event of Loss) notify Lessor as to the circumstances and time of such event. On the rental payment date next succeeding such notice, Lessee will pay to Lessor in immediately available funds (i) the Loss Value for such Car and (ii) all rental accrued to and including the date the Loss Value payment is made. Upon payment of the Loss Value, rental through the date the Loss Value is paid, and any other amounts then payable by Lessee hereunder with respect to a Car, the rental for such Car will cease to accrue and such Car will cease to be a Car leased hereunder. Lessor will credit Lessee with any settlement amounts received by Lessor from any party responsible for such loss or destruction pursuant to AAR Rule 107, up to the amount of the Loss Value.

(B) Lessor may, at its expense, with the consent of Lessee, replace any Car that has suffered an Event of Loss with a similar replacement railcar upon prior written notice from Lessor to Lessee, in which event rental for such replacement railcar will commence, and such replacement railcar will be a Car leased hereunder, upon Delivery.

(C) Lessor and Lessee agree to cooperate with and to assist each other in any manner reasonably requested to establish and pursue proper claims against parties responsible for loss or destruction of, or damage to, Car(s); provided, however, that this will not affect their respective obligations under this Section or the Agreement.

12. Possession and Use

(A) So long as no Event of Default has occurred and is continuing, Lessee will be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and the applicable Schedule(s). Lessee agrees to use the Cars only in a careful and prudent manner and only in the use, service and manner for which the Cars were designed. At no time will Lessee permit the Cars to be (i) loaded in excess of any load limit stenciled thereon, (ii) used in a service in which the Cars will be subjected to thaw heat, open flames, or other loading or unloading practices damaging to the Cars, (iii) used in unit train service or other designated high mileage usage or loaded with hazardous materials, unless the applicable Schedule provides otherwise. Lessee agrees the Cars will at all times be used and operated, and commodities loaded in the Cars will be handled, under and in compliance with the laws of the jurisdiction in which the Cars are operated; in compliance with all rules, regulations and orders of any agency or organization having power to regulate or supervise the use or handling of the Cars or the commodity(ies); and in accordance with applicable rules established by the AAR and FRA, except that either Lessor or Lessee may, at its own expense and by appropriate proceedings timely instituted

and diligently conducted, contest the application of any such act, rule, regulation or order. Lessee will comply with, and will ensure all shippers loading the Cars comply with, applicable requirements for placarding commodities, and Lessee will be responsible for any costs associated with the failure to placard.

(B) At Lessor's election, Cars may be marked to indicate the rights of Lessor, of an assignee, mortgagee, trustee, pledgee or security holder of Lessor, or of a lessor to Lessor. Except for renewal and maintenance of the aforesaid markings or lettering indicating that a Car is leased to Lessee (which lettering must comply with all applicable rules and regulations), no lettering or marking will be placed upon any Car by Lessee and Lessee will not remove or change any reporting mark or number except upon the prior written direction, or with the prior written consent, of Lessor. Lessee will be responsible for all costs associated with any marking changes made at its request and for removal of such markings prior to return of the Cars to Lessor.

(C) Lessee will not, with regard to the Cars or any interest therein, including the right to payment of Car Hire revenues thereon, or with regard to the Agreement or any Schedule thereto, directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or any other security interest or claim (each a "Lien" for purposes of this provision) other than Liens created by or through Lessor ("Lessor Liens"). Lessee will notify Lessor in writing within five (5) days after learning that any Lien other than a Lessor Lien has been asserted against or imposed on any Car. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge such Lien. If Lessee fails to do so, Lessor may take such action and Lessee will pay the cost thereof within thirty (30) days of receiving an invoice from Lessor for such costs.

(D) In the event a Schedule provides for a car hire rental structure: (i) Lessee will accord the Cars priority loading status (primary and preferential use over similar cars available to Lessee), (ii) in the event Lessee has the option to terminate the Schedule prior to the expiration of the Initial Term, and Lessee exercises such option, Lessee will not acquire, whether by purchase or otherwise, similar cars for use in similar service from any source other than Lessor during the balance of the Initial Term, and (iii) Lessee will subscribe to and abide by the Association of American Railroads Car Service and Car Hire Agreement while the Schedule is in effect.

(E) Lessee acknowledges that Cars may be leased by Lessor from a third party for lease to Lessee, or may be financed through a secured loan. In that event, (a) Lessee's right of quiet use and enjoyment of the Cars will not be disturbed so long as no Event of Default has occurred and is continuing, and (b) this Agreement and the applicable Schedule will otherwise be subordinate to the interest of the Car owner or secured lender.

13. Default

(A) The occurrence of any of the following events will be an "Event of Default" hereunder:

(i) The nonpayment by Lessee of any sum required to be paid by Lessee when any such payment is due, which nonpayment continues unremedied for a period of ten (10) days;

(ii) The failure of Lessee to maintain insurance as required, to remove liens as required by Section 12(C), or Lessee's breach of Section 19(C) of this Agreement;

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

(iv) The material breach by Lessee of any representation or warranty herein;

(v) The filing by or against Lessee or any guarantor of any petition or the initiation by or against Lessee or any guarantor of any proceeding: (a) for any relief which includes, or might result in, any modification of the obligations hereunder or under any guaranty; or (b) under any bankruptcy, reorganization, receivership, insolvency, moratorium or other laws relating to the relief of debtors, the readjustment of indebtedness, financial reorganization, arrangements with creditors or compositions of or extensions of indebtedness, provided, in the case of involuntary proceedings, such petitions or proceedings have not been dismissed within sixty (60) days of filing;

(vi) The (a) insolvency of Lessee or any guarantor or (b) subsection of any portion of Lessee's or any guarantor's property to any levy, seizure, assignment, application sale for or by any creditor or governmental agency the effect of which would be to materially impair Lessee's ability to perform its obligations hereunder.

(B) Upon the occurrence of an Event of Default hereunder, without limiting Lessor's rights and remedies otherwise provided by law, at law or in equity, which will be available to Lessor in addition to the following rights and remedies (no right or remedy of Lessor being exclusive but all such rights and remedies being available at all times), Lessor may, at its option:

(i) Terminate Lessee's rights and Lessor's obligations under the Agreement and applicable Schedule(s) and recover damages;

(ii) Proceed by any lawful means to enforce performance by Lessee of its obligations under this Agreement and applicable Schedule(s) or to recover damages for a breach hereof and/or thereof;

(iii) By notice in writing to Lessee, terminate Lessee's right to possession and use of some or all of the Cars, whereupon all right and interest of Lessee in such Cars will terminate; in such event, Lessee will, at its expense, promptly return the Cars to Lessor at such place as Lessor designates and in the condition required in the applicable Schedule and Section 14 of this Agreement; or if Lessee does not promptly return the Cars on demand, Lessor may enter upon any premises where such Cars may be located and take possession thereof and hold, possess and enjoy the same free from any right of Lessee. If any Car is not returned or recovered, Lessor may recover the Loss Value of such Car;

(iv) Recover from Lessee, and Lessee shall pay on demand, any and all unpaid rental and other past due amounts, plus the present value of future lease rentals (discounted at the rate, on the date of such termination notice, for U.S. Treasuries for a term approximately equal to the remainder of the term of the applicable Schedule);

(v) Sell or relet the Cars or any part thereof to others upon such terms as Lessor may elect.

The proceeds of any reletting, for the period through the remainder of the term of the applicable Schedule (and discounted at the rate, on the date of Lessor's termination notice, for U.S. Treasuries for a term approximately equal to the remainder of the term of the applicable Schedule), shall be applied to the payment of rent and any other past due amounts, and to any accelerated future lease rentals and other sums due, under the applicable Schedule. In the case of sale, sale proceeds, less Lessor's anticipated residual, shall be applied to the payment of rent and any other past due amounts, and to any accelerated future lease rentals and other sums due, under the applicable Schedule. The election of Lessor to sell or relet the Cars and the acceptance of the Cars by a new owner or lessee shall not release Lessee from liability for any of its existing and future obligations hereunder.

The obligation of Lessee to pay sums due and unpaid and any damages suffered by reason of Lessee's default hereunder, and including any deficiency after sale or relet, shall survive the termination of the Agreement and the retaking of the Cars. If applicable, the parties hereto intend that Lessor shall be afforded all rights and remedies of a lessor under Section 1168 of the U.S. Bankruptcy Code. Interest will accrue on past due amounts, the deficiency and damages at the rate set forth in Section 4(B) of this Agreement. Lessor shall be entitled to recover all costs, expenses and attorney fees incurred by Lessor in enforcing its rights and remedies hereunder, regardless of whether a lawsuit is filed, including but not limited to repossession, transportation, storage and remarketing costs, and attorney fees, costs and expenses incurred at trial, on appeal and in any mediation, arbitration or bankruptcy proceeding.

14. Expiration or Termination

(A) Lessee will notify Lessor in writing one hundred twenty (120) days prior to either the expiration of any Schedule or the date as of which Lessee may exercise a right of early termination, if any, expressly set forth in any Schedule, of Lessee's intent to return the Cars or desire to continue leasing the Cars.

(B) Upon the expiration or earlier termination with respect to Cars on any Schedule:

(i) Lessee will return such Cars to Lessor, clean and free from all accumulations, deposits or evidence of commodities transported in or on the Cars, in as good condition and repair as when delivered to Lessee, less ordinary wear and tear, and in good operating condition and in serviceable and interchangeable condition in accordance with AAR and FRA interchange and other applicable rules and regulations. "Ordinary wear and tear" does not include (a) deterioration or damage that results from overloading, corrosion, negligence, carelessness, accident or abuse, including but not limited to disfiguration of the Cars caused by impact, thaw heat, open flame or other loading or unloading practices, or (b) or any other damage (including those conditions described in AAR Interchange Rule 95). In no event will ordinary wear and tear excuse the requirement that the Cars be in AAR and FRA interchangeable condition. After expiration of a Schedule and redelivery of the Cars, representatives of the Lessor and the Lessee will, at Lessor's option, perform a joint inspection of the Cars and execute joint inspection reports.

(ii) Until the Cars are delivered to Lessor in the required condition, Lessee will continue to be liable for and will pay all rental at the rate being paid immediately prior to expiration or termination and will make all other payments and keep all obligations and undertakings required of Lessee under this Agreement as though such expiration had not occurred; provided, however, if Lessor requests the return of the Cars and Lessee fails to return any Cars in its possession within thirty (30) days of such request, Lessor, at its option, may without notice to Lessee increase the rate Lessee is required to pay on a fixed-rate lease to one hundred fifty percent (150%) of the greater of the rate being paid immediately prior to expiration or the fair market lease rate for the Cars, and on a car hire lease to 150% of the greater of the On-Line Rate, if defined in the Schedule, or default car hire rates for the Cars. Nothing in this Section will give Lessee the right to retain possession of any Car after expiration or termination of the applicable Schedule.

(iii) Upon Lessor's request, Lessee will store the Cars for up to one hundred twenty (120) days, free of charge, at Lessor's risk except for losses and claims arising from Lessee's negligence or willful misconduct, and during such storage period rent under the applicable Schedule will not accrue. Following such storage period the Cars will be returned to Lessor as required above, and if the return conditions are not met at that time Lessee's rent obligations will be reinstated retroactive to the date each Car was released from storage.

(iv) In the event Cars bear reporting marks designated by Lessee, Lessee will pay for re-marking each Car, which re-marking will be performed at a facility mutually acceptable to Lessor and Lessee. Re-marking will include: (1) removal of existing mandatory markings and all company logos of Lessee; (2) cleaning of the area where new marks and numbers are to be placed; (3) application of new marks and numbers designated by Lessor; (4) application of properly programmed automatic equipment identification tags; and (5) any transportation involved in moving each Car to and from the re-marking location. In the event Lessee fails to re-mark the Cars as required, Lessor will have the right to arrange for the re-marking and may recover all associated costs from Lessee, and/or declare Lessee in default and pursue its remedies as provided in this Agreement.

(v) If any Car has been exposed to any hazardous material, Lessee will clean and otherwise restore the Car to the condition it was in prior to such exposure. If Lessee cannot restore the Car, then Lessor will have the right to declare an Event of Loss with respect to such Car.

15. Representations and Warranties

Lessee represents and warrants as of the date hereof that:

(A) Lessee is duly organized, validly existing and in good standing under the laws of the state of its organization and is duly qualified to do business in each state where it conducts business and is required to be

so qualified. Lessee has the power and authority to and is duly qualified and authorized to: (i) own or hold under lease its properties, and (ii) execute and perform its obligations under this Agreement. This Agreement, and each Schedule hereto, constitutes the legal, valid and binding obligation of Lessee, enforceable in accordance with its terms.

(B) The entering into and performance of this Agreement by Lessee will not (i) violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, any agreement of Lessee, or (ii) result in the creation of any lien, charge or security interest in this Agreement or the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

(C) There is no action or proceeding pending or threatened against Lessee, and there is no fact which Lessee has not disclosed in writing to Lessor, which might, alone or in combination with other factors, adversely affect Lessee's ability to perform its obligations under this Agreement or any Schedule.

16. Inspection

Lessee will provide Lessor reasonable access, at any time during normal business hours, to any premises where the Cars or Lessee's records may be located for the purpose of inspecting the Cars and ensuring Lessee's compliance with its obligations hereunder, provided that no such inspection shall unreasonably interfere with the use, operation or maintenance of the Cars. In addition, if requested by Lessor, Lessee will cooperate with all reasonable requests to assist Lessor in attempting to obtain access to premises other than Lessee's to carry out the purpose and intent of this Section 16. Upon Lessor's request, Lessee will promptly supply Lessor with information pertaining to the Cars' movements, mileage and other data, to the extent such information is available to Lessee.

17. Indemnification

Lessee assumes liability for, and unconditionally agrees to indemnify on demand, protect, save and keep harmless Lessor and its Affiliates, each financing party (if any) and the respective officers, directors, employees, agents, successors and assigns of each of the foregoing (each, an "Indemnitee"), on an after-tax basis, from and against, and agrees to pay when due, any and all losses, damages (including, without limitation, consequential damages and/or damages to property, or injury to, or illness or death of, persons), liabilities, obligations, penalties, fines, interest, duties, charges, demurrage claims, actions, suits, costs, expenses and disbursements (including reasonable legal expenses) of whatsoever kind and nature, and regardless of the legal basis thereof (including, but not limited to, strict liability in tort), in any way relating to or arising out of (i) the transactions contemplated in this Agreement, including, but not limited to, the acquisition, delivery, inspection, rejection, ownership, possession, use, operation, loading, unloading, presence, leasing, subleasing, Maintenance, repair, removal, Modification and/or Additional Requirements (each as defined in Section 7(D) above), replacement, substitution, alteration, improvement, storage, return, movement, repossession, sale or other disposition of, or transfer of title to, any Car or any part thereof (including, without limitation, any claim for loss of lading or damage to persons, property, groundwater or air or other environmental impairment, alleged to be caused by any commodity, hazardous or toxic substance or material, or solid waste), (ii) the failure of Lessee to perform any of its obligations under this Agreement, (iii) the transportation, movement or use of any Car, or (iv) any loss of, or damage to, commodities, or any part thereof, loaded or shipped on or in any Car (all of such matters described in the foregoing subsections 17(i), (ii), (iii) and (iv) hereinafter collectively referred to as "Claims"). Lessee will provide Lessor with written notice promptly after having actual knowledge of any Car becoming subject to, or causing or threatening to cause, any environmental contamination or any other material adverse condition or event. Lessee will, at its own cost and expense, defend any and all suits and other proceedings which may be brought against any Indemnitee upon any such Claim, and will satisfy, pay and discharge any and all judgments and fines that may be awarded against or imposed on any Indemnitee in any such action or proceeding. Lessee will not be required to indemnify any Indemnitee for any Claim in respect of any Car to the extent such Claim (x) accrues prior to initial delivery of the Cars to Lessee; (y) accrues while such Car is in a repair shop undergoing repairs not necessitated by Lessee's acts or omissions or any breach by Lessee of its obligations hereunder and not otherwise the responsibility of Lessee hereunder, or (z) to the extent caused by the willful misconduct or active gross negligence of such Indemnitee. All amounts payable hereunder will be due upon demand therefor by an Indemnitee. For clarity, Claims do not include Taxes, except to the extent that Lessee fails to pay Taxes in accordance with Section 9 of this Agreement and any applicable Schedule.

18. Reports

If not publicly available, Lessee will promptly furnish to Lessor the annual report or audited financial statements of Lessee and its parent company, Hi-Crush Partners LP, not less than one hundred twenty (120) days after the end of its fiscal year, and such other financial information with respect to Lessee as Lessor may reasonably request from time to time.

19. Miscellaneous

(A) LESSOR MAY SELL OR ASSIGN ALL OR ANY PORTION OF ITS RIGHTS, INTERESTS AND OBLIGATIONS UNDER THIS AGREEMENT AND ALL OR ANY PORTION OF ANY ONE OR MORE OF THE SCHEDULES CONTEMPLATED HEREBY, ALONG WITH LESSOR'S INTEREST IN SOME OR ALL OF THE CARS SUBJECT TO SUCH SCHEDULE(S). IN SUCH EVENT, SO LONG AS THE ASSIGNEE ASSUMES THE ASSIGNED RIGHTS, INTERESTS AND OBLIGATIONS OF LESSOR UNDER THE AFFECTED SCHEDULE(S) AND THIS AGREEMENT AS IT PERTAINS TO SUCH SCHEDULE(S), WITH RESPECT TO THE PERIOD FOLLOWING SUCH SALE OR ASSIGNMENT, LESSOR WILL BE RELEASED WITH RESPECT TO THE ASSIGNED OBLIGATIONS. LESSEE HEREBY CONSENTS TO ANY SUCH SALE AND ASSIGNMENT, AND AGREES TO EXECUTE AN ACKNOWLEDGMENT AND/OR CONSENT IN CONNECTION THEREWITH IN SUCH FORM AS LESSOR OR ITS ASSIGNEE MAY REASONABLY REQUIRE.

(B) IT IS UNDERSTOOD AND AGREED THAT ALL RENTS AND OTHER SUMS DUE OR TO BECOME DUE OR AT ANY TIME OWING OR PAYABLE BY LESSEE HEREUNDER HAVE BEEN OR MAY BE ASSIGNED BY LESSOR AS SECURITY OR IN CONNECTION WITH LESSOR'S BORROWING ARRANGEMENTS, AND THAT THE CARS LEASED HEREUNDER HAVE BEEN OR MAY BE MORTGAGED OR ASSIGNED BY LESSOR AS SECURITY OR IN CONNECTION WITH LESSOR'S BORROWING ARRANGEMENTS, AND LESSEE HEREBY CONSENTS TO AND ACCEPTS ANY SUCH MORTGAGE AND/OR ASSIGNMENT PROVIDED THAT LESSEE'S RIGHT OF QUIET USE AND ENJOYMENT OF THE CARS WILL NOT BE DISTURBED SO LONG AS NO EVENT OF DEFAULT HAS OCCURRED AND IS CONTINUING. IN THE EVENT SUCH AN ASSIGNMENT OF RENTS AND OTHER SUMS IS MADE AS DESCRIBED IN THIS SUBSECTION, THEN THE RIGHT, TITLE AND INTEREST OF SUCH ASSIGNEE IN AND TO SUCH RENTS AND OTHER SUMS, AND TO RECEIVE AND COLLECT THE SAME, WILL NOT BE SUBJECT TO ANY ABATEMENT, DEFENSE, SETOFF, COUNTERCLAIM OR RECOUPMENT WHATSOEVER ARISING OUT OF ANY BREACH OF ANY OBLIGATION OF LESSOR HEREUNDER OR BY REASON OF ANY OTHER INDEBTEDNESS OR LIABILITY AT ANY TIME OWING BY LESSOR TO LESSEE OR FROM ANY DEFECTS IN THE CARS. PROVIDED THAT LESSEE'S RIGHT OF QUIET USE AND ENJOYMENT OF THE CARS WILL NOT BE DISTURBED SO LONG AS NO EVENT OF DEFAULT HAS OCCURRED AND IS CONTINUING, LESSEE'S RIGHTS HEREUNDER ARE AND WILL AT ALL TIMES BE SUBJECT AND SUBORDINATE TO ANY AND ALL RIGHTS OF ANY ASSIGNEE, MORTGAGEE OR SECURITY HOLDER, PLEDGEE OR TRANSFEREE, AND ANY SUCH PARTY WILL BE ENTITLED TO ALL THE PRIVILEGES, POWERS AND IMMUNITIES OF LESSOR AND MAY, BUT WILL NOT BE OBLIGATED TO, PERFORM ANY DUTY, COVENANT OR CONDITION REQUIRED TO BE PERFORMED BY LESSOR UNDER THE TERMS OF THIS LEASE, PROVIDING THAT NOTHING IN THIS SECTION WILL RELEASE LESSOR FROM ITS OBLIGATIONS TO LESSEE HEREUNDER AND LESSEE WILL LOOK SOLELY TO LESSOR FOR THE PERFORMANCE THEREOF. AT LESSOR'S REQUEST, LESSEE WILL EVIDENCE ITS CONSENT TO THE FOREGOING BY EXECUTING A CONSENT OR ACKNOWLEDGMENT IN SUCH FORM AS MAY REASONABLY BE REQUESTED BY LESSOR OR ITS ASSIGNEE.

(C) This Agreement and the Schedules contemplated hereby will be binding upon and will inure to the benefit of the parties hereto and their respective successors and assigns; PROVIDED, HOWEVER, THAT LESSEE MAY NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR, ASSIGN THIS AGREEMENT OR ANY OF ITS RIGHTS OR OBLIGATIONS HEREUNDER, OR SUBLEASE ANY CARS TO ANY PARTY, OR ASSIGN ANY CARS TO ANY PARTY. Any purported assignment or sublease in violation hereof will be void.

(D) If any term or provision of this Agreement is, to any extent, determined by a tribunal with jurisdiction to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to other persons or circumstances, and the enforceability of such provision in any other jurisdiction, will not be affected thereby, and each provision of this Agreement will be valid and be enforceable to the fullest extent permitted by law.

(E) Both parties agree to execute any documents contemplated by this Agreement and/or as may be required to more effectively consummate the purposes of this Agreement, implement the transactions contemplated hereby, or confirm the subordination provisions contained in this Agreement.

(F) At the request of Lessor, Lessee will join Lessor in executing memoranda to be filed with the Surface Transportation Board and/or Registrar General, and/or financing statements to be filed pursuant to the Uniform Commercial Code, reflecting Lessor's and Lessee's respective interests under this Agreement. In the alternative, Lessee hereby authorizes Lessor to execute such memoranda and financing statements on Lessee's behalf (to the extent Lessee's signature is required).

(G) Lessee will deliver to Lessor, promptly after receipt of Lessor's written request therefor, such information and documents available to or in its possession as Lessor may reasonably request from time to time in order to enable Lessor to comply with any applicable (i) tax reporting, (ii) audit, or (iii) litigation requirements.

(H) Time is of the essence of this Agreement and of each of its provisions.

(I) Lessor's failure to exercise or delay in exercising any right, power or remedy available to Lessor will not constitute a waiver or otherwise affect or impair its rights to the future exercise of any such right, power or remedy. No waiver, indulgence or partial exercise by Lessor of any right, power or remedy will preclude any further exercise thereof or the exercise of any additional right, power or remedy.

(J) Any notices required or permitted to be given pursuant to the terms of this Agreement will be deemed given when made in writing, and sent via facsimile [or email] with delivery receipt, or deposited in the United States mail, registered or certified, postage prepaid, or hand-delivered by a nationally recognized courier service, addressed to:

Lessor: Greenbrier Leasing Company LLC
One Centerpointe Drive, Suite 200
Lake Oswego, OR 97035
Attention: Equipment Accounting
Facsimile: 503-968-4375
Email: equipacctg@gbrx.com

Lessee: D & I Silica, LLC
c/o Hi-Crush Partners LP
Three Riverway, Suite 1550
Houston, Texas 77056
Attention: General Counsel
Facsimile: 713-963-0088

or to such other addresses as Lessor or Lessee may from time to time designate in writing.

(K) This Agreement will be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, by and under the laws of the State of Oregon (without giving effect to principles of conflicts of laws). Lessee irrevocably and unconditionally submits to the jurisdiction of and venue in federal and/or state courts located in the State of Oregon, Multnomah County for any proceeding arising under this Agreement. LESSEE AND LESSOR AGREE AND STIPULATE THAT A FAIR TRIAL MAY BE HAD BEFORE A STATE OR FEDERAL JUDGE BY MEANS OF A BENCH TRIAL WITHOUT A JURY. IN VIEW OF THE FOREGOING, LESSEE AND LESSOR HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY

JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT, OR THE TRANSACTIONS RELATED HERETO, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

(L) Lessor will be entitled to recover all costs, expenses and attorney fees incurred by Lessor in enforcing its rights and remedies, regardless of whether a lawsuit is filed, including but not limited to attorney fees, costs and expenses incurred at trial, on appeal and in any mediation, arbitration or bankruptcy proceeding, and will be entitled to interest thereon at the rate set forth in Section 4(B) of this Agreement until paid.

(M) The obligations and liabilities of Lessor and Lessee hereunder will survive the expiration or termination of this Agreement.

(N) This Agreement represents, and each Schedule hereto will represent, the entire agreement with respect to the subject matter hereof and thereof. Nothing in this provision will be deemed to void any Lessee commitment to lease Cars from Lessor pursuant to a proposal or letter agreement not yet formally documented under a Schedule to this Agreement or another agreement between Lessor and Lessee. This Agreement may not be modified, altered, or amended, except by an agreement in writing signed by the parties.

(O) Except as may be required in connection with any permitted assignment of this Agreement or any Schedule, or to meet legal or audit requirements, neither party will disclose the terms of this Agreement or any Schedule to any third party. The foregoing obligation of confidentiality will not apply to the income tax structure or income tax treatment of the transactions contemplated by this Agreement, and each party hereto (and each employee, representative, or other agent of such party) may disclose the same to any and all persons, without limitation of any kind, and may disclose all materials of any kind (including opinions or other tax analyses) that are provided to such party relating to such tax treatment and tax structure.


(P) This Agreement may be executed in any number of counterparts, and such counterparts together constitute but one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

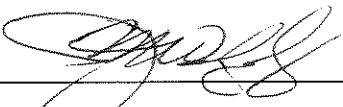
LESSOR:

GREENBRIER LEASING COMPANY LLC

BY: 
NAME: J. T. Staud
TITLE: President

LESSEE:

D & I SILICA, LLC

BY: 
NAME: JAMES M. WHIPKEY
TITLE: Co-CEO & President