11197
RECORDATION NO. Filed 1425

CRAVATH, SWAINE & MOORE

DEC 14 1979 - 1 10 PM
INTERSTATE COMMERCE COMMISSION

ONE CHASE MANHATTAN PLAZA
NEW YORK, N. Y. 10005
212 HANOVER 2-3000
TELEX
RCA 233663
WUD 125547
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11197 B
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INTERSTATE COMMERCE COMMISSION

11197 A
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11197 C
RECORDATION NO. Filed 1425
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INTERSTATE COMMERCE COMMISSION

No. 9-342A-87
Date DEC 14 1979
Fee $ 100.00
ICC Washington, D. C.

MAURICE T. MOORE
BRUCE BROMLEY
WILLIAM B. MARSHALL
RALPH L. McAFEE
ROYALL VICTOR
ALLEN H. MERRILL
HENRY W. DeKOSMIAN
ALLEN F. MAULSBY
STEWARD R. BROSS, JR.
HENRY P. RIORDAN
JOHN R. HUPPER
SAMUEL C. BUTLER
WILLIAM J. SCHRENK, JR.
BENJAMIN F. CRANE
FRANCIS F. RANDOLPH, JR.
JOHN F. HUNT
GEORGE J. GILLESPIE, III
RICHARD S. SIMMONS
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THOMAS D. BARR
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ROBERT ROSENMAN
JAMES H. DUFFY
ALAN J. HRUSKA

JOHN E. YOUNG
JAMES M. EDWARDS
DAVID G. ORMSBY
DAVID L. SCHWARTZ
RICHARD J. HIEGEL
FREDERICK A. O. SCHWARZ, JR.
CHRISTINE BESHAR
ROBERT S. RIFKIND
DAVID BOIES
DAVID O. BROWNWOOD
PAUL M. DODYK
RICHARD M. ALLEN
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RONALD S. ROLFE
JOSEPH R. SAHID
PAUL C. SAUNDERS
MARTIN L. SENZEL
DOUGLAS D. BROADWATER
ALAN C. STEPHENSON
RICHARD L. HOFFMAN
JOSEPH A. MULLINS
MAX R. SHULMAN

COUNSEL
CARLYLE E. MAW
ALBERT R. CONNELLY
FRANK H. DETWEILER
GEORGE G. TYLER

ROSWELL L. GILPATRIC
L. R. BRESLIN, JR.
GEORGE B. TURNER
JOHN H. MORSE
HAROLD R. MEDINA, JR.
CHARLES R. LINTON

4, PLACE DE LA CONCORDE
75008 PARIS, FRANCE
TELEPHONE: 265-81-54
TELEX: 290530

33 THROGMORTON STREET
LONDON, EC2N 2BR, ENGLAND
TELEPHONE 01-606-1421
TELEX: 8814901

CABLE ADDRESSES
CRAVATH, N. Y.
CRAVATH, PARIS
CRAVATH, LONDON E. C. 2

December 13, 1979

Consolidated Rail Corporation ("Conrail")
Lease Financing Dated as of February 1, 1979
11% Conditional Sale Indebtedness Due 1995

[CS&M Ref: 1696-036]

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303(a), I enclose herewith on behalf of Consolidated Rail Corporation ("Conrail"), for filing and recordation, counterparts of the following:

(1) (a) Conditional Sale Agreement dated as of February 1, 1979, between First Security Bank of Utah, N.A., and General Motors Corporation (Electro-Motive Division); and

(b) Agreement and Assignment dated as of February 1, 1979, between Mercantile-Safe Deposit and Trust Company and General Motors Corporation (Electro-Motive Division).

(2) (a) Lease of Railroad Equipment dated as of February 1, 1979, between Consolidated Rail Corporation and First Security Bank of Utah, N.A.; and

(b) Assignment of Lease and Agreement dated as of February 1, 1979, between First Security Bank of Utah, N.A., and Mercantile-Safe Deposit and Trust Company.

The addresses of the parties to the aforementioned agreements are:

Lessor-Vendee:

First Security Bank of Utah, N.A.,
79 South Main Street,
Salt Lake City, Utah 84111.

Builder-Vendor:

General Motors Corporation,
(Electro-Motive Division),
La Grange, Illinois 60525.

Lessee:

Consolidated Rail Corporation,
1310 Six Penn Center Plaza,
Philadelphia, Pennsylvania 19104.

Agent-Vendor-Assignee:

Mercantile-Safe Deposit and Trust Company,
Two Hopkins Plaza,
Baltimore, Maryland 21203.

The equipment covered by the aforementioned agreements consists of 19 1,500 h.p. Model GP15-1 Diesel-Electric Locomotives bearing the road numbers of the Lessee CR1652-CR1670 and also bearing the legend "Ownership Subject to a Security Agreement filed with the Interstate Commerce Commission".

Enclosed is our check for $100 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt addressed to the undersigned.

Very truly yours,

Martin Jacobson

Martin D. Jacobson
As Agent for Consolidated
Rail Corporation.

Agatha Mergenovich, Secretary,
Interstate Commerce Commission,
Washington, D. C. 20423

Encls.
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RECORDATION NO. 11197-B Filed 1425

DEC 14 1979 - 1 10 PM

INTERSTATE COMMERCE COMMISSION

[CS&M Ref. 1696-036]

LEASE OF RAILROAD EQUIPMENT

Dated as of February 1, 1979

between

CONSOLIDATED RAIL CORPORATION

and

FIRST SECURITY BANK OF UTAH, N.A.,
as Trustee Under a Trust Agreement

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*This Table of Contents has been included in this document for convenience only and does not form a part of or affect any construction or interpretation of this document.

LEASE OF RAILROAD EQUIPMENT dated as of February 1, 1979, between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (the "Lessee"), and FIRST SECURITY BANK OF UTAH, N.A., a national banking association, not individually but solely as Trustee (the "Lessor") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with GENERAL ELECTRIC CREDIT CORPORATION (the "Beneficiary").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with General Motors Corporation (Electro-Motive Division) (the "Builder"), wherein the Builder has agreed to manufacture, conditionally sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (the "Equipment");

WHEREAS the Builder, under an Agreement and Assignment dated as of the date hereof (the "CSA Assignment"), is assigning its interests in the CSA to Mercantile-Safe Deposit and Trust Company, acting as Agent (hereinafter, together with its successors and assigns and the Investors, as hereinafter defined, called the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessee, the Lessor, the Beneficiary, the Vendor, and the investors named in Schedule A thereto (said investors, together with their successors and assigns, being hereinafter called the "Investors");

WHEREAS the Lessee desires to lease such number of units of Equipment as are delivered and accepted and settled for under the CSA (the "Units") at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS the parties contemplate that the Lessor will assign for security purposes certain of its rights in this Lease to the Vendor by an Assignment of Lease and Agreement dated as of the date hereof (the "Lease Assignment"), and the Lessee will consent thereto by a Consent and Agreement (the "Consent");

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:

§ 1. *Net Lease.* This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent or additional rent, or setoff against or recoupment or reduction of rent or additional rent, including, but not limited to, abatements, setoffs, reductions or recoupments due or alleged to be due by reason of any past, present or future claims or counterclaims of the Lessee against the Lessor under this Lease or the CSA, or against the Beneficiary, the Builder or the Vendor or otherwise. The Lessee's obligations hereunder, including its obligations to pay all rentals, additional rentals and other amounts hereunder, shall be absolute and unconditional under any and all circumstances, and, except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. *Delivery and Acceptance of Units.* The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. The Lessor will cause each Unit to be delivered 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 CSA. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same and, if such Unit is found to be acceptable, to accept delivery of such Unit, and the Lessee shall execute and deliver to the Lessor a certificate of acceptance (the "Certificate of Acceptance") substantially in the form annexed hereto as Schedule C, whereupon, except as provided in the next sentence hereof, 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. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease or to constitute acceptance thereof on behalf of the Lessor for any purpose whatsoever.

§ 3. *Rentals.* The Lessee agrees to pay to the Lessor, as rental for each Unit, one interim payment and 34 consecutive semiannual payments payable in arrears. The interim payment for each Unit is payable on January 15, 1980 (such date being hereinafter called the "Basic Rent Commencement Date"). The 34 semiannual payments are payable on January 15 and July 15 in each year, commencing July 15, 1980, to and including January 15, 1997 (each of such 34 consecutive dates being hereinafter called a "Rental Payment Date"). The rental payable on the Basic Rent Commencement Date for each Unit shall be in an amount equal to the product of (a) the number of calendar days elapsed from and including the Closing Date for such Unit to, but not including, the Basic Rent Commencement Date, times (b) .030556% of the Purchase Price (as defined in the CSA) of such Unit. The 34 semiannual rental payments shall each be in an amount equal to the applicable Semi-Annual Lease Factor (as hereinafter defined) of the Purchase Price of each Unit then subject to this Lease. As used herein, the term "Semi-Annual Lease Factor" means (a) with respect to each of the first 30 semiannual rental payments, 4.58170% and (b) with respect to each of the last four semiannual rental payments, 2.46635%, in each case, or such percentage as it may be adjusted pursuant to § 16 hereof. The rental payments hereinbefore provided and the Casualty Values (as defined in § 7 hereof) are subject to adjustment pursuant to § 16 hereof, but shall in all events be in amounts sufficient to satisfy the obligations of the Lessor under the CSA, regardless of any limitation of liability set forth therein.

In addition to the foregoing rentals, the Lessee agrees to pay to the Lessor as additional rentals amounts which, after deduction of any taxes payable in respect of such amounts, will be equal to the amounts required by the Lessor to make the payments provided for in the last sentence of the first paragraph of, and the last paragraph of, Paragraph 9 of the Participation Agreement on the dates on which the Lessor is required to make such payments and the Lessor agrees to apply such rentals for such purposes. In the event that there are any losses or liabilities arising out of or resulting from the Investments made pursuant to Paragraph 2 of the Participation Agreement, including, but not limited to, any deficiency in respect thereof, the rentals thereafter payable by the Lessee in respect of Units settled for concurrently with or after such loss, liabilities, or deficiency arose shall be increased by such amount as shall, in the reasonable opinion of the Beneficiary, cause such Beneficiary's after-tax economic yields and cash flows, computed on the same assumptions, including tax rates, as were utilized by such Beneficiary in originally evaluating this transaction (such economic yields and cash flows hereinafter called the Net Economic Return) to equal the Net Economic Return that would have been realized by such Beneficiary if such loss or liability had not occurred.

If any of the dates for the payment of rent referred to above is not a business day the rental payment otherwise payable on such date shall be payable on the next preceding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Baltimore, Maryland, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, but excluding all payments not assigned to the Vendor pursuant to the Lease Assignment, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the CSA, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as

contemplated by this paragraph in Federal or other funds immediately available to the Vendor by 11:00 a.m., Baltimore time, on the date such payment is due.

§ 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 3, 6, 7, 9, 14 and 16 hereof) shall survive the expiration or termination of the term of this Lease and the full payment of all amounts payable under this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination), all as provided therein; *provided, however,* that, so long as (i) no Event of Default exists hereunder, (ii) no Event of Default exists under any other Lease of Railroad Equipment to which the Lessee is a party dated February 1, 1979, providing for the lease of up to approximately 246 locomotives, (iii) the Lessee is complying with the provisions of the Consent and (iv) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 12 hereof.

§ 5. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identification number set forth in Schedule A hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", with appropriate changes thereof as from time to time may be required by law, in the opinion of the Vendor and the Lessor, in order to protect the Lessor's and the Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect that such statement has been so filed and deposited, that such filing and deposit will protect the Vendor's and the Lessor's rights in such Units and that no other filing, deposit or giving of notice with or to any Federal, state or local government or agency thereof is necessary to protect the rights of the Vendor and the Lessor in such Units.

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

§ 6. *Taxes.* Whether or not any of the transactions contemplated hereby are consummated, the Lessee assumes responsibility for, and agrees to pay, hold harmless and indemnify the Lessor (both in its individual and trust capacity), the Vendor, the Beneficiary and the Investors and their successors and assigns (the "Indemnified Persons") against, all local, state, Federal or foreign taxes, fees, withholdings, levies, imposts, duties, assessments, charges, license and registration fees and other governmental charges of any nature whatsoever, including, without limitation, penalties, fines, additions to tax and interest thereon, however imposed, imposed on, incurred by or asserted against any Indemnified Person or the Units or any part or portion thereof on account of, or with respect to, this Lease, the CSA, the Lease Assignment, the Consent, the CSA Assignment or the Participation Agreement or any document referred to herein or therein or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acquisition, acceptance or rejection of the Units or any part or portion thereof or the ownership, delivery, nondelivery, leasing, re-leasing, subleasing, possession, use, operation, maintenance, repair, condition, sale, return, abandonment or other application or disposition of the Units or any thereof or any indebtedness with respect thereto or the

rentals, receipts, earnings or gains arising therefrom (all such taxes, fees, withholdings, levies, imposts, duties, license and registration fees, other governmental charges, penalties, additions to tax and interest being hereinafter called "Taxes"); *provided, however,* that there shall be no indemnification hereunder for (i) any Taxes imposed on or measured by any trustee or agency fees received by the persons who are the Lessor or the Vendor, (ii) Federal income Taxes measured solely by net income or excess profits of the Lessor (in its individual capacity), the Beneficiary or an Investor, or (iii) Taxes measured solely by net income or excess profits of, and franchise Taxes imposed on, the Lessor (in its individual capacity), the Beneficiary or an Investor or their successors and assigns by the respective entity's state of incorporation or state where its principal place of business is located; *provided, however,* that, notwithstanding the preceding proviso, the Lessee will indemnify the Beneficiary for any Taxes arising out of or imposed in respect of indemnification payments pursuant to this Lease or to the extent that indemnification is otherwise provided for in § 16 hereof. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify each Indemnified Person to the extent required by this § 6 within ten days after receipt of a written request by such Indemnified Person for indemnification specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question; *provided, however,* that if any Taxes are being contested in accordance with § 16 hereof, any payment shall be made at the time therein provided. The Lessee will keep at all times all and every part of the Equipment free and clear of all Taxes (other than those which are covered by the obligations of the Lessor set forth in the proviso to the last paragraph of Article 12 of the CSA) which might in any way affect the title or interests of the Vendor or result in a lien upon any part of the Equipment.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any corresponding provision of the CSA including, but not limited to, Article 6 thereof (other than the proviso to the third paragraph of Article 12 thereof) not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed Taxes hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any returns, statements or reports with respect to Taxes are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Vendor in the Units; *provided, however,* that the Lessor shall, with respect to any state or political subdivision thereof of the United States of America, file such returns, statements, and reports relating to sales or use taxes, and taxes, fees, and charges on or measured by the Lessor's earnings or gross receipts arising from the Units, or the value added by the Lessor thereto, as the Lessee shall determine are required to be filed, and as shall be prepared by the Lessee, and the Lessor shall remit the amount thereof upon payment by the Lessee to the Lessor (such payment to be made forthwith upon demand by the Lessor therefor) of such taxes, fees and charges except as provided above. All costs and expenses (including legal and accounting fees) of preparing such returns or reports shall be borne by the Lessee. To the extent that the Lessor has information necessary to the preparation of such returns, statements and reports, it will furnish such information to the Lessee.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in the Lessor's own name and on its behalf; *provided, however,* that the Lessee shall indemnify and hold the Lessor and the Beneficiary harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor, of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

The Lessee agrees to pay all amounts due under this § 6 free of any Taxes and to indemnify each Indemnified Person against any Taxes imposed by reason of any payment made by the Lessee so that the Indemnified Person to whom or for whose benefit the payment is made shall receive an amount which, net of

any Taxes or other charges required to be paid by such Indemnified Person in respect thereof, shall be equal to the amount of payment otherwise required hereunder. Without limiting the foregoing, the amount which the Lessee shall be required to pay with respect to any Taxes subject to indemnification under this § 6 shall be an amount sufficient so that, after considering the tax effects of the Taxes in question and the receipt of indemnification payments hereunder, the Indemnified Person will have the same anticipated after-tax rate of return on equity and periodic recovery of net cash flow as such Indemnified Person would have realized had such Taxes not been incurred or imposed.

All the obligations of the Lessee under this § 6 shall survive and continue, notwithstanding payment of all amounts under the CSA and the termination of this Lease, but only with respect to periods included in the term of this Lease. The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee or any subsidiary or affiliated corporation of the Lessee of the payment of any installments of principal or interest payable under the CSA, or a guarantee of any residual value of the Units following the expiration of the term hereof as such term may or may not be renewed.

§ 7. *Maintenance; Casualty Occurrences; Insurance.* The Lessee at its own expense will maintain and service each Unit and comply with a preventive maintenance schedule consistent with the Builder's preventive maintenance schedule and which will include testing, repair and overhaul of each Unit so that each Unit will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations, and (c) desirable to and suitable for immediate purchase or lease and use by a Class I line-haul railroad (not then or prospectively a debtor in any insolvency, bankruptcy or reorganization proceedings) in the event of resale or re-lease upon an Event of Default hereunder. In no event shall any Unit be maintained or scheduled for maintenance on a basis less frequent than the maintenance or maintenance scheduling basis employed as of the date hereof by the Lessee for similar equipment.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, permanently returned to the Builder pursuant to any patent indemnity provision of the CSA, or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term of this Lease (or, if such taking, requisition or condemnation shall occur during a renewal term, for a period which shall exceed the then remaining renewal term), or by any other government or governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days (such occurrences being hereinafter called "Casualty Occurrences"), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly (but in any event within 30 days after such Casualty Occurrence) and fully notify the Lessor, the Beneficiary and the Vendor with respect thereto. On the date for the payment of rent hereunder with respect to such Unit next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the Casualty Value (as hereinafter defined) of such Unit as of such date in accordance with Schedule B hereto referred to below, plus the rental payment or payments in respect of such Unit then due and payable. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or permanent return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis and the Lessee may be a purchaser of such Unit and shall notify the Lessor prior to any such purchase by the Lessee. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing the Lessee shall be entitled to the net proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit permanently returned to the Builder pursuant to any patent indemnity provision of the CSA an amount equal to any net patent indemnity payment in respect of such Unit made by the Builder to the Vendor under the CSA. The Lessee will pay all costs and expenses in connection with the sale of any Unit pursuant to a Casualty Occurrence.

The Casualty Value of each Unit as of the Basic Rent Commencement Date and as of any Rental Payment Date shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date.

Whenever any Unit shall suffer a Casualty Occurrence after the final payment of rent in respect thereof is due pursuant to § 3 or § 13 hereof and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly (as provided above) and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 26.158045% of the Purchase Price of such Unit, except that if the term of this Lease shall have been extended pursuant to § 13 hereof, then the applicable Casualty Value (i) shall be during the first and second renewal terms the fair market value of such Unit, as of the rental payment date on or next preceding the date of such Casualty Occurrence, determined as provided in the following sentence, and (ii) thereafter, shall be, if there is no second renewal term, the fair market value of such Unit as of the last rental payment date during the first renewal term, or, if there is a second renewal term, the fair market value of such Unit as of the last rental payment date during such second renewal term. For the purposes of the preceding sentence, the term "fair market value" of a Unit shall, at the beginning of such first renewal term, be equal to the Fair Market Purchase Price of such Unit at such time determined in accordance with the provisions of § 13 hereof, and shall decline or increase on a straight-line basis (computed on the basis of a 360-day year of twelve 30-day months) to the estimated Fair Market Purchase Price of such Unit at the end of such first renewal term determined in accordance with the provisions of § 13 hereof, and the term "fair market value" of a Unit shall, at the beginning of such second renewal term, be equal to the Fair Market Purchase Price of such Unit at such time determined in accordance with the provisions of § 13 hereof, and shall decline or increase on a straight-line basis (computed on the basis of a 360-day year of twelve 30-day months) to the estimated Fair Market Purchase Price of such Unit at the end of such second renewal term determined in accordance with the provisions of § 13 hereof. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit or return to the Builder of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence, or any component thereof, at the best price obtainable on an "as is, where is" basis and the Lessee may be a purchaser of such Unit and shall notify the Lessor prior to any such purchase by the Lessee. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition (other than a requisition which constitutes a Casualty Occurrence) for use by the United States Government or by any other government or governmental entity (hereinafter collectively called the "Government") of any Unit during the term of this Lease or any renewal thereof, all of the Lessee's obligations (including without limitation the obligation to pay rent) under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease or any renewal thereof, but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessee, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease or any renewal thereof, shall be paid over to, or retained by, the Lessor.

Except as hereinabove in this § 7 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 from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Units to the Lessor, at its own expense, cause to be carried and maintained casualty insurance and public liability insurance in respect of the Units at the time subject hereto, against such risks, in such amounts and on such terms and conditions as are satisfactory to the Lessor and the Vendor, and, in any event, not less comprehensive in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned or leased by it, but in no event shall such coverage be for amounts or against risks less than the prudent industry standard for major Class I line-haul railroads. If the Casualty Value of all the Units at any given time is less than what the deductible would be under the foregoing standard, then no casualty insurance need be carried. All policies with respect to such insurance shall name the Lessor (both in its individual and trust capacity), the Beneficiary and the Vendor as additional named insureds and loss payees, as their interests may appear, shall provide for at least 30 days' prior written notice by the insurance carrier to the Lessor, the Beneficiary and the Vendor in the event of cancelation, expiration or amendment (and the Lessee shall provide 30 days' prior written notice to the Lessor, the Beneficiary and the Vendor in any such event), shall include waivers by the insurer of all claims for premiums against the Lessor, the Beneficiary and the Vendor and shall provide that losses are payable notwithstanding, among other things, any act of negligence of the Lessee, the Lessor, the Beneficiary or the Vendor, more hazardous use or occupation of the Units than that permitted by such policies, any breach or violation by the Lessee, the Lessor, the Beneficiary or the Vendor of any warranty, declaration, condition or other provision contained in any such policy, or foreclosure, notice of sale or any other proceeding in respect of the Units, or any change in the title to or ownership of any of the Units. Each such insurance policy shall expressly provide that all of the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Lessee) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by the Lessor, the Beneficiary or the Vendor. The Lessee shall, not later than June 15 of each year, commencing June 15, 1980, furnish to the Lessor, the Beneficiary and the Vendor a certificate of an independent insurance broker acceptable to the Vendor and the Lessor evidencing the maintenance of the insurance required hereunder and shall furnish certificates evidencing renewal 15 days prior to the expiration date of such policy or policies. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired so as to comply with the provisions of the first paragraph of this § 7, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

§ 8. *Reports.* On or before April 30 in each year, commencing with the calendar year 1980, the Lessee will furnish to the Lessor and the Vendor a certificate signed by the Chief Executive Officer, the Chief Operating Officer or the Chief Mechanical Officer of the Lessee or another qualified engineer satisfactory to the Lessor and the Vendor (a) setting forth as of the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the CSA, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request (including a description and the cost of all additions, modifications or

improvements made to the Units in the preceding year) and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof have been preserved or replaced. No later than the last business day of October in each calendar year, commencing with the calendar year 1980, the Lessee will furnish to the Lessor and the Vendor a certificate ("Certificate A") dated no earlier than December 31 of the preceding calendar year of a Consultant (as hereinafter defined) (i) setting forth the identification numbers of all Units as to which the Lessee is complying with the preventive maintenance schedule required by the first paragraph of § 7 of this Lease and are then in the condition required by clauses (a), (b) and (c) of the first paragraph of § 7 of this Lease, and (ii) setting forth the identification numbers of all Units as to which the Lessee is not complying with the preventive maintenance schedule required by § 7 of this Lease or which are not in such condition. The term "Consultant" as used herein shall mean Wyer Dick & Company or such other consulting firm or engineer as may be appointed in writing by the Vendor (which appointment may not be made by the Vendor without the prior written consent of Investors holding more than 50% of the outstanding CSA Indebtedness). No later than 120 days after the delivery of each Certificate A, the Lessee will, if such Certificate sets forth the identifying number of any Unit as not being maintained or in the condition referred to in clause (i) of the second sentence of this paragraph, furnish the Lessor and the Vendor with a supplemental certificate ("Certificate B") of a Consultant (i) certifying that the appropriate maintenance has been done and that such Unit is now in the condition required by clauses (a), (b) and (c) of § 7 of the Lease, or (ii) stating that such maintenance has not been done or such Unit is not in such condition. If such Certificate B is required and shall not be delivered on or prior to the last date specified for such delivery in the preceding sentence (or within ten days after written notice of such failure to deliver by the Lessor to the Lessee) or shall state that Unit is not in the required condition or the required maintenance has not been done, such Unit shall be deemed to have suffered a Casualty Occurrence under § 7 hereof. The Lessor and the Vendor, at their sole expense, shall have the right by their agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as either may request during the continuance of this Lease but the Lessor and the Vendor shall have no obligation to do so.

It is understood and agreed that in preparing Certificates A and B the Consultant shall first inspect the records of the Lessee with respect to the Units, and that, if the Consultant shall deem it desirable, the Consultant shall be permitted to physically inspect the Units, which shall be made available for such purpose at the locomotive maintenance facilities of the Lessee.

The Lessee shall promptly notify the Lessor, the Beneficiary and the Vendor of any occurrence of an Event of Default or other event which after notice or lapse of time or both would become an Event of Default, specifying such Event of Default and all such events and the nature and status thereof.

§ 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification.* THE LESSOR NEITHER MAKES, HAS MADE NOR SHALL BE DEEMED TO MAKE, ANY 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 OR ANY COMPONENT 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, OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF THE LESSOR), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder including, but not limited to, under Article 13 of the CSA; *provided, however,* that if at any time an Event of Default shall have occurred

and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, subleasing, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, at all times to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal thereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will fully conform therewith at its own expense; *provided, however,* that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, the Beneficiary or the Vendor, adversely affect the property or rights of the Lessor, the Beneficiary or the Vendor under this Lease or under the CSA. The Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value of the Units). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee (or such other party as may have title thereto), except to the extent such additions, modifications or improvements are described in the following sentence. Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units (including, but not limited to, parts in replacement of or in substitution for, and not in addition to, any parts originally incorporated in or installed as part of such Unit at time of acceptance hereunder or any part in replacement of, or substitution for, such replacement part) or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the United States Department of Transportation or any other regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA) shall immediately be vested in the Lessor.

The Lessee shall pay, and shall protect, indemnify and hold the Lessor (both individually and in its trust capacity), the Beneficiary and the Vendor, and their respective successors, assigns, agents and servants (hereinafter called "Indemnified Persons"), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising or alleged to arise out of this Lease or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any

latent or other defects whether or not discoverable by any Indemnified Person or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort or imposed by statute; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Lease (except by the Lessor) or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof; (vii) any claim (other than for the payment of the principal and interest on the CSA Indebtedness (as defined in the CSA)) arising out of the Vendor's holding a security interest under the CSA or the Lease Assignment; or (viii) any claim arising out of the Lease Assignment, the CSA or the Participation Agreement, including, without limitation, any claim arising out of any of the Lessor's obligations under the Lease Assignment, the CSA or the Participation Agreement, except to the extent such claim arises from the gross negligence or willful misconduct of the Lessor not related to the transactions contemplated by this Lease and the Participation Agreement. The Lessee shall be obligated under this § 9, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this § 9 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this § 9, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Lessor each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this § 9 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this § 9 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter.

The Lessee further agrees to indemnify, protect and hold harmless the Vendor, the Beneficiary and the Lessor (both individually and in its trust capacity) from and against any and all liabilities, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor, the Beneficiary and the Lessor because of the use in or about the construction or operation of any of the Units of any article or material or of any design, system, process, formula or combination which infringes or is claimed to infringe on any patent or other right to the extent the Builder does not so indemnify, protect and hold harmless the Vendor, the Beneficiary and the Lessor.

The Lessee shall bear the responsibility and risk for, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any or all of the Units of Equipment.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required filing date (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns,

except as otherwise provided in § 6 hereof) 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.

The indemnities contained in this § 9 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this § 9 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee or the Lessor therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise. The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee of the payment of any installments of principal or interest payable under the CSA or a guarantee of the residual value of the Equipment.

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

(A) default shall be made in payment of any amount provided for in §§ 3, 7 or 13 hereof when due and such default shall continue for five days;

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

(C) 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 Consent or in the Participation Agreement, and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

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

(E) any other proceeding shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee 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 Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee, or for the property of the Lessee, in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(F) an event of default shall have occurred under Article 15(g) of the CSA;

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

(a) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including, but not limited to, net after-tax losses of Federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; 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 terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents, subject to compliance with all mandatory requirements of law, enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; 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 as damages for loss of the bargain and not as a penalty whichever of the following amounts the Lessor, in its sole discretion, shall specify: (i) a sum, with respect to each Unit, equal to (x) the excess of 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, such present value to be computed on the basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rental would have been payable hereunder had this Lease not been terminated over the then present value of the rental which the Lessor reasonably estimates to be obtainable for each Unit during such period, such present value to be computed on the basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or, if such Unit is sold, the net proceeds of the sale plus (y) 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, representation or warranty of this Lease other than payment of rental, or (ii) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value (after deduction of all estimated expenses of sale) of such Unit at such time; *provided, however,* that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clause (ii) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination, over the net proceeds of such sale.

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

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The 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

not, at the time in question, prohibited 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 such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf. The Lessee hereby waives any and all claims against the Lessor and the Vendor and their agent or agents for damages of whatever nature in connection with any retaking of any Unit in any reasonable manner.

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

§ 11. *Return of Units upon Default.* If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof. For the purpose of delivering possession, the Lessee shall:

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

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance (which shall conform to the provisions of § 7 hereof), rent or storage 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 the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own expense, maintain and keep the Equipment in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof, maintain insurance on the Units (to the same extent as provided in § 7 hereof) and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All rent and per diem charges earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which 1/180 of the Semi-Annual Lease Factor, then applicable, of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor with respect to such Unit for each such day.

Without in any way limiting the foregoing obligations of the Lessee under this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney 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.

§ 12. *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. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's successors and assigns.

So long as (i) no Event of Default exists hereunder, (ii) no Event of Default exists under any other Lease of Railroad Equipment to which the Lessee is a party dated February 1, 1979, providing for the lease of up to approximately 246 locomotives, (iii) the Lessee is complying with the provisions of the Consent and (iv) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and, without the prior written consent of the Lessor and the Vendor, the Lessee may sublease (which sublease shall be subject to the rights and remedies of the Lessor and the Vendor hereunder) the Units to, or permit their use by, a user incorporated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by the Lessee or such user or by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease; *provided, however,* that the Vendor's and the Lessor's consent, not to be unreasonably withheld, must be obtained for any sublease that is for a term longer than six months or is renewable for a term more than six months; *provided, further, however,* that the Lessee shall not sublease or permit the sublease or use of any Unit to service involving operation or maintenance outside the United States of America except that occasional service in Canada shall be permitted so long as such service in Canada is on a temporary basis which is not expected to exceed a total of 90 days in any taxable year of the Beneficiary; and *provided, further, however,* that any such sublease or use shall be consistent with the provisions of § 16 hereof. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety.

The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor, the Beneficiary or the Vendor or resulting from claims against the Lessor, the Beneficiary or the Vendor not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

The Lessee agrees that at all times during the term of this Lease, the Units will be used in a manner so as to constitute rolling stock of a domestic railroad corporation subject to Part I of the Interstate Commerce Act or any successor provision within the meaning of Section 48(a)(2)(B)(ii) of the Code (as hereinafter defined). The Lessee agrees that it will not sublease the Units to, or permit their use by, any person in whose hands such Units would not qualify as "section 38 property" within the meaning of the Code.

§ 13. *Renewal and Duty of First Offer.* 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 or any extended term of this Lease, elect to extend the term of this Lease in respect of all, but not fewer than all, the Units then covered by this Lease for one or two additional five-year periods commencing on the scheduled expiration of the term of this Lease, provided that no such extended term shall extend beyond a date 27 years after the Basic Rent Commencement Date, at a semiannual rental equal to the Fair Market Rental of each Unit then subject to this Lease, payable in arrears on January 15 and July 15, in each year of the extended term of this Lease.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder and the term of this Lease is not to be extended or further extended pursuant to the preceding paragraph, the Lessor shall notify the Lessee not later than 90 days prior to the end of the original or any extended term of this Lease of the Lessor's intention to retain title to the Units then subject to this Lease or to sell any Units to third parties at the expiration of such term. If the Lessor shall have elected to sell any Units, the Lessor shall first offer such Units for sale to the Lessee at their then fair market value as determined not later than 70 days prior to the end of such term by an independent appraiser appointed by the Lessor for cash payable on the last day of such

term. The Lessee shall notify the Lessor of its acceptance of such offer not later than 60 days prior to the end of such term. If the Lessor has not received notice of such acceptance on or before such sixtieth day, the Lessor shall no longer be obligated to offer such Units to the Lessee. Any notice of acceptance given by the Lessee shall be irrevocable.

Fair Market Rental and Fair Market Purchase Price shall be determined on the basis of, and shall be equal in amount to, the cash rental for a five-year period or the purchase price, as the case may be, which would obtain in an arm's-length transaction between an informed and willing lessee or purchaser with a credit standing comparable to the credit standing of the Lessee at the time (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing lessor or seller, as the case may be, under no compulsion to lease or sell. If, after 60 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease pursuant to the first paragraph of this § 13, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Purchase Price or Fair Market Rental of the Units, then such purchase price or rental shall be determined in accordance with the foregoing definition by the following procedure. If either party to such determination shall have given written notice to the other requesting determination of such purchase price or rental by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, either party may request the American Arbitration Association to make such appointment, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental (and in the case of a renewal period, the Fair Market Purchase Price at the beginning and end of such renewal period) of the Units subject to the proposed extended term within 70 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental or Fair Market Purchase Price, as the case may be, of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from that of the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental or Fair Market Purchase Price, as the case may be. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental or Fair Market Purchase Price, as the case may be, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. Appraisal procedure expenses for appraisals referred to in this paragraph shall be borne equally by the Lessee and the Lessor.

Upon payment of the purchase price of any Unit, pursuant to an election by the Lessee to purchase the Units, the Lessor shall at Lessee's expense upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

§ 14. *Return of Units upon Expiration of Term.* The Lessor intends to retain the Units for re-lease at the expiration of the term of this Lease. As soon as practicable on or after the expiration of the original or any extended term of this Lease with respect to any Unit and in any event not later than 90 days after termination, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding 90 days following notification to the Lessor by the Lessee that all the Units have been assembled and

delivered for storage and transport the same, at any time within such 90-day period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee (including the insurance required by § 7 hereof); and in the event that any Unit shall suffer a Casualty Occurrence during such storage period, the Lessee shall pay the Lessor the Casualty Value thereof as provided in § 7 hereof. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable, except in the case of negligence or strict liability of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor or any prospective purchaser, lessee or user, such rights of inspection. Each Unit returned to the Lessor pursuant to this § 14 shall be in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof. During any storage period, the Lessee will, at its own expense, maintain and keep the Units in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof and will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. The Lessee shall pay to the Lessor for each day from the date of such termination to the date such Unit is placed in storage an amount equal to 1/180 of the Semi-Annual Lease Factor, then applicable, of the Purchase Price of such Unit.

§ 15. *Recording.* The Lessee, at its own expense, will cause this Lease, the CSA and any assignment hereof or thereof to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C.§ 11303 and deposited with the Registrar General of Canada (and notice of such deposit to be given forthwith in *The Canada Gazette*) pursuant to Section 86 of the Railway Act of Canada. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the CSA and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective rights in the Units, or for the purpose of carrying out the intention of this Lease, the CSA and the assignments hereof and thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this § 15, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor; *provided, however,* that no such opinion of counsel need be furnished in respect of the filing of the CSA or the assignment thereof in Canada. This Lease and the CSA, and the assignments hereof and thereof, shall be filed with the Interstate Commerce Commission and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision shall be made for publication of notice of such deposit in *The Canada Gazette* prior to the delivery and acceptance hereunder of any Unit.

§ 16. *Income Taxes.* (a) *Indemnity for Federal and Other Income Tax Benefits.* (1) This Lease has been entered into on the assumption that the Federal rate of taxable income of corporations in excess of $100,000 during the year 1979 is 46%, that the Beneficiary, as the beneficial owner of the Units for Federal income tax purposes, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended (hereinafter called the Code), and state and local taxing statutes to an owner of property, including, without limitation, (i) deductions for depreciation with respect to the basis of the Units under section 167(g) of the Code, which basis shall be at least equal to the entire Purchase Price of the Units, using the half-year convention and computed on the basis of the double-declining balance method of depreciation authorized by section 167(b)(2) of the Code, switching to the sum-of-the-years-digits method of depreciation authorized by section 167(b)(3) of the Code when most beneficial to the Beneficiary and without obtaining the prior consent of the Commissioner of Internal Revenue, on an asset depreciation period of 12

years, and to a net salvage value of zero after the reduction permitted by section 167(f)(1) of the Code (herein called the ADR Deductions), (ii) deductions for interest with respect to the CSA Indebtedness as authorized by section 163 of the Code (herein called the Interest Deductions) and (iii) the investment credit in the year in which the Units become subject to the Lease pursuant to section 38 of the Code for "new section 38 property" equal to at least 10% of the basis of the Units under section 167(g) of the Code, which basis shall be at least equal to the Purchase Price of the Units (herein called the Investment Credit).

(2) The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that the Lessee and any corporation controlled by it, in control of it or under common control with it, directly or indirectly, will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof.

(3) The Lessee agrees to maintain sufficient records to verify the amount of income and deductions in respect of each Unit allocable to sources within and without the United States and within domestic state and local taxing jurisdictions. The Lessee agrees to give the Beneficiary, within 90 days after request therefor, written notice describing the amounts of use of the Units within and without the United States and within domestic state and local taxing jurisdictions and specifying in reasonable detail the basis on which such allocations were made, if such information is required in connection with the preparation of the Beneficiary's domestic state and local tax returns or in connection with an audit by the Internal Revenue Service of the tax returns of the Beneficiary. In addition, within 90 days after the end of each calendar year, beginning with the year 1979, the Lessee agrees to furnish to the Beneficiary a statement to the effect that none of the Units has been used outside of the United States during the preceding calendar year, or if any of the Units was used outside the United States during such year, that the amount of such usage was minimal and did not impair the ability of the Beneficiary to treat, for Federal income tax purposes, all income and deductions relating to all uses of the Units subject to this Lease during such year as being derived from, or allocable to, sources within the United States, which statement shall be signed by the chief financial officer of the Lessee.

(4) The Lessee represents and warrants that (a) at the time the Beneficiary becomes the beneficial owner of the Units, the Units will constitute a "new section 38 property" within the meaning of section 48(b) of the Code; (b) at the time the Beneficiary becomes the beneficial owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code from commencing with the Beneficiary; (c) at the time the Beneficiary becomes the beneficial owner of the Units, no other person will be entitled to and the Lessee will have not claimed the Investment Credit, the ADR Deductions or the Interest Deductions with respect thereto; (d) at all times during the original term of the Lease and renewal periods, the Units will constitute "section 38 property" within the meaning of section 48(a) of the Code; and (e) at all times during the original term of this Lease and renewal periods, the Beneficiary will be entitled to treat, for Federal income tax purposes, each item of income, deduction, and credit relating to all uses of the Units subject to this Lease as being derived from, or allocable to, sources within the United States within the meaning of sections 861 through 864 of the Code.

(5) If by reason of any act of commission or omission (including any act required or permitted to be taken pursuant to § 9 of this Lease), misrepresentation, breach of any agreement, covenant, or warranty contained herein, in the Participation Agreement, or in any exhibit thereto, on the part of the Lessee, the Beneficiary shall not have, shall lose the right to claim (including a good faith determination based upon the advice of tax counsel of General Electric Company ("Tax Counsel") that such claim is not allowable), shall suffer a disallowance of or be required to recapture all or any portion of the ADR Deductions, the Interest Deductions, or the Investment Credit, or if, under any circumstances or for any reason whatsoever, the Beneficiary, in computing its taxable income for Federal income tax purposes, shall not have, shall lose the right to claim (including a good faith determination based upon advice of Tax Counsel that such claim is not allowable), shall suffer a disallowance of or be required to recapture an amount of foreign tax credit which

would have been allowable to the Beneficiary if it had not participated in the transactions contemplated by this Lease (hereinafter called the Foreign Tax Credit) (any such event being hereinafter called a Loss), then the Lessee shall pay to the Beneficiary such amount or, from time to time, such amounts as, after deduction of all taxes required to be paid by the Beneficiary in respect of the receipt of such amounts under the laws of any Federal, state, local or foreign government or taxing authority, shall be equal to the sum of the aggregate additional Federal, state or local income taxes payable by the Beneficiary from time to time as a result of any such Loss plus the amount of any interest, penalties or additions to tax payable as a result of any such Loss. If, as a result of a Loss, the aggregate Federal income taxes paid by the Beneficiary for any taxable year shall be less than the amount of such taxes that would have been payable by such Beneficiary had no such loss occurred, then the Beneficiary shall pay to the Lessee the amount of such difference in taxes, plus any additional tax benefits realized by the Beneficiary as the result of such payment; *provided, however,* that the Beneficiary shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to the Beneficiary pursuant to this subsection (a) in respect of a Loss, less (y) the amount of all prior payments by the Beneficiary to the Lessee pursuant to this sentence. The amount payable to such Beneficiary pursuant to this paragraph shall be paid within 30 days after receipt of a written demand therefor from the Beneficiary accompanied by a written statement describing in reasonable detail such loss and the computation of the amount so payable (but not prior to the earlier of (i) the filing of a return or the acceptance of an audit report in which such Loss is reflected and (ii) the payment of additional tax which becomes due as the result of the Loss and, in the case of amounts which are being contested in accordance with subsection (d) of this § 16, not prior to the time provided in such subsection (d)). Any payment due to the Lessee from the Beneficiary pursuant to this paragraph shall be paid within 30 days after the Beneficiary realizes any such savings in its Federal income taxes or additional tax benefits, as the case may be.

(6) Notwithstanding anything to the contrary hereinbefore set forth, no amount shall be payable to the Beneficiary as an indemnity under this § 16 in respect of any Loss to the extent that such Loss is due solely to the occurrence of any of the following events:

(i) a voluntary transfer or other voluntary disposition by the Beneficiary of any interest in the Units or under the Trust Agreement without the consent of the Lessee, unless an Event of Default shall have occurred and be continuing;

(ii) the failure of the Beneficiary to timely and properly claim the Investment Credit, the ADR Deductions or the Interest Deductions as determined by the Beneficiary unless the Beneficiary shall have received an opinion of Tax Counsel that such claim is not allowable;

(iii) the failure of the Beneficiary to have sufficient liability for Federal income tax against which to credit such Investment Credit or the Foreign Tax Credit or to have sufficient income to benefit from the ADR Deductionss or the Interest Deductions, as the case may be;

(iv) a Casualty Occurrence if the Lessee shall have paid the Casualty Value pursuant to § 7 hereof; and

(v) an amendment to, or change in, the Code or any Regulation thereunder or any published Revenue Ruling or other document of the Treasury or the Internal Revenue Service which is enacted or adopted after the acceptance of the last Unit to be accepted pursuant to the CSA and this Lease.

(b) *Change of Law.* If there is any amendment to, or change in, the Code or any Regulation thereunder or any published Revenue Ruling or other document of the Treasury or the Internal Revenue Service which is enacted or adopted prior to the acceptance of the last Unit to be accepted pursuant to the CSA and this Lease and if such amendment or change affects the Investment Credit allowable with respect to any Unit or the ADR Deductions allowable with respect to any Unit or the privilege of the Beneficiary to file consolidated Federal, state and local income tax returns with corporations affiliated with it, or if such amendment or change affects the Federal rate of tax on taxable income of corporations, then the amounts of rentals and the Casualty Values

under this Lease will be appropriately adjusted by such amount or amounts as shall, in the reasonable opinion of the Beneficiary, cause the Beneficiary's Net Economic Return (as defined in § 3 herein) to equal the Net Economic Return that would have been realized by the Beneficiary if such amendment or change had not occurred; *provided, however,* that the rentals and Casualty Values, as so adjusted, shall not be less than amounts which are sufficient to satisfy the obligations of the Lessor under the CSA, notwithstanding any limitation of liability contained therein.

(c) *Indemnity for Improvements.* If at any time the Beneficiary determines that it is required by the Internal Revenue Service to include in its gross income an amount in respect of any improvement or addition made to the Equipment or action required to be taken by the Lessee pursuant to the Lease or otherwise (hereinafter called Capital Expenditures), then the Lessee shall pay to the Beneficiary, as an indemnity, such amount or amounts as, after deduction of all taxes required to be paid by the Beneficiary in respect of the receipt of such amounts under the laws of any Federal, state, local or foreign taxing authority, shall be equal to the sum of the aggregate additional Federal, state, local or foreign income taxes payable by the Beneficiary from time to time as a result of such Capital Expenditures plus the amount of any interest, penalties or additions to tax payable as a result of any such Capital Expenditures. If as a result of any such Capital Expenditures the aggregate Federal, state, local or foreign income taxes paid by the Beneficiary for any taxable year shall be less than the amount of such taxes that would have been payable by the Beneficiary had no such Capital Expenditures been made, then the Beneficiary shall pay the Lessee the amount of such savings in taxes plus any additional tax benefits realized by the Beneficiary as a result of such payment; *provided, however,* that the Beneficiary shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee pursuant to this subsection (c) in respect of any Capital Expenditures less (y) the amount of all prior payments by the Beneficiary pursuant to this sentence. The amount payable to the Beneficiary pursuant to this subsection (c) shall be paid within 30 days after receipt of the written demand therefor from the Beneficiary accompanied by a written statement describing in reasonable detail such inclusion and the computation of the amount so payable (but not prior to the payment of the additional Federal, state, local or foreign income tax which becomes due as a result of said inclusion and, in the case of amounts which are being contested in accordance with subsection (d) of this § 16, not prior to the time provided in such subsection (d)). Any payment due to the Lessee pursuant to subsection (d) of this § 16 shall be paid within 30 days after the Beneficiary realizes any such savings in its income taxes or additional tax benefits, as the case may be.

The Lessee agrees to give the Beneficiary, within 30 days after request therefor, written notice describing in reasonable detail Capital Expenditures made and specifying the cost thereof with respect to each Unit if such information is required in connection with an audit by the Internal Revenue Service of the tax returns of the Beneficiary.

(d) *Contests.* (1) If the Internal Revenue Service shall propose an adjustment in the Federal income taxes of the Beneficiary for which the Lessee would be required to indemnify the Beneficiary pursuant to subsection (a) of this § 16 and the amount of the indemnity which the Lessee would be required to pay would exceed $100,000, then, if requested by the Lessee in a timely written request, the Beneficiary shall request an opinion from counsel selected by the Beneficiary and approved by the Lessee as to whether the basis in law and in fact in favor of allowance of the item proposed to be adjusted outweighs the basis in law and in fact to the contrary. If the opinion is to that effect and if the Lessee promptly requests the Beneficiary to do so, the Beneficiary shall contest the proposed adjustment; *provided, however,* that the Beneficiary shall determine in its sole discretion the nature of all action to be taken to contest such proposed adjustment including (i) whether any action to contest such proposed adjustment shall initially be by way of judicial or administrative proceedings, or both, (ii) whether any such proposed adjustment shall be contested by resisting payment thereof or by paying the same and seeking a refund thereof, and (iii) if the Beneficiary shall undertake judicial action with respect to such proposed adjustment, the court or other judicial body before which such action shall be commenced. The Beneficiary shall have full control over any contest pursuant to this subsection (d) and shall not be obligated to appeal an adverse determination by any court. At any time, whether before or

after commencing to take the action set forth in this subsection (d), the Beneficiary may decline to take any such action with respect to all or any portion of a proposed adjustment by notifying the Lessee in writing that the Lessee is relieved of its obligation to indemnify the Beneficiary with respect to the adjustment or such portion, as the case may be.

(2) The Beneficiary shall not be required to take any action pursuant to this subsection (d) unless and until the Lessee shall have agreed to indemnify the Beneficiary in a manner reasonably satisfactory to the Beneficiary for any liability or loss which the Beneficiary may incur as a result of contesting the validity of any proposed adjustment and shall have agreed to pay to the Beneficiary on demand all costs and expenses which the Beneficiary may incur in connection with contesting such proposed adjustment (including fees and disbursements of counsel). If the Beneficiary determines to contest any adjustment by paying the additional tax and suing for a refund, the Lessee shall have paid to the Beneficiary an amount equal to the sum on an after-tax basis of any tax, interest, penalties and additions to tax which are required to be paid. Upon receipt by the Beneficiary of a refund of any amounts paid by it based on the adjustment in respect of which amounts it shall have been paid an equivalent amount by the Lessee, the Beneficiary shall pay to the Lessee the amount of such refund together with any interest received by it on such amount. The Lessee shall be obligated to pay to the Beneficiary the amount specified in subsection (a) of this § 16 promptly after the Beneficiary has taken all the action that it has agreed in this § 16 to take.

(e) *Definition of Beneficiary.* For purposes of this § 16, the term "Beneficiary" shall include any member of an affiliated group, within the meaning of section 1504 of the Code, of which the Beneficiary is, or may become, a member if consolidated returns are filed for such affiliated group for Federal income tax purposes.

(f) *Survival of Indemnities.* The liability of the Lessee to make indemnification payments pursuant to this § 16 shall, notwithstanding any expiration or termination of this Lease, continue to exist until such indemnity payments are made by the Lessee. All indemnity payments under this § 16 shall be made directly to the party entitled to indemnification. All payments provided to be made to the Beneficiary by the Lessee pursuant to this § 16 shall be made by wire transfer of immediately available funds to such bank in the continental United States for the account of the Beneficiary as it from time to time shall have directed the Lessee in writing.

§ 17. *Interest on Overdue Rentals.* Anything contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount on the overdue rentals and other obligations for the period of time during which they are overdue at a rate per annum equal to 12%, or such lesser amount as may be legally enforceable. Interest hereunder shall be determined on the basis of a 360-day year of twelve 30 day months.

§ 18. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at P.O. Box 30007, Salt Lake City, Utah 84125, Attention of Corporate Trust Department, with a copy to the Beneficiary at its address set forth in the Participation Agreement, and

(b) if to the Lessee, at 1310 Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, Attention of Assistant Treasurer - Financing & Collections;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at P.O. Box 2258, Baltimore, Maryland 21203, Attention of Corporate Trust Department.

§ 19. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition

or unenforceability 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.

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

§ 20. *Immunities; No Recourse.* 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, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by the Lessor, or for the purpose or with the intention of binding the Lessor 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 Lease is executed and delivered by the Lessor solely in the exercise of the powers expressly conferred upon the Lessor as trustee under the Trust Agreement; and that no personal liablity or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Lessor or the Beneficiary (except as provided in the last paragraph of Article 12 of the CSA and Section 1.03 and the last sentence of Section 3.04 of the Trust Agreement) on account of any representation, undertaking or agreement herein of the Lessor, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

§ 21. *Execution.* This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. It shall not be necessary that any counterpart be executed by both parties hereto as long as each party shall have executed one counterpart hereof and delivered it to the other party. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 22. *Lessor's Right to Perform.* If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at the rate per annum specified in § 17 hereof, shall be payable by the Lessee upon demand except as otherwise provided in this Lease. No such performance or compliance by the Lessor shall be deemed a waiver of rights and remedies of the Lessor or any assignee of the Lessor against the Lessee hereunder or for the purposes of Article 15(g) of the CSA be deemed to cure an Event of Default hereunder.

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

§ 24. *Obligations of Lessor under CSA; Additional Rentals.* In the event that the Lessor shall become obligated to make any payment (other than payments in settlement for the Purchase Price for any Unit, payments of the principal of or interest on the CSA Indebtedness in respect thereof pursuant to the CSA and payments made pursuant to the proviso to the third paragraph of Article 12 thereof) or to perform any obligations pursuant to the CSA not covered by the provisions of this Lease, the Lessee shall pay such additional rentals hereunder and perform such obligations so that all of the Lessor's obligations (other than as aforesaid) pursuant to the CSA shall be fully complied with, without regard for any limitation of liability of the Lessor contained in the CSA.

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

[Corporate Seal]

Attest:

Assistant Secretary

CONSOLIDATED RAIL CORPORATION,

by

Assistant Treasurer - Financing & Collections

[Corporate Seal]

Attest:

Authorized Officer

FIRST SECURITY BANK OF UTAH, N.A.,
not individually but solely as Trustee,

by

Authorized Officer

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

On this 10th day of December, 1979, before me personally appeared H. W. Brown, to me personally known, who, being by me duly sworn, says that he is Assistant Treasurer - Financing & Collections of CONSOLIDATED RAIL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Catherine Forrester
Notary Public

[Notarial Seal]

My Commission Expires

CATHERINE FORRESTER
NOTARY PUBLIC, State of New York
No. 30-01FO4696213
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1981

CATHERINE FORRESTER
NOTARY PUBLIC, State of New York
No. [illegible]
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1981

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

On this 10th day of December, 1979, before me personally appeared ROBERT S. CLARK, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the seal of said association, and that said instrument was signed and sealed on behalf of said association 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 association.

Catherine Forrester
Notary Public

[Notarial Seal]

My Commission Expires

CATHERINE FORRESTER
NOTARY PUBLIC, State of New York
No. 30-01FO4696213
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1981

SCHEDULE A TO LEASE

Type	Builder	Quantity	Lessee's Identification Numbers (Both Inclusive)
1,500 h.p. Model GP15-1 Diesel Electric Locomotives	General Motors Corporation (Electro-Motive Division)	19	CR 1652-CR 1670.

Casualty Value

Rental Payment Date	Percentage of Purchase Price
(Interim Payment)	82.22
July 15, 1980	82.91
January 15, 1981	83.36
July 15, 1981	83.57
January 15, 1982	83.57
July 15, 1982	83.34
January 15, 1983	82.91
July 15, 1983	82.28
January 15, 1984	81.44
July 15, 1984	80.40
January 15, 1985	79.18
July 15, 1985	77.78
January 15, 1986	76.20
July 15, 1986	74.44
January 15, 1987	72.53
July 15, 1987	70.47
January 15, 1988	68.25
July 15, 1988	65.90
January 15, 1989	63.42
July 15, 1989	60.82
January 15, 1990	58.09
July 15, 1990	55.25
January 15, 1991	52.30
July 15, 1991	49.25
January 15, 1992	46.11
July 15, 1992	42.89
January 15, 1993	39.62
July 15, 1993	36.29
January 15, 1994	32.91
July 15, 1994	29.47
January 15, 1995	25.99
July 15, 1995	24.58
January 15, 1996	23.12
July 15, 1996	21.59
January 15, 1997	20.00

The foregoing percentages have been calculated without regard to recapture of the Investment Credit (as defined in § 16 hereof). Consequently, the above Casualty Values shall each be increased by an amount equal to the sum of pre-tax equivalents of the Investment Credit lost to the Beneficiary computed in accordance with the marginal federal, state and local income tax rate of the Beneficiary at the date of payment of such Casualty Value. Promptly upon receipt of the notice of Casualty Occurrence pursuant to § 7 hereof, the Lessor, after obtaining the information required from the Beneficiary, shall notify the Lessee and the Vendor of the applicable marginal tax rates and such other information as may be required to compute the increase in Casualty Value pursuant to the preceding sentence.

SCHEDULE C TO LEASE

Certificate of Acceptance

To: First Security Bank of Utah, N.A., as Trustee (the "Lessor")
79 Main Street (Suite 310)
Salt Lake City, Utah 84111
Attention of Corporate Trust Department

I, the duly authorized representative for the Lessor and Consolidated Rail Corporation (the "Lessee") under the Conditional Sale Agreement and the Lease of Railroad Equipment, both dated as of February 1, 1979, respectively, do hereby certify that I inspected and accepted delivery thereunder of the following Units of Equipment:

TYPE OF EQUIPMENT: Diesel electric locomotive
MODEL:
DATE ACCEPTED:
NUMBER OF UNITS:
NUMBERED:
MANUFACTURER'S SERIAL NOS:

I do further certify that the foregoing Units are in good order and condition, and appear to conform to the specifications, requirements and standards applicable thereto as provided in Article 2 of the aforesaid Conditional Sale Agreement.

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

"Ownership Subject to a Security Agreement filed with the Interstate Commerce Commission."

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

_____
Authorized Representative of Lessor and Lessee

BUILDER:

General Motors Corporation
(Electro-Motive Division)