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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of September 1, 1970

among

GENERAL ELECTRIC COMPANY,

BANKERS TRUST COMPANY,
as Trustee,

and

DELAWARE AND HUDSON RAILWAY COMPANY

CONDITIONAL SALE AGREEMENT dated as of September 1, 1970, among GENERAL ELECTRIC COMPANY, a New York corporation (hereinafter called the Vendor or Manufacturer as more particularly set forth in Article 27 hereof), BANKERS TRUST COMPANY, as Trustee under the Trust Agreement (hereinafter called the Trust Agreement and said Trustee being hereinafter called the Trustee) dated as of September 1, 1970, with GENERAL ELECTRIC CREDIT CORPORATION and DELAWARE AND HUDSON RAILWAY COMPANY, a Delaware corporation (hereinafter called the Guarantor or the Lessee).

WHEREAS, the Manufacturer agrees to construct, sell and deliver to the Trustee, and the Trustee agrees to purchase, the railroad equipment described in Annex B hereto (hereinafter called the Equipment); and

WHEREAS, the Trustee is executing a lease of the Equipment as of the date hereof to the Lessee in substantially the form annexed hereto as Annex C (hereinafter called the Lease) and the Guarantor is willing to guarantee to the Vendor the due and punctual payment of all sums payable by, and the due and punctual performance of all other obligations of, the Trustee under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty and making certain further agreements as hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Construction and Sale.* Pursuant to this Agreement, the Manufacturer will construct the Equipment at its plant set forth in Annex B hereto and will sell and deliver the Equipment to the Trustee and the Trustee will purchase from the Manufacturer and accept delivery

of and pay for (as hereinafter provided) the Equipment, each unit of which will be a new standard-gauge unit of railroad equipment, constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may have been agreed upon in writing by the Manufacturer, the Trustee and the Guarantor (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of the Equipment will conform to all Department of Transportation and Interstate Commerce Commission requirements and specifications and all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

ARTICLE 2. *Delivery.* The Manufacturer will deliver the various units of the Equipment to the Trustee, at the point specified in, and in accordance with, the delivery schedule set forth in Annex B hereto; *provided, however,* that no delivery of any unit of the Equipment shall be made until this Agreement and the Lease have been filed pursuant to Section 20c of the Interstate Commerce Act; *provided further,* that Manufacturer shall have no obligation to deliver any unit of Equipment hereunder subsequent to the filing by or against the Guarantor of a petition for reorganization under Section 77 of the Bankruptcy Act and prior to the assumption, adoption or affirmation of the obligations of the Guarantor under this Agreement by a trustee or trustees acting pursuant to a court order or decree in any proceeding under said Section 77.

The Manufacturer and the Guarantor represent and warrant that, at the time of the delivery of the Equipment to the Trustee, the Equipment will be new equipment and will not have been used by any person. The Guarantor

represents and warrants that no amortization deduction or depreciation will have been claimed by any person with respect thereto.

The Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Manufacturer's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered, accepted and settled for pursuant to Article 3 hereof on or before December 30, 1970 (unless such date is extended by the Trustee, the Guarantor and the Vendor by appropriate written agreement), shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion (a) the Vendor, the Trustee and the Guarantor shall execute an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered, accepted and settled for hereunder and (b) if such exclusion resulted from one or more of the causes referred to in the next preceding paragraph, a separate agreement shall be entered into between the Manufacturer and the Guarantor providing for the purchase of such excluded Equipment by the Guarantor, on the terms herein specified, payment to be made in cash on delivery of such Equipment either directly or by means of a conditional sale, equipment trust or such other appropriate method of financing the purchase as the Guarantor and the Manufacturer shall mutually determine.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized

representatives of the Trustee (who may be employees of the Guarantor), and the Manufacturer shall grant to such inspectors or such authorized representatives reasonable access to its plant. From time to time upon the completion of the construction of each unit or of a number of units of the Equipment, such unit or units shall be presented to such inspector or other authorized representative for inspection at the place designated for delivery of the Equipment and, if each such unit conforms to the Specifications, such inspector or representative shall execute and deliver to the Manufacturer, in such number of counterparts or copies as may reasonably be requested, a certificate of delivery and acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Trustee and are marked in accordance with the provisions of Article 9 hereof; *provided, however,* that the Manufacturer shall not thereby be relieved of its warranty contained in Item 1 of Annex A hereto.

On delivery of each of the units of Equipment hereunder and acceptance thereof on behalf of the Trustee as aforesaid, the Manufacturer shall have no further responsibility nor bear any risk of loss.

ARTICLE 3. *Purchase Price and Payment.* The base price per unit of the Equipment is set forth in Annex B hereto. Such base price is subject to such increase or decrease as is agreed to by the Manufacturer, the Trustee and the Guarantor. The term "Purchase Price" as used herein shall mean the base price as so increased or decreased. If on any Closing Date (as hereinafter defined in this Article 3) the aggregate of the Invoiced Purchase Prices (as hereinafter defined in this Article 3) for which settlement has theretofore been and is then being made under this Agreement would, but for the provisions of this sentence, exceed $2,556,000 (or such higher amount as the Trustee may at its option agree to), the Manufacturer

(and any assignee of the Manufacturer) and the Guarantor will, upon request of the Trustee, enter into an agreement excluding from this Agreement such unit or units of Equipment, then proposed to be settled for and specified by the Trustee, as will, after giving effect to such exclusion reduce such aggregate Invoiced Purchase Prices under this Agreement to not more than $2,556,000 (or such higher amount as aforesaid), and the Guarantor agrees to purchase any such unit or units so excluded from this Agreement from the Manufacturer for cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, if the Manufacturer and the Guarantor shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing.

The Equipment shall be settled for in not more than two groups of units of the Equipment delivered to and accepted by the Trustee (each such group being hereinafter called a Group), unless the Trustee, the Guarantor and the Manufacturer shall otherwise agree. The term "Closing Date" with respect to any Group shall mean such date (not earlier than September 15, 1970 and not later than December 30, 1970), occurring not more than ten business days following presentation by the Manufacturer to the Trustee of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Guarantor by written notice delivered to the Trustee and the Vendor at least five business days prior to the Closing Date designated therein; *provided, however,* that all Groups to be settled for prior to December 15, 1970, shall have an aggregate Purchase Price not exceeding $852,370. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Baltimore, Maryland or New York, New York are authorized to remain closed.

The Trustee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) On each Closing Date with respect to each Group (i) an amount equal to 29.96% of the aggregate Purchase Price of such Group plus (ii) the amount by which (x) 70.04% of the aggregate of the Purchase Price of all units of the Equipment covered by this Agreement for which settlement has theretofore and is then being made, as set forth in the invoice or invoices therefor (said invoiced price being herein called the Invoiced Purchase Prices) exceeds (y) the sum of $1,790,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to clause (ii) of this subparagraph (a); and

(b) In 30 consecutive semiannual instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment in the Group for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The first instalment of the portion of the Purchase Price of each Group of Equipment payable pursuant to subparagraph (b) of the preceding paragraph (said portion of the aggregate Purchase Price for all Groups being herein called the Conditional Sale Indebtedness) shall be payable on March 1, 1971, and subsequent instalments shall be payable semiannually thereafter on each March 1 and September 1 to and including September 1, 1985 (or if any such date is not a business day on the next succeeding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of

which such Indebtedness was incurred at the rate of 10½% per annum and such interest shall be payable, to the extent accrued, on each March 1 and September 1, commencing March 1, 1971. The principal amount of Conditional Sale Indebtedness payable on each of the 30 semiannual Payment Dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each Payment Date shall be substantially equal and such 30 instalments of principal and interest will completely amortize the Conditional Sale Indebtedness; *provided, however,* that in calculating the amount of the first principal payment it shall be assumed that interest is payable for a full six months' period. The Trustee will furnish to the Vendor and the Guarantor promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Trustee will pay interest at the rate of 11% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts in immediately available funds not later than 11:00 a.m. Baltimore time on the date such payments are due. Except as provided in Article 5 hereof, the Trustee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The parties hereto contemplate (subject to the limitations set forth in the first paragraph of this Article 3) that the Trustee will furnish that portion of the Pur-

chase Price for each Group of Equipment as is required under subparagraph (a) of the third paragraph of this Article 3 and that an amount equal to the balance of such Purchase Price shall be paid to the Manufacturer by an assignee of the Manufacturer's right, title and interest under this Agreement pursuant to an Agreement and Assignment between the Manufacturer and Mercantile-Safe Deposit and Trust Company, as Agent (such Agreement and Assignment being hereinafter called the Assignment and such Agent being herein called the Assignee or the Vendor as indicated in Article 27 hereof).

It is agreed that the obligation of the Trustee to pay to the Vendor any amount required to be paid pursuant to subparagraph (a) of the third paragraph of this Article 3 with respect to any Group of Equipment is specifically subject to the following conditions:

(a) the Assignee shall have paid or caused to have been paid to the Manufacturer the amounts contemplated to be paid by it as provided in the preceding paragraph of this Article 3 and in Section 5 of the Assignment and the documents required by Section 5 of the Assignment shall have been delivered;

(b) no event of default of the Guarantor specified herein or of the Lessee under the Lease, nor any event which with the lapse of time and/or notice provided for herein or in the Lease would constitute such an event of default, shall have occurred and be continuing;

(c) No event of default of the Guarantor specified in subparagraphs (c) or (d) of the first paragraph of Article 17 hereof or of the Lessee specified in subparagraphs D or E of the first paragraph of § 9 of the Lease, nor any event which with the lapse of time provided for herein or in the Lease would constitute such an event of default, shall have occurred, whether

or not such an event of default has occurred or is continuing; and

(d) the Trustee shall have received (i) the opinion of counsel required by § 13 of the Lease, (ii) the certificate required by § 6 of the Lease and (iii) such other documents as the Trustee may reasonably request.

Notwithstanding any other provision of this Agreement, it is understood and agreed by the Vendor that liability of the Trustee for all payments to be made by it under and pursuant to this Agreement, with the exception only of the payments to be made pursuant to Article 22 hereof and subparagraph (a) of the third paragraph of Article 3 hereof, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Trustee only to the extent that the Trustee or any assignee of the Trustee shall have actually received sufficient "income or proceeds from the Equipment" to make such payments. Except as provided in the next preceding sentence, the Vendor agrees that the Trustee in its capacity as trustee and the trust in respect of which the Trustee is acting as trustee shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Trustee or any assignee of the Trustee as above provided. In addition, the Vendor agrees and understands that the Trustee (i) makes no representation or warranty, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease (or any document relative thereto) or of any of the Lessee's or the Guarantor's obligations thereunder and (ii) shall have no obligation, duty or other liability whatsoever to see to or be responsible for the performance or observance by the Lessee or the Guarantor of any of its agreements,

representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Guarantor and the Equipment and to the Vendor's rights under the Lease against the Lessee, the Guarantor and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 17 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Trustee or any assignee of the Trustee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as hereinafter defined in Article 5 hereof) paid for or with respect to the Equipment pursuant to the Lease and (b) any and all payments or proceeds received by the Trustee or any assignee of the Trustee under the Lease or for or with respect to the Equipment as the result of the sale, lease or other disposition thereof and after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Trustee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts received by the Trustee or any assignee of the Trustee were required to be paid to it pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Trustee or any assignee of the Trustee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the

Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the Payment Date corresponding to the date on which amounts with respect thereto received by the Trustee or any assignee of the Trustee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. It is further specifically understood and agreed that nothing contained herein limiting the liability of the Trustee shall derogate from the right of the Vendor to proceed against the Equipment or the Guarantor as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon. The Vendor agrees, however, that in the event it shall obtain a judgment against the Trustee for an amount in excess of the amounts payable by the Trustee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to such amount.

ARTICLE 4. *Title to the Equipment.* The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Trustee shall have made all the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Trustee or the Guarantor as herein provided. Any and all additions to the Equipment (except for communications, signal and automatic control equipment or devices having a similar use which have been added to the Equipment by the Guarantor, the cost of which is not included in the Purchase Price of the Equipment and which are not required for the operation or use of the Equipment by a railroad subject to regulation by the Interstate Commerce Commission or the Department of Transportation or any other regulatory body having jurisdiction or by

standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement), and any and all replacements of the Equipment and of parts thereof shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 5 hereof, when and only when the Vendor shall have been paid the full amount of the Purchase Price of all the Equipment, together with interest and all other payments as herein provided, and all the Trustee's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Trustee, will, at the expense of the Trustee, execute appropriate instruments confirming such passage to the Trustee of title to and property in the Equipment free of all liens and encumbrances created or retained hereby and deliver such instruments to the Trustee at its address specified in Article 23 hereof, and will, at the expense of the Trustee, execute in the same manner and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Trustee to the Equipment, and will pay to the Trustee any money paid to the Vendor pursuant to Article 5 hereof and not theretofore applied as therein provided.

The Trustee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instruments or to file any certificate of

payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instruments or to file such certificate within a reasonable time after written demand of the Trustee.

ARTICLE 5. *Casualty Occurrences; Insurance.* In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed or, in the opinion of the Trustee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being herein called Casualty Occurrences), the Trustee shall, within 14 days after it shall have determined that such unit has suffered a Casualty Occurrence (or as of such earlier date as the Trustee may receive notice thereof under the Lease), fully inform the Vendor in writing in regard thereto. On the next succeeding March 1 or September 1, whichever is earlier, the Trustee shall pay to the Vendor a sum equal to the aggregate Casualty Value (as hereinafter defined) of all units of the Equipment which have suffered a Casualty Occurrence, determined as of the date of such payment, as to which payment shall not previously have been made to the Vendor pursuant to this Article 5 and shall cause to be filed with the Vendor a certificate setting forth the Casualty Value of such units. Any money paid to the Vendor pursuant to this paragraph with respect to any unit of the Equipment suffering a Casualty Occurrence shall be applied to prepay the Conditional Sale Indebtedness of the Group of which such unit was a part and the Trustee will promptly furnish to the Vendor and the Guarantor a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor may request, calculated as provided in the fourth paragraph of Article 3 hereof, so that the remaining payments shall be substantially equal.

Upon payment by the Trustee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Trustee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Trustee, will execute and deliver to the Trustee, at the expense of the Trustee, an appropriate instrument confirming such passage to the Trustee of all the Vendor's right, title and interest in such unit, in recordable form, in order that the Trustee may make clear upon the public records the title of the Trustee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article 5), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of a Group made pursuant to Article 3 hereof shall be deemed to be a payment on each unit of the Equipment in such Group in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Group in which such unit is included.

The Guarantor will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Guarantor on equipment owned by it.

Such insurance shall be payable to the Vendor, the Trustee and the Guarantor as their interests may appear to the extent that the Guarantor is permitted to do so under such policies of insurance.

On or before April 15 in each year, commencing with the year 1971, the Guarantor will cause to be furnished to the Vendor and the Trustee in such number of counterparts as the Vendor or the Trustee may request, a certificate of an officer of the Guarantor (a) describing the insurance policies, if any, carried and maintained by the Guarantor pursuant to the next preceding paragraph as of the preceding December 31, and (b) certifying that such insurance policies satisfy the requirements of this Article 5 or that no insurance is necessary to satisfy the requirements of this Article 5.

It is further understood and agreed that any insurance proceeds received by the Vendor in respect of units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Trustee to the Vendor in respect of Casualty Occurrences pursuant to the first paragraph of this Article 5. If the Vendor shall receive any other insurance proceeds in respect of insurance carried in respect of such units suffering a Casualty Occurrence after the Trustee shall have made payments pursuant to this Article 5 without deduction for such insurance proceeds, the Vendor shall pay such insurance proceeds to the Trustee. All proceeds of insurance received by the Vendor in respect of insurance carried on any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Trustee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 6. *Obligations of Guarantor.* The Guarantor, for value received, hereby unconditionally guarantees to

the Vendor by endorsement (through its execution hereof) the due and punctual payment of that portion of the Purchase Price of the Equipment payable pursuant to subparagraph (b) of the third paragraph of Article 3 hereof and interest thereon, and the due and punctual performance of all obligations of the Trustee under this Agreement and unconditionally guarantees to the Vendor that all sums payable by the Trustee under this Agreement (except for the sums payable by the Trustee pursuant to subparagraph (a) of the third paragraph of Article 3 hereof), will be promptly paid when due, together with interest thereon as herein provided, whether at stated maturity or by declaration or otherwise, and in case of default by the Trustee in any such obligations or payments the Guarantor agrees punctually to perform or pay the same, irrespective of any enforcement against the Trustee of any of the rights of the Vendor hereunder.

The Guarantor hereby agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever), irrespective of the genuineness, validity, regularity or enforceability of this Agreement or any other circumstance which might otherwise constitute a legal or equitable discharge of a surety or guarantor and irrespective of the last paragraph of Article 3 hereof or the provisions of Article 24 hereof or any other circumstances (including an assignment by the Vendor of all its right, title and interest under this Agreement to a person designated by the Trustee pursuant to the provisions of the ninth paragraph of Article 18 hereof) which might otherwise limit the recourse of the Vendor to the Trustee. The Guarantor hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof in whole or in part or of any default hereunder and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by

the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder.

In the event that the Guarantor shall make any payments to the Vendor on account of its guaranty hereunder, the Guarantor hereby covenants and agrees that it shall not acquire any rights, by subrogation or otherwise, against the Trustee or with respect to any of the units of the Equipment by reason of such payments, all such rights being hereby irrevocably released, discharged and waived by the Guarantor; *provided, however,* that after the payment by the Guarantor to the Vendor of all sums payable under this Agreement, the Guarantor shall, by subrogation, be entitled to the rights of the Vendor against the Trustee by reason of such payment, to the extent, but only to the extent, that the Trustee has received "income and proceeds from the Equipment" (as defined in Article 3 hereof) and has not applied amounts equal to such income and proceeds to the payment, in accordance with this Agreement and subject to the limitations contained in the last paragraph of said Article 3, of sums payable by the Trustee to the Vendor hereunder.

ARTICLE 7. *Maintenance and Repairs.* The Trustee agrees that, at its own cost and expense, it will maintain and keep each unit of the Equipment in good order and repair.

ARTICLE 8. *Reports and Inspections.* On or before April 15 in each year, commencing with the year 1971, the Trustee will cause to be furnished to the Vendor in such number of counterparts as the Vendor may request an accurate statement as of the preceding December 31 (a) showing the amount, description and numbers of the Equipment then covered hereby, the amount, description and numbers

of all units of the Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of delivery hereunder of the Equipment in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request, and (b) stating that, in the case of all units of the Equipment repainted or repaired during the period covered by such statement, the markings required by Article 9 hereof have been preserved or replaced.

ARTICLE 9. *Identification Marks.* The Trustee will cause each accepted unit of the Equipment to be kept numbered with the identifying number as set forth in Annex B and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such unit, in letters not less than one inch in height, the words "MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, BALTIMORE, MARYLAND, AGENT-SECURITY OWNER" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Vendor to such unit and the rights of the Vendor under this Agreement. The Trustee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such names and words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such names and word or words which may be removed, defaced or destroyed. The Trustee will not permit the identifying number of any unit of Equipment to be changed except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded or deposited in all public offices where this Agreement will have been filed, recorded or deposited.

Except as above provided, the Trustee will not allow the name of any person, association or corporation to be placed on any units comprising the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however,* that the Trustee may allow the Equipment to be lettered with the names or initials or other insignia customarily used by the Guarantor or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the interests of the Guarantor therein.

ARTICLE 10. *Taxes.* All payments to be made by the Trustee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state or Federal or Canadian (Dominion or Provincial) taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes], franchise taxes measured by net income based on such receipts, excess profits and similar taxes), assessments, license fees, charges, fines or penalties (hereinafter called impositions) hereafter levied or imposed upon, or in connection with, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which impositions the Trustee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Trustee will also pay promptly all impositions which may be imposed upon the Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any unit of the Equipment; *provided, however,* that the Trustee shall be under no obligation to pay any impositions so long as it is contesting

in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Trustee shall reimburse the Vendor on presentation of an invoice therefor.

ARTICLE 11. *Compliance with Laws and Rules.* During the term of this Agreement, the Trustee will comply, and will cause any lessee of the Equipment to comply, in all respects with all laws of the jurisdictions in which operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the Interstate Commerce Commission, the Department of Transportation and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, the Trustee will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; *provided, however,* that the Trustee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

ARTICLE 12. *Possession and Use.* The Trustee, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Manufacturer to the Trustee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Trustee may lease the Equipment to the Lessee or its assigns as permitted by, and for use as provided in, the Lease; *provided, however,* that (the Lessee hereby so acknowledging) if and only if the Lessee shall be in default under the Lease or under this Agreement in its capacity as guarantor or otherwise, the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement and, so long as no such default shall be continuing, the Lessee shall be entitled to possession and use of the Equipment. The Trustee hereby agrees that it will not exercise any of the remedies provided in the case of an Event of Default under and as defined in the Lease unless it shall notify the Vendor and the Guarantor in writing of its intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by it upon the Lessee or served by the Lessee upon it in connection therewith.

So long as no event of default as specified in Article 17 hereof shall have occurred and be continuing hereunder, the Trustee shall be entitled to the possession and use of the Equipment and the Equipment may be used upon the lines of railroad owned or operated by the Lessee or any affiliate of the Lessee (or any other railroad company approved by the Vendor) or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, trackage or other operating rights and the Equipment may be used upon other railroads in the usual interchange of traffic but only upon and subject to all the terms and conditions of this Agreement; *provided, however,* that in no event shall the Trustee regularly use, or permit the regular use, of any unit of the Equipment outside the United States of America except on an inci-

dental basis in the Province of Quebec, Dominion of Canada. The Trustee may also lease the Equipment to any other railroad company with prior written consent of the Vendor, which consent shall not be unreasonably withheld, provided that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement and provided such lessee shall expressly agree to abide by the proviso to the next preceding sentence. A copy of such lease shall be furnished to the Vendor.

ARTICLE 13. *Prohibition Against Liens.* The Trustee will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Trustee or its successors or assigns which, if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the title of the Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 14. *Indemnities and Warranties.* The Trustee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, or out of the use and operation thereof during the period when title thereto remains in the

Vendor. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as provided in Article 4 hereof, or the termination of this Agreement in any manner whatsoever.

The Trustee will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The agreement of the parties relating to the Manufacturer's warranty of material and workmanship contained in Item 1 of Annex A hereto is herein incorporated in this Article 14 with the same effect as if herein set forth.

ARTICLE 15. *Patent Indemnity.* The Agreement of the parties relating to patent indemnification contained in Item 2 of Annex A hereto is herein incorporated in this Article 15 with the same effect as if herein set forth.

ARTICLE 16. *Assignments.* The Trustee will not sell, assign or transfer its rights under this Agreement or, except as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment unless such assignment or transfer is made expressly subject in all respects to the rights and remedies of the Vendor hereunder. Any such assignment or transfer may be made by the Trustee without the assignee or transferee assuming any of the obligations of the Trustee hereunder (and the Trustee shall, in any event, remain liable for all of the obligations of the Trustee hereunder), but shall be subject to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Trustee and the Guarantor).

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive

the payments herein provided to be made by the Trustee and the benefits arising from the undertakings of the Guarantor hereunder, may be assigned by the Vendor and reassigned by an assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturer from, any of the obligations of the Manufacturer to construct and to deliver the Equipment in accordance herewith or to respond to its warranties and agreements contained or referred to in Articles 14 and 15 hereof, or relieve the Trustee or the Guarantor of their respective obligations to the Manufacturer contained or referred to in Articles 1, 2, 3, 6, 10, 14 and 15 hereof or in the last paragraph of this Article 16, or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Trustee and the Guarantor, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the Vendor's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Trustee and the Guarantor, respectively, of the notification of any such assignment, all payments thereafter to be made by the Trustee or the Guarantor hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee.

The Trustee and the Guarantor recognize that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understand that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Trustee and the Guarantor expressly represent, for the pur-

pose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided the rights of such assignee to the entire unpaid Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer with respect to the Equipment or the delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Trustee or the Guarantor by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Trustee or the Guarantor, as the case may be, against and only against the Manufacturer.

In the event of any such assignment or successive assignments by the Vendor of title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Trustee will, whenever requested by such assignee, change the names and word or words to be marked on each side of each unit of the Equipment, so as to indicate the title of such assignee to the Equipment with such names and word or words reasonably specified by such assignee to denote such assignee's interest in the Equipment, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such names and word or words for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of marking such names and word or words with respect to the first assignee of this Agreement (or to a successor

agent or trustee in case the first assignee is an agent or trustee) shall be borne by the Manufacturer. The cost of marking such names and word or words in connection with any subsequent assignment (other than to a successor agent or trustee if the first assignee is an agent or trustee) will be borne by the subsequent assignee.

The Trustee and the Guarantor will, in connection with settlement for any Group of Equipment, deliver to the assignee, at the time of delivery by the Guarantor of notice fixing the Closing Date with respect to such Group, all documents required by the terms of the assignment to be delivered to the assignee in connection with such settlement, in such number of counterparts as may reasonably be requested, except for any opinion of counsel for the assignee.

If the Manufacturer shall not receive on the Closing Date with respect to a Group of Equipment the aggregate Purchase Price in respect of such Group, the Manufacturer will promptly notify the Trustee and the Guarantor of such event and, if such amount shall not have been previously paid, the Trustee and the Guarantor will, upon the request of the Manufacturer, enter into an appropriate written agreement with the Manufacturer excluding the units of Equipment in such Group from this Agreement, and the Guarantor will, not later than 90 days after the Closing Date, purchase such Group from the Manufacturer for cash, together with interest thereon from such Closing Date to the date of payment by the Guarantor at the average prime rate of interest of the five largest New York City banks in effect at 11:00 a.m., New York time, on such Closing Date.

ARTICLE 17. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) The Trustee shall fail to pay in full any sum payable by the Trustee when payment thereof shall be

due hereunder and such default shall continue for 15 days; or

(b) The Trustee or the Guarantor shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) Any proceeding (other than a proceeding under Section 77 of the Bankruptcy Act) shall be commenced by or against the Guarantor for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Guarantor under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Guarantor or for the property of the Guarantor in connection with any such proceedings or otherwise given the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(d) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by

or against the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Guarantor under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment (whether or not subject to confirmation by the Interstate Commerce Commission), if any, or 60 days after such petition shall have been filed, whichever shall be later; or

(e) The Trustee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Trustee and the Guarantor and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the rights of the Lessee referred to in Article 12 hereof, cause the Lease immediately upon such notice to terminate (and the Trustee and the Guarantor each acknowledge the right of the Vendor to terminate the Lease) and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such Purchase Price and such interest shall bear interest from the date of such Declaration of Default at the rate of 11% per annum

and the Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Trustee (subject to the provisions of the last paragraph of Article 3 hereof) or the Guarantor wherever situated. The Trustee or the Guarantor, as the case may be, shall promptly notify the Vendor of any event which has come to its attention which constitutes, or would constitute but for the giving of notice and/or lapse of time, an event of default under this Agreement.

The Vendor may waive any such event of default and its consequences and rescind any Declaration of Default or notice of termination of the Lease by notice to the Trustee and the Guarantor in writing to that effect, and thereupon, except as otherwise provided in this Agreement, the respective rights of the parties shall be as they would have been if no such default had existed and no Declaration of Default or notice of termination of the Lease had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Trustee and the Guarantor that time is of the essence of this Agreement and that no such waiver or rescission shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 18. *Remedies.* At any time during a Declaration of Default, the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law then in force and applicable to the action to be taken by the Vendor (subject to the rights of the Lessee under the Lease referred to in Article 12 hereof) take, or cause to be taken by its agent or agents, immediate possession of the Equipment, or any unit thereof, without liability to return to the Trustee or the Guarantor any sums theretofore paid and free from all claims what-

soever, except as hereinafter in this Article 18 expressly provided, and may remove the same from possession and use of the Trustee or anyone having such possession and use and for such purpose may enter upon the premises of the Trustee or the Guarantor or where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Trustee or the Guarantor, with or without process of law.

In case the Vendor shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Guarantor for the delivery of the Equipment to the Vendor, the Guarantor shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall be reasonably designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines of railroad or premises of the Guarantor until the Vendor shall have leased, sold or otherwise disposed of the same. For such purpose the Guarantor agrees to furnish without charge for rent or storage, the necessary facilities at any reasonably convenient point or points selected by the Vendor. This agreement to deliver the Equipment as hereinbefore provided is of the essence of this Agreement between the parties, and upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Trustee and/or the Guarantor requiring specific performance hereof; *provided, however,* that if the Guarantor is in possession of the Equipment, the Vendor shall be entitled to such a decree only against the Guarantor. The Trustee and the Guarantor hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever

nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 18 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment together with interest thereon accrued and unpaid and all other payments due under this Agreement and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Trustee and the Guarantor by telegram or registered mail, addressed as provided in Article 23 hereof, and to any other persons to whom the law may require notice within 30 days after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable. In the event that the Vendor should elect to retain the Equipment, and no objection is made thereto within the 30-day period described in the second proviso below, all rights of the Trustee in the Equipment will thereupon terminate and all payments made by the Trustee or the Guarantor may be retained by the Vendor as compensation for the use of the Equipment; *provided, however,* that if the Trustee, before the expiration of the 30-day period described in the proviso below should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee; and *provided, further, however,* that if the Trustee or any other persons notified under the terms of this paragraph object in writing

to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law.

At any time during the continuance of a Declaration of Default, the Vendor with or without the retaking of possession thereof at its election and upon reasonable notice to the Trustee, the Guarantor and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Trustee, or of any other party (including the Guarantor) claiming by, through or under the Trustee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however,* that if prior to such sale or prior to the making of a contract for such sale, the Trustee should tender full payment of the entire indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking, holding and preparing the Equipment for disposition and arrangement for the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee. The proceeds of such sale, or of any lease or other disposition of the Equipment as provided hereunder, less the attorneys' fees and any other expenses incurred by the Vendor in taking possession of, removing, storing and so disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may

specify, in one lot and as an entirety or in separate lots, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine; *provided, however,* that the Trustee and the Guarantor shall be given written notice of such sale as provided hereinabove. If such sale shall be a private sale it shall be subject to the right of the Trustee and the Guarantor to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Trustee or the Guarantor (except to the extent of surplus money received as hereinafter provided in this Article 18), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor from the Trustee hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor, except as such exercise may expressly be limited herein. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others, except as such exercise may expressly be limited herein. No delay, except where time limits are expressly herein provided, or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

All sums of money realized by the Vendor under the remedies herein provided shall be applied, *first* to the payment of the expenses and liabilities of the Vendor herein undertaken to be paid, *second* to the payment of interest on the unpaid Purchase Price of the Equipment accrued and unpaid and *third* to the payment of the unpaid Purchase Price of the Equipment. If, after applying as aforesaid all sums of money realized by the Vendor, there shall remain any amount due to it under the provisions of this Agreement, the Trustee, subject to the provisions of the last paragraph of Article 3 hereof, shall pay the amount of such deficiency to the Vendor upon demand, and, if the Trustee shall fail to pay the full deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Trustee, subject to the provisions of the last paragraph of Article 3 hereof, and the Guarantor. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Trustee or the Guarantor, as the case may be, to the extent of their interest therein.

The Trustee, subject to the provisions of the last paragraph of Article 3 hereof, will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover, subject to the provisions of the last paragraph of Article 3 hereof, reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

At any time during the continuance of a Declaration of Default due to an event of default occasioned by an act or omission of the Guarantor hereunder or attributable to the Lessee under the Lease, and if such Declaration of Default shall not have been rescinded by the Vendor within

30 days of the making thereof, or if the Vendor theretofore has indicated either in writing to the Trustee or the Guarantor or by commencement of the remedies specified in this Article 18 that it will not rescind such Declaration of Default, the Vendor, upon payment to it of an amount equal to the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, shall enter into an appropriate agreement assigning to any person designated by the Trustee all the Vendor's right, title and interest in and to the Equipment and under this Agreement.

The foregoing provisions of this Article 18 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

ARTICLE 19. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any state shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Trustee and the Guarantor to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Trustee and the Guarantor, to the full extent permitted by law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

ARTICLE 20. *Extension not a Waiver.* Any extension of time for payment hereunder or other indulgence duly

granted to the Trustee shall not otherwise alter or affect the Vendor's rights or the obligations of the Trustee or the Guarantor hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Trustee's or the Guarantor's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 21. *Recording.* The Trustee and the Guarantor will cause this Agreement, the first assignment hereof and any supplements hereto and thereto to be filed, recorded or deposited and refiled, re-recorded or redeposited with the Interstate Commerce Commission and otherwise as may be required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Trustee or the Guarantor will promptly furnish to the Vendor evidences of such filing, recording or depositing, and an opinion or opinions of counsel with respect thereto, satisfactory to the Vendor. This Agreement shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance of any unit of the Equipment.

ARTICLE 22. *Payment of Expenses.* The Trustee will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Manufacturer and the Guarantor) incident to the preparation and execution of this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), or any instrument supplemental thereto, including all fees and expenses of special counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any

party of interests acquired in such first assignment; and the Guarantor agrees to pay the balance of such costs, expenses and fees (other than fees and expenses of counsel for the Manufacturer). For the purposes of this Article 22, if the first assignee is an agent, then any successor thereto shall be considered the first assignee.

ARTICLE 23. *Notice.* Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Trustee, at 16 Wall Street, New York, New York 10015, attention of Corporate Trust Division, with a copy to General Electric Credit Corporation, P. O. Box 8300, Stamford, Connecticut 06904,

(b) to the Guarantor, at The Plaza, Albany, New York 12207,

(c) to the Manufacturer, at 2901 East Lake Road, Erie, Pennsylvania 16501,

(d) to any assignee of the Vendor, or of the Trustee, at such address as may have been furnished in writing to the Trustee, or the Vendor, as the case may be, and to the Guarantor, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement. The Trustee represents and warrants that its chief place of business is in the State of New York.

ARTICLE 24. *Immunities; Satisfaction of Undertakings.* No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Trustee, the Guarantor or the Manufacturer (or Vendor), or against any beneficiary of the trust under which the Trustee is acting, whether by virtue of any constitutional provision, statute or rule of

law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors, officers or beneficiaries being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Trustee under Articles 7, 8, 9, 10, 11, 13, 14, 15 and 21 hereunder shall be deemed in all respects satisfied by the Lessee's undertakings contained in §§ 4, 5, 7, 8, 11 and 15 of the Lease. The Guarantor shall be liable in respect of its guaranty hereunder for such obligations under said Articles regardless of whether or not the Lease provides for the discharge of such obligations or is in effect. The Trustee shall not have any responsibility for the Lessee's failure to perform such undertakings, but if the same shall not be performed they may constitute the basis for an event of default hereunder pursuant to Article 17. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of the Trustee, while in form purporting to be the representations, covenants, undertakings and agreements of the Trustee are nevertheless each and every one of them, made and intended not as personal representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding the Trustee personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by the Trustee not in its own right but solely in the exercise of the powers expressly conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by

or shall at any time be asserted or enforceable against the Trustee, or any beneficiary of the trust under which the Trustee is acting on account of this Agreement or on account of any representation, covenant, undertaking or agreement of the Trustee or any beneficiary under the Trust Agreement, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; *provided, however,* that the Vendor or any person claiming by, through or under any of them, making claim hereunder, may look to the Trust Estate for satisfaction of the same.

ARTICLE 25. *Effect and Modification of Agreement.* This Agreement, and the annexes relating hereto, exclusively and completely state the rights and agreements of the Vendor, the Trustee and the Guarantor with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Vendor, the Trustee and the Guarantor.

ARTICLE 26. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 27. *Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, General Electric Company and any successor or successors for the time being to its

manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor or assignors as regards any rights hereunder that are retained or excluded from any assignment; and the term "Manufacturer", whenever used in this Agreement, means, both before and after any such assignment, General Electric Company and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 28. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of September 1, 1970, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

GENERAL ELECTRIC COMPANY,

by C. J. Bressler

[CORPORATE SEAL]

~~General~~ *Manager—* Marketing
Locomotive Department

Attest:

J. T. Hughes

Attesting Secretary

BANKERS TRUST COMPANY, as
Trustee under a Trust Agreement
dated as of September 1, 1970

by .....
Vice President

[CORPORATE SEAL]

Attest: .....
Assistant Secretary

DELAWARE AND HUDSON RAILWAY
COMPANY

by ..J. F. Reilly.....
Vice President

[CORPORATE SEAL]

Attest: .....
~~*Assistant*~~ *Secretary*

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF ERIE } ss.:

On this 18 day of September, 1970, before me personally appeared C. S. BRESSLER me personally known, who, being by me duly sworn, says that he is the ~~General~~ Marketing Manager—Locomotive Department of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Audrey A. Bromkowski
Notary Public

[NOTARIAL SEAL]

My commission expires

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 15 day of September, 1970, before me personally appeared G. E. Maier, to me personally known, who, being by me duly sworn, says that he is a Vice Presirent of BANKERS TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Muriel Haarstick
Notary Public

[NOTARIAL SEAL]

MURIEL HAARSTICK
Notary Public, State of New York
No. 41-1612650
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1971

STATE OF NEW YORK }
COUNTY OF ALBANY } SS.:

On this 16 day of September, 1970, before me personally appeared J. F. REILLY, to me personally known, who, being by me duly sworn, says that he is a Vice President of DELAWARE AND HUDSON RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Stephen La Malfa
Notary Public

[NOTARIAL SEAL]

STEPHEN LA MALFA
Notary Public in the State of New York
Commission Expires March 30, 1971

ANNEX A—GE

Item 1: The Manufacturer warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 1 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter in this Annex called the Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein that are not of the Manufacturer's own specification or design) and workmanship under normal use and service; the Manufacturer's obligations under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which, within two years after the delivery of such unit to the Trustee or before such unit has been in scheduled service 250,000 miles (whichever event shall first occur), shall be returned to the Manufacturer with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective.

This warranty of the Manufacturer shall not apply (i) to any locomotive components which shall have been repaired or altered unless repaired or altered by the Manufacturer or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a unit of the Equipment or (ii) to any unit of the Equipment which has been subject to misuse, negligence or accident.

This warranty is expressly in lieu of all other warranties expressed or implied, including any implied warranty of merchantability

or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Manufacturer, except for its obligations under Articles 1, 2, 3 and 15 of the Agreement. The Manufacturer neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid.

In no event shall the Manufacturer be liable for special or consequential damages. The Manufacturer's liability on any claim of any kind including negligence, or for any loss or damage arising out of, connected with, or resulting from, the Agreement, or from the performance or breach thereof, or from the manufacture, sale, delivery, resale, repair or use of any unit of the Equipment covered by, or furnished under, this Agreement, shall in no case exceed the Purchase Price of such unit of the Equipment involved in the claim except as provided in Article 15 of the Agreement, and upon the expiration of the warranty period specified above, except as so provided, all such liability shall terminate. The Manufacturer shall have no liability for any unit of the Equipment or part thereof which becomes defective by reason of improper storage or application, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Trustee or the Lessee or any third party other than the Manufacturer. The foregoing warranty shall constitute the sole remedy of the Trustee or the Lessee and the sole liability of the Manufacturer.

It is understood that the Manufacturer has the right to make changes in the design of, or to add improvements to, units of the Equipment at

any time without incurring any obligations to install, at the Manufacturer's expense, the same on other locomotives sold by Manufacturer.

The Manufacturer further agrees with the Trustee that neither the inspection as provided in Article 2 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 2 shall be deemed a waiver or a modification by the Trustee of any of its rights under this Item 1.

Notwithstanding anything to the contrary contained herein, it is understood and agreed that there will be incorporated in each unit of the Equipment a limited number of used components which will be remanufactured by the Manufacturer and will be the equivalent of new components.

Item 2: Except to the extent the Manufacturer is obligated under this Agreement to indemnify, protect and hold harmless each assignee of any of the rights of the Manufacturer under the Agreement, the Trustee agrees, subject to the provisions of the last paragraph of Article 3 of the Agreement and the second paragraph of Article 24 of the Agreement, to indemnify, protect and hold harmless each such assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against each such assignee because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes or is claimed to infringe on any patent or other right.

The Manufacturer shall defend any suit or proceeding brought against the Trustee, the Lessee and/or each assignee of the Manufacturer's rights under the Agreement so far as the same is based on a claim that the Equipment of Manufacturer's specification, or any part thereof, furnished under this Agreement constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information and assistance (at the Manufacturer's expense) for the defense of same, and the Manufacturer shall pay all damages and costs awarded therein against the Trustee, the Lessee and/or any such assignee.

The Manufacturer further agrees that, in case the use of any unit of the Equipment or any part thereof is enjoined by a patent infringement suit or claim against the Manufacturer, any assignee of the Manufacturer, the Trustee or the Lessee (other than a suit or claim arising in any way out of an alleged infringement by reason of the use of or incorporation in the Equipment of any device and/or specialty designated by the Lessee to be used by the Manufacturer in the building of the Equipment and which was not manufactured by the Manufacturer), the Manufacturer will promptly, at its own expense and at its option: (i) procure for the Trustee the right to continue using such unit of the Equipment, or part thereof; or (ii) replace the same with a noninfringing unit or part thereof of the same quality and performance as the unit or part so replaced, or (iii) modify such unit of the Equipment, or part thereof, so that it becomes noninfringing and so that such unit or part thereof shall be of the same quality and performance as the unit or

part so modified; *provided, however,* that the exercise of any of the foregoing options by the Manufacturer shall not in any way be construed as a waiver of or a limitation on the rights of the Trustee or the Lessee under this Item 2.

The Manufacturer will not assume liability for patent infringement by reason of purchase, manufacture, sale, or use of devices not included in and covered by its specification.

The foregoing states the entire liability of the Manufacturer for patent infringement by the Equipment or any part thereof.

ANNEX B

Type	Manufacturer's Specifications	Manufacturer's Plant	Quantity	Lessee's Road Numbers (Inclusive)	Unit Base Price	Total Base Price	Time and Place of Delivery
3300 H.P. Model U33C diesel electric locomotives	Specification No. 3490A dated September, 1968	Erie, Pennsylvania	9	754-762	$284,000	$2,556,000	September through December, 1970 at Manufacturer's plant, Erie, Pennsylvania

ANNEX C

LEASE OF RAILROAD EQUIPMENT

by and between

BANKERS TRUST COMPANY,
as Trustee,

and

DELAWARE AND HUDSON RAILWAY COMPANY

Dated as of September 1, 1970

LEASE OF RAILROAD EQUIPMENT, dated as of September 1, 1970, between BANKERS TRUST COMPANY, as Trustee under a Trust Agreement (hereinafter called the Trust Agreement and said Trustee being hereinafter called the Lessor) dated as of September 1, 1970, with GENERAL ELECTRIC CREDIT CORPORATION (hereinafter called the Trustor) and DELAWARE AND HUDSON RAILWAY COMPANY, a Delaware corporation (hereinafter called the Lessee).

WHEREAS, the Lessor and the Lessee have entered into a Conditional Sale Agreement dated as of September 1, 1970 (hereinafter called the Conditional Sale Agreement), with GENERAL ELECTRIC COMPANY (hereinafter referred to as the Manufacturer), wherein the Manufacturer has agreed to manufacture, sell and deliver to the Lessor the railroad equipment described in Schedule A hereto;

WHEREAS, the Manufacturer has assigned or will assign its interest in the Conditional Sale Agreement to MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent (hereinafter, together with its successors and assigns, referred to as the Vendor); and

WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number as are delivered and accepted and settled for under the Conditional Sale Agreement on or prior to December 30, 1970 (hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder or under the Conditional Sale Agreement, subject to

all the rights and remedies of the Vendor under the Conditional Sale Agreement:

§ 1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be tendered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Conditional Sale Agreement. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and execute and deliver to the Lessor and to the Manufacturer a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 2. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 30 consecutive semiannual payments, payable on March 1 and September 1 in each year commencing March 1, 1971; *provided, however,* that if any of the payment dates referred to above is not a business day, the payment shall be payable on the next succeeding business day. The first such semiannual payment shall be in an amount equal to 1.4417% of the Conditional Sale Indebtedness (as such term is defined in the Conditional Sale Agreement) plus an amount equal to 0.026051% of the Purchase Price (as such term is defined in the Conditional Sale Agreement) of each Unit subject to this Lease for each day elapsed from and including the Closing Date under the Conditional Sale Agreement (as such term is defined in the Conditional Sale Agreement) in respect of such Unit to March 1, 1971; and the last 29 such semiannual payments shall each be in an amount equal to 5.699% of the Purchase Price of each such Unit.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease in immediately available Baltimore funds (including but not limited to the payments required under § 6 hereof) for the account of the Lessor, care of the Vendor at its office at Two Hopkins Plaza, Baltimore, Maryland 21201, attention of Corporate Trust Department (or to any assignee of the Vendor pursuant to Section 6 of the Agreement and Assignment between the Manufacturer and the Vendor, dated as of September 1, 1970, under which the Conditional Sale Agreement is being assigned to the Vendor). Such payments shall be applied by the Vendor to satisfy the obligations of the Lessor under the Conditional Sale Agreement accrued at the time such payments are due hereunder and, so long as no event of default under the Conditional Sale Agreement shall have occurred and be continuing, any balance shall be paid directly to the Lessor at its offices at 16 Wall Street, New York, New York 10015, attention of Corporate Trust Division. All payments provided to be made by the Lessee under this Lease shall be made by 10 a.m. on the date the payment is due in Federal or immediately available Baltimore funds.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or the Manufacturer or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restric-

tion against Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

§ 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 6 and 9 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, or under the Conditional Sale Agreement in its capacity as guarantor or otherwise, are subject to the rights of the Vendor under the Conditional Sale Agreement. If an event of default should occur under the Conditional Sale Agreement, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not so in default under this Lease or under the Conditional Sale Agreement. If a Declaration of Default (as defined in the Conditional Sale Agreement) should be made under the Conditional Sale Agreement due to an event of default not occasioned by an act or omission of the Lessee hereunder or not attributable to the Lessee under the Conditional Sale Agreement as aforesaid, and if such Declaration of Default shall not have been rescinded by the Vendor within 30 days of the making thereof, or if the Vendor

theretofore has indicated either in writing to the Lessor or the Lessee or by the commencement of the remedies specified under Article 18 of the Conditional Sale Agreement that it will not rescind such Declaration of Default, the Lessee, without penalty, may terminate this Lease.

§ 4. *Identification Marks.* The Lessee, so long as this Lease shall remain in effect, will cause each Unit to be kept numbered with the identifying number set forth in Annex B to the Conditional Sale Agreement and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the following words:

"MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, BALTIMORE, MD., AGENT-SECURITY OWNER"

or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor or the Vendor to such Unit and the rights of the Lessor under this Lease and of the Vendor under the Conditional Sale Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor by the Lessee and filed, recorded or deposited by the Lessee in all public offices where this Lease will have been filed, recorded or deposited.

Except as above provided, the Lessee, so long as this Lease shall remain in effect, will not allow the name of any person, association or corporation to be placed on the

Units as a designation that might be interpreted as a claim of ownership; *provided, however,* that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 5. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state or federal or Canadian (Dominion or Provincial) taxes (other than any federal income tax or any Canadian [Dominion or Provincial] income tax [to the extent that the Lessor receives credit therefor against its United States federal income tax liability] payable by the Lessor in consequence of the receipt of payments provided herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees and any charges, fines or penalties in connection therewith (hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Conditional Sale Agreement, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom

or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however,* that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Conditional Sale Agreement. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor. Prior to making such payment, Lessor shall promptly notify Lessee of the impositions charged or levied, and Lessee shall have the opportunity to contest in good faith and by appropriate legal proceedings such impositions, at its sole expense.

In the event that the Lessor shall become obligated to make any payment to the Manufacturer or the Vendor pursuant to Article 10 of the Conditional Sale Agreement not covered by the foregoing paragraph of this § 5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 10.

In the event any reports with respect to impositions are required to be made on the basis of individual Units, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement

of any impositions, pursuant to this § 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 6. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall, within eight days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully notify the Lessor and the Vendor in writing with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. In the event of the complete destruction of such Unit, the Lessee shall also pay the Lessor the salvage value of such Unit which will be based upon its net scrap value, computed at the current quoted price per gross ton of number 1 railroad heavy melting steel scrap at Pittsburgh, Pennsylvania, on the date of the Casualty Occurrence, less an allowance of $4.50 per gross ton for dismantling such Unit. Upon such payment of the salvage value for such Unit, the title to such Unit shall pass to and vest in the Lessee. The Lessee

shall file with the Vendor and the Lessor the certificate required by the first paragraph of Article 5 of the Conditional Sale Agreement.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite the number of such rental payment date:

Payment No.	Percentage	Payment No.	Percentage
1	101.00%	16	70.17%
2	101.00	17	66.77
3	100.00	18	63.17
4	100.00	19	59.57
5	99.12	20	55.75
6	97.52	21	51.93
7	95.92	22	47.85
8	93.74	23	43.77
9	91.56	24	39.37
10	88.85	25	34.97
11	85.99	26	30.42
12	82.99	27	25.87
13	79.99	28	20.88
14	76.78	29	15.89
15	73.57	30	10.00

Except as hereinabove in this § 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

The Lessee will at all times while this Lease is in effect, at its own expense, cause to be carried and maintained insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Lessee on equipment owned by it. Such insurance shall be payable to

the Vendor, the Lessor and the Lessee as their interests may appear to the extent that the Lessee is permitted to do so under such policies of insurance. All insurance proceeds received by the Lessor shall be paid over to the Lessee if the Lessee has fully complied with all of its obligations and indemnifications in respect of the risk insured against for which such proceeds were paid by the insurance company.

On or before April 15 in each year, commencing with the year 1971, and on each Closing Date (as defined in Article 3 of the Conditional Sale Agreement) the Lessee will cause to be furnished to the Vendor and the Lessor in such number of counterparts as the Vendor or the Lessor may request, a certificate of an officer of the Lessee (a) describing the insurance policies, if any, carried and maintained by the Lessee pursuant to the next preceding paragraph as of the preceding December 31 (or, in the case of a certificate furnished on any Closing Date, as of such Closing Date), and (b) certifying that such insurance policies satisfy the requirements of this § 6 or that no insurance is necessary to satisfy the requirements of this § 6.

§ 7. *Annual Reports.* On or before April 15, in each year, commencing with the year 1971, the Lessee will cause to be furnished to the Lessor and the Vendor an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the Units then leased hereunder and/or covered by the Conditional Sale Agreement, the amount, description and number of all Units that may have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the markings required by § 4 hereof and Article 9 of the Conditional Sale Agreement shall have been pre-

served or replaced. The Lessor shall have the right at its sole cost, risk and expense, by its authorized representatives, to inspect the Units and the Lessee's records with respect thereto, at such times as shall reasonably be necessary to confirm to the Lessor the existence and proper maintenance of the Units during the continuance of this Lease.

So long as any Conditional Sale Indebtedness shall be unpaid, the Lessee will deliver to the Lessor, in such number of counterparts as the Lessor may reasonably request (i) as soon as available and in any event within 120 days after the end of each fiscal year, a certificate signed by a Vice President or Treasurer of the Lessee stating that a review of the activities of the Lessee during such year has been made under his supervision with a view to determining whether the Lessee has kept, observed, performed and fulfilled all its obligations under the Conditional Sale Agreement and this Lease and that to the best of his knowledge the Lessee during such year has kept, observed, performed and fulfilled each and every covenant, obligation and condition contained herein or in the Conditional Sale Agreement or, if the Lessee shall have been or shall be in default or if an event has occurred or is continuing which, with the giving of notice or the passage of time or both, would constitute a default, specifying all such defaults and events and the nature and status thereof, and (ii) as soon as available, and in any event within 120 days after the end of each fiscal year, copies of the Annual Report of the Lessee to its stockholder containing the balance sheet of the Lessee as at the end of the preceding fiscal year and the statements of income and retained earnings of the Lessee for such fiscal year and as promptly as possible thereafter, any financial summary and supplement to such Annual Report.

The Lessee will furnish the Lessor such other information as the Lessor may reasonably from time to time request with respect to the Lessee and its financial condition

and will permit the Lessor to visit any of the properties of the Lessee and discuss its affairs, finances and accounts with the officers of the Lessee (who shall furnish the Lessor with all information reasonably requested) at such reasonable times as the Lessor may desire. This privilege may be exercised by any officer of or by anyone designated for the purpose in writing by the Lessor.

§ 8. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.* **The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof,** it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, whatever claims and rights the Lessor may have, as vendee, under the provisions of Articles 14 and 15 of the Conditional Sale Agreement. Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units described in the Certificate of Delivery are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects with all laws of the jurisdictions in which the Units may be operated, with the inter-

change rules of the Association of American Railroads, if applicable, and with all lawful rules of the Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units. In the event that such laws or rules require the alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Lease; *provided, however,* that the Lessee may, in good faith, contest the validity or application of any such law, regulation, requirement or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor hereunder or under the Conditional Sale Agreement.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good order and repair.

Any and all additions to any Unit (except for communications, signal and automatic control equipment or devices having a similar use which have been added to the Equipment by the Lessee, the cost of which is not included in the Purchase Price of the Equipment and which are not required for the operation or use of the Equipment by a railroad subject to regulation by the Interstate Commerce Commission or the Department of Transportation or any other regulatory body having jurisdiction or by standards recommended by the Association of American Railroads

reasonably interpreted as being applicable to railroad equipment of the character of the Units as of the date of this Lease), and any and all parts installed on or replacements made to any Unit shall be considered accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free of any lien, charge, security interest or encumbrance (except for those created by the Conditional Sale Agreement) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

If the Lessee (by any officer, employee or agent thereof) shall make any representation, warranty or statement herein, which shall prove to be fraudulent, untrue, incorrect or inaccurate in whole or in part; or fail to state any material fact in connection with this transaction; or take any action in respect of its income tax returns which shall be inconsistent with, or in contravention of, this transaction; or use or permit the use of any of the Units in such a way and as to prevent such Unit (or Units) from being at all times during the continuation of this Lease "qualified railroad rolling stock" within the meaning of Section 184(d) of the Internal Revenue Code of 1954, as amended; and if Lessor (or General Electric Credit Corporation, as beneficiary of the trust created by the Trust Agreement) shall thereby lose or not be entitled to claim the Rapid Amortization Deduction (as hereinafter defined in § 9 hereof) in respect of any Unit or Units, then Lessee shall pay the Lessor, as supplemental rent, an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt of such supplemental rent, shall be equal to the benefit so lost plus any interest or penalty assessed against Lessor in connection with such loss. Lessor agrees to notify promptly Lessee of any claim made by the Internal Revenue Service against Lessor with respect to such loss which relates to information which may be particularly within the knowledge of Lessor.

The Lessee agrees to indemnify and save harmless the Lessor and the Vendor against any charge or claim made against the Lessor or the Vendor, and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Lessor or the Vendor may incur in any manner by reason of entering into or the performance of the Conditional Sale Agreement or this Lease or by reason of the ownership of any Unit, or which may arise in any manner out of or as the result of the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit under this Lease, except as otherwise provided in Article 22 of the Conditional Sale Agreement and § 15 of this Lease. The Lessee further agrees to indemnify and save harmless the Lessor and the Vendor against any charge, claim, expense, loss or liability (including strict liability in tort) on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property or injury to any person. The indemnities arising under this paragraph shall survive payment of all other obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 9. *Default.* If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

A. default shall be made in the payment of any part of the rental provided in § 2 hereof and such default shall continue for five days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Conditional Sale Agreement and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. any proceedings (other than proceedings under Section 77 of the Bankruptcy Act) shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Conditional Sale Agreement), unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), and all the obligations of the Lessee under this Lease and under the Conditional Sale Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceeding shall have been commenced, whichever shall be earlier; or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Conditional Sale Agreement and this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment (whether or not subject to confirmation by the Interstate Commerce Commission), if any, or 60 days after such petition shall have been filed, whichever shall be later;

then, in any such case, the Lessor, at its option, may:

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to

recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on a basis of a 7.76% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, and including, without limitation, (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to any portion of the increase in the tax liability of the Lessor attributable to the loss or reduction of the Rapid Amortization Deduction (as hereinafter defined) in respect of a Unit which is so lost or reduced as a result

of the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

Anything in this § 9 to the contrary notwithstanding, any default in the observance or performance of any covenant, condition or agreement on the part of the Lessee which results solely in the loss by the Lessor of, or the loss by the Lessor of the right to claim, or the disallowance with respect to the Lessor of, all or any portion of the amortization deduction with respect to a Unit provided for in Section 184 of the Internal Revenue Code of 1954, as amended, or any successor section thereto (herein called the Rapid Amortization Deduction), shall be, for all purposes of this Lease, deemed to be cured if the Lessee shall, on or before the next rental payment date after written notice from the Lessor of the loss, or the loss of the right to claim, or the disallowance of the Rapid Amortization Deduction in respect of such Unit, have paid to the Lessor the supplemental rent in respect of such Unit determined as provided in the fifth paragraph of § 8 of this Lease.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such

right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 10. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate,

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor, and

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

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any pro-

spective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney-in-fact of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 11. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. It is understood and agreed that the term "Lessor" wherever used in this Lease, including but not limited to the use thereof in §§ 2, 5, 7, 9 and 14, shall include the Trustor and any such assignee.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor, the Vendor or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the

Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use thereof upon its lines of railroad or upon the lines of any affiliate or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, and also to permit the use of the Units upon other railroads in the usual interchange of traffic, if customary at the time, but only upon and subject to all the terms and conditions of this Lease, including the last paragraph of this § 11, and the Conditional Sale Agreement. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have duly assumed the obligations of the Lessee hereunder and under the Conditional Sale Agreement) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety; *provided, however,* that no such assignment or transfer shall be made if, after giving effect thereto, any Unit would not be deemed to be "qualified railroad rolling stock" within the meaning of Section 184(d) of the Internal Revenue Code of 1954, as amended.

The Lessee agrees that during the term of this Lease the Lessee will not regularly use or permit the regular use of any Unit outside the United States of America except on an incidental basis in the Province of Quebec, Dominion of Canada.

§ 12. *Return of Units upon Expiration of Term; Purchase Option.* As soon as practicable on or after the expiration of the term of this Lease, the Lessee will (unless the

Units are sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of any Units to the Lessor upon such storage tracks of the Lessee as the Lessee may designate and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee as directed by the Lessor; the movement and storage of the Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in

respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however,* that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 6 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence during the term of this Lease.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease or any extended term hereof, as the case may be, elect to purchase all, but not fewer than all, the Units then covered by this Lease at the end of the original or any extended term of this Lease for a purchase price equal to the "Fair Market Value" as of the end of such term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such deter-

mination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

§ 13. *Opinion of Counsel.* On each Closing Date (as defined in the Conditional Sale Agreement), the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of the State of Delaware, with adequate corporate power to enter into this Lease;

B. this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement of the Lessee, enforceable in accordance with its terms;

C. this Lease has been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and has been duly deposited with the Registrar General of Canada in accordance with Section 148 of the Railway Act of Canada (and the Lessee has caused or has made appropriate provision to cause notice of such deposit to be duly given promptly after such deposit in the *Canada Gazette* pursuant to said Section 148); and such filing, recording and deposit will protect the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Lessor in and to the Units;

D. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease;

E. the entering into and performance of this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's right, title and interest therein; *provided, however,* that such liens may attach to the rights of the Lessee hereunder in and to the Units.

§ 14. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended, to an owner of property, including (without limitation) the Rapid Amortization Deduction (as defined in § 9 of this Lease).

§ 15. *Recording; Expenses.* The Lessee will cause this Lease, the Conditional Sale Agreement and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and this Lease and the Conditional Sale Agreement and any assignment hereof or thereof to be duly deposited with the Registrar General of Canada in accordance with Section 148 of the Railway Act of Canada and to cause notice of such deposit to be duly given in the *Canada Gazette* pursuant to said Section 148. The Lessee will undertake the filing, recording and depositing and re-filing, re-recording and redepositing required of the Lessor under Article 21 of the Conditional Sale Agreement and will from time to time do and perform any other act and

will execute, acknowledge, deliver, file, register, record and deposit (and will refile, re-register, re-record or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Conditional Sale Agreement or the first assignment thereof by the Manufacturer; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, recording or depositing, and an opinion or opinions of counsel for the Lessee with respect thereto (but not with respect to the assignments by the Lessor referred to in § 11 hereof) satisfactory to the Vendor and the Lessor. This Lease and the Conditional Sale Agreement shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

The Lessor will pay the reasonable costs and expenses involved in the preparation and printing of this Lease. The Lessor and the Lessee will each bear the respective fees and disbursements, if any, of their respective counsel.

§ 16. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations when due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to 11% per annum of the overdue rentals for the period of time during which they are overdue.

§ 17. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

if to the Lessor, at P. O. Box 318, Church Street Station, New York, New York 10008, attention of Cor-

porate Trust Division, with a copy to General Electric Credit Corporation, P. O. Box 8300, Stamford, Connecticut 06904;

if to the Lessee, at The Plaza, Albany, New York 12207;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

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

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

The Lessor agrees not to enter into any amendment or modification of the provisions contained in Articles 2, 6 or 7 of the Trust Agreement without the prior written consent of the Lessee and the Vendor.

§ 19. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of September 1, 1970, for convenience, the actual date or dates of execution hereof by the

parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 20. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

BANKERS TRUST COMPANY, as Trustee under a Trust Agreement dated as of September 1, 1970,

by .....
Vice President.

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary.

DELAWARE AND HUDSON RAILWAY COMPANY

by .....
Vice President.

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this day of September, 1970, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of BANKERS TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was this day signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

. . . . . .
Notary Public

[NOTARIAL SEAL]

STATE OF NEW YORK }
COUNTY OF ALBANY } ss.:

On this day of September, 1970, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of DELAWARE AND HUDSON RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that such instrument was this day signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

. . . . . .
Notary Public

[NOTARIAL SEAL]

SCHEDULE A

Type	Manufacturer's Specifications	Manufacturer's Plant	Quantity	Lessee's Road Numbers (Inclusive)	Unit Base Price	Total Base Price	Time and Place of Delivery
3300 H.P. Model U-33c diesel electric locomotives	Specification No. 3490A dated September, 1968	Erie, Pennsylvania	9	754-762	$284,000	$2,556,000	September through December, 1970, at Manufacturer's plant, Erie, Pennsylvania