

CHICAGO AND



TRANSPORTATION COMPANY

RECORDATION NO. 8530 Filed & Recorded

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INTERSTATE COMMERCE COMMISSION  
BERNARD J. ALLEN  
DIANE KOHLER-RAUSCH  
ASSISTANT SECRETARIES  
DIRECT DIAL NUMBER  
312/454-6534

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INTERSTATE COMMERCE COMMISSION

File No.: A-9911

I. C. C. OPERATION  
Interstate Commerce Commission  
Washington, D. C. 20423

RECORDATION NO. 8530 Filed & Recorded

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6-296A106

8530-B

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Attn: Mr. Robert L. Oswald,

INTERSTATE COMMERCE COMMISSION  
Washington, D. C.

Dear Sir:

Enclosed for recordation pursuant to Section 20c of the Interstate Commerce Act are counterparts of the following:

- (1) Conditional Sale Agreement dated as of September 1, 1976, between General Motors Corporation (Electro-Motive Division), Vendor, and Gold Bond Stamp Company of Georgia, Vendee.
- (2) Agreement and Assignment as of September 1, 1976, between General Motors Corporation (Electro-Motive Division), as builder, and American National Bank and Trust Company of Chicago, as Agent, Assignee, assigning the Conditional Sale Agreement covered in (1) above.
- (3) Lease of Railroad Equipment dated as of September 1, 1976, between Chicago and North Western Transportation Company, Lessee, and Gold Bond Stamp Company of Georgia, Lessor.
- (4) Assignment of Lease and Agreement, dated as of September 1, 1976, between Gold Bond Stamp Company of Georgia, Lessor, and American National Bank and Trust Company of Chicago, as Agent, Vendor, assigning the Lease of Railroad Equipment covered in (3) above.

The addresses of the parties to the aforementioned agreements are:

Chicago and North Western  
Transportation Company  
400 West Madison Street  
Chicago, Illinois 60606

*Handwritten signatures: C. Dunlap and M. Cannella*

Mr. Robert L. Oswald  
Page 2

American National Bank and  
Trust Company of Chicago  
33 North LaSalle Street  
Chicago, Illinois 60690

General Motors Corporation,  
Electro-Motive Division  
LaGrange, Illinois 60525

Gold Bond Stamp Company  
of Georgia  
12755 State Highway 55  
Minneapolis, Mn. 55441

The equipment covered by the aforementioned agreement consists of 10  
3,000 horsepower diesel-electric locomotives, General Motors Model  
SD-40-2, bearing the road numbers of Chicago and North Western Transpor-  
tation Company 6926 through 6935, and also bearing the legend "Ownership  
subject to a Security Agreement Filed under the Interstate Commerce Act,  
Section 20c."

Enclosed is our check for \$120.00 for the required recordation fee. Please  
accept for recordation two counterparts 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,



Diane Kohler-Rausch  
Assistant Secretary

DK:db  
Enc.

RECORDATION NO. 8530-B Filed & Recorded

OCT 22 1976 4 24 PM

INTERSTATE COMMERCE COMMISSION

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LEASE OF RAILROAD EQUIPMENT

Dated as of September 1, 1976

between

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

and

GOLD BOND STAMP COMPANY OF GEORGIA

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## Lease of Railroad Equipment

### Table of Contents

|   | <u>Page</u> |
|---|-------------|
| § 1. Net Lease .....  | 1           |
| § 2. Delivery and Acceptance of Units .....   | 2           |
| § 3. Rentals .....  | 3           |
| § 4. Term of Lease .....  | 4           |
| § 5. Identification Marks .....   | 4           |
| § 6. Taxes .....  | 5           |
| § 7. Maintenance; Casualty Occurrences,<br>Insurance .....                              | 8           |
| § 8. Reports and Inspection .....   | 11          |
| § 9. Disclaimer of Warranties; Compliance<br>with Laws and Rules; Indemnification ..... | 11          |
| § 10. Default .....   | 14          |
| § 11. Return of Units upon Default .....  | 17          |
| § 12. Assignment; Possession and Use .....  | 22          |
| § 13. Right of First Refusal .....  | 21          |
| § 14. Return of Units upon Expiration of<br>Lease Term .....                            | 23          |
| § 15. Recording .....   | 25          |
| § 16. Income Taxes .....  | 25          |
| § 17. Interest on Overdue Rentals .....   | 32          |
| § 18. Notices .....   | 33          |
| § 19. Severability; Effect and Modification<br>of Lease .....                           | 33          |

|                                   | <u>Page</u> |
|-----------------------------------|-------------|
| § 20. Execution .....             | 33          |
| § 21. Law Governing .....         | 34          |
| Schedule 1--Schedule of Equipment |             |
| Schedule 2--Casualty Values       |             |

LEASE OF RAILROAD EQUIPMENT dated as of September 1, 1976, between CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation (hereinafter called the Lessee), and GOLD BOND STAMP COMPANY OF GEORGIA, a New Jersey corporation (hereinafter called the Lessor).

WHEREAS the Lessor is entering into a conditional sale agreement dated as of the date hereof with General Motors Corporation (Electro-Motive Division), a Delaware corporation (hereinafter called the Builder), (such agreement being hereinafter called the Security Documentation), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule 1 hereto (hereinafter called the Equipment);

WHEREAS the Builder is assigning its interests in the Security Documentation to American National Bank & Trust Company of Chicago, a national banking association, acting as agent (hereinafter, together with its successors and assigns, called the Vendor) under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) with the Lessee and the parties named in Exhibit A thereto;

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

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Documentation, or against the Builder or the Vendor

or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, 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 or entity, 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 Security Documentation. The Lessor will cause the Units to be delivered to the Lessee at the point within the United States of America at which the Units are delivered to the Lessor under the Security Documentation. 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 (hereinafter called the Certificate of Acceptance) in accordance with the provisions of Article 3 of the Security Documentation, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, 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 Security Documentation pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 61 consecutive payments payable (i) on January 1, 1977, and (ii) on each quarterly anniversary of such first payment date to and including the 60th quarterly anniversary thereof. The rental payment which is due and payable pursuant to clause (i) of the preceding sentence shall be in an amount equal to 9.50% of the product of (x) a fraction the numerator of which is the number of days elapsed from the Closing Date (as such term is defined in the Security Documentation), including such date, through and including December 31, 1976, and the denominator of which is 360, and (y) the Purchase Price (as such term is defined in the Security Documentation) of all Units at any time subject to this Lease. The rental payments due and payable pursuant to clause (ii) of the first sentence of this paragraph shall be in an amount equal to 2.464871% of the Purchase Price of all Units then subject to this Lease; provided, however, notwithstanding any other provision hereof, to the extent that the Lessee shall be denied possession of a Unit or Units because of the occurrence of a default under the Security Documentation which is not an Event of Default (as such term is hereinafter defined) under this Lease, the Lessee shall have no further obligation to make any additional rental payments for such Unit or Units with regard to periods subsequent to its loss of possession of such Unit or Units.

The rental payments hereinbefore set forth are subject to adjustment pursuant to § 16 hereof.

If any of the rental payment dates referred to above is not a business day the rental payment otherwise payable on such date shall be payable on the next succeeding 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 Chicago, Illinois, 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, 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 Security Documentation, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default under the Security Documentation 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., Chicago 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 and 10 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 §§ 6, 7, 9 and 14 hereof) shall survive the expiration of the term of 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 Security Documentation. If an event of default should occur under the Security Documentation, the Vendor may terminate this Lease (or rescind its termination), all as provided therein.

§ 5. Identification Marks. The Lessee (at its own expense) will cause each Unit to be kept numbered with the road number set forth in Schedule 1 hereto, or in the case of any Unit not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, 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 under the Interstate Commerce Act, Section 20c", "Gold Bond Stamp Company of Georgia Owner/Lessor; Bank or Trust Company Security Owner under a Security Agreement Filed under the

Interstate Commerce Act, Section 20c" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and of the rights of the Vendor under the Security Documentation. 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 or destroyed. The Lessee will not change the road 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, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to such effect. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

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.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, Federal, or foreign taxes (other than any United States Federal income tax payable by the Lessor in consequence of the receipt of payments provided for herein and, to the extent that the Lessor receives credit therefor against its United States Federal income tax liability, any foreign income tax, and other than the aggregate of all state or local taxes measured by net income based on such receipts and value added taxes in lieu of such net income taxes up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state and other than any state franchise tax, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or

license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documentation, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the interest of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as such imposition remains unpaid and Lessee is contesting in its own name and in good faith and by appropriate legal or administrative proceedings such impositions, or the Lessor is required to contest such impositions as provided in this § 6, and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Lessor or the Vendor under the Security Documentation. The Lessee agrees to give the Lessor notice of such contest brought in Lessee's name within 30 days after institution thereof and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall pay the Lessor on presentation of an invoice therefor if the Lessor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Lessor) or the Lessee shall have approved the payment thereof, and the Lessor agrees to give the Lessee written notice promptly after it first obtains knowledge of the making of such charge or levy, and agrees to take such other action as may reasonably be requested by the Lessee for the purpose of contesting payment or obtaining refund of all or a portion of such imposition, as hereinafter provided in this § 6.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise

pursuant to any correlative provision of the Security Documentation not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor to fulfill completely its obligations pursuant to said provision; provided, however, that the Lessor shall have contested (if required to do so under this § 6) such impositions in good faith and to the extent permitted under the Security Documentation.

In the event any returns, statements or reports with respect to impositions involving any Unit 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 such Units, as shall be satisfactory to the Lessor and the Vendor or, where not so permitted, will notify the Lessor and the Vendor of such requirement and will prepare and deliver such reports to the Lessor and the Vendor within a reasonable period of time prior to the time such reports are to be filed in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

In the event the Lessee may be prohibited by law or is impaired from contesting in its own name any imposition covered by this § 6 in respect of which the Lessee would otherwise be required to make payments to the Lessor pursuant hereto, the Lessor shall, upon request and at the expense of the Lessee, take all legal and other appropriate action reasonably requested by the Lessee to contest such imposition. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein. Further, the Lessee shall indemnify and hold the Lessor 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 taken by the Lessee or Lessee under this § 6. The Lessee shall be entitled to any refund received by the Lessor or the Lessee in respect of any imposition paid 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.

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 amount which the Lessee shall be required to pay with respect to any imposition which is subject to indemnification under this § 6 shall be an amount sufficient to restore the Lessor to the same position, after considering the effect of the receipt of such indemnification by the Lessor on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that the Lessor would have been in had such imposition not been imposed so as to maintain the Lessor's net return after taxes on the same basis (including the tax rates and the Tax Assumptions defined in § 16) as used by the Lessor in originally evaluating this transaction (hereinafter called Lessor's Net Return).

§ 7. Maintenance; Casualty Occurrences; Insurance. The Lessee agrees that, at Lessee's own cost and expense, it will be responsible for ordinary maintenance and repairs required to maintain and keep all of the Units which are subject to this Lease in good operating order, repair and condition; provided, however, that the Lessee will at all times maintain each of the Units at least as well as it maintains comparable locomotives owned by it.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, returned to the Builder pursuant to the patent indemnity provisions of the Security Documentation, or taken or requisitioned by condemnation or otherwise by the United States Government or any political subdivision thereof for a stated period which shall exceed the then remaining term of this Lease or for an indefinite period, but only when such period shall exceed the term hereof, or by any other 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 and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule referred to below. 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 return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit and the Lessee shall pay all costs of removal of such Unit and of freight to the place designated pursuant to § 14 hereof. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit returned to the Builder pursuant to the patent indemnity provisions of the Security Documentation an amount equal to any payment made by the Builder to the Vendor in respect thereof under the Security Documentation.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule 2 hereto opposite such date.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly 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 20% of the Purchase Price of such Unit. 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), the Lessor shall be entitled to recover possession of such Unit.

The Lessor hereby irrevocably 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. Provided that the Lessee has previously paid the Casualty Value to the Lessor, 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 for use by the United States Government or any political subdivision thereof (hereinafter called the Government) of any Unit during the term of this Lease all of the Lessee's obligations 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, 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, 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 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, 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 Equipment to the Lessor, at its own expense, cause to be carried and maintained property insurance and public liability insurance in respect of the Units at the time subject hereto, in amounts (subject to customary deductibles) and against risks customarily insured against by railroad companies in respect of similar equipment, and, in any event, comparable in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it. 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, 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 from the Lessee's insurance coverage 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.

§ 8. Reports and Inspection. On or before April 30 in each year, commencing with the calendar year 1978, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documentation, 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 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 and by the Security Documentation have been preserved or replaced. The Lessor, at its sole cost and expense, shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

The Lessee shall furnish to the Lessor the reports required to be furnished to the Lessor pursuant to Paragraph 11 of the Participation Agreement.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, 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, 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 under the provisions of Items 3 and 4 of Annex A of the Security Documentation; 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, 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, 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 all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units and with all applicable interchange rules, 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 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 reasonable opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documentation. The Lessee, at its own cost and expense, may furnish other additions, modifications and improvements to the Units during the term of this Lease. Any such additions, modifications and improvements made by the Lessee which are readily removable without causing material damage to the Units shall be owned by the Lessee and may be removed by the Lessee at any time during the term of this Lease or any renewal thereof.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default, an event of default or an Event of Default under the Security Documentation, the Participation Agreement, this Lease, or any sublease entered into pursuant to § 12 hereunder, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease or the transfer of title to the Equipment by the Vendor pursuant to any provision of the Security Documentation. The indemnities arising under this paragraph shall continue in full force and effect with respect to all events, facts, conditions or other circumstances occurring or existing prior to the expiration or termination of the term of this Lease and return of the Units as provided in § 14 of this Lease; provided, however, that the foregoing indemnification shall not apply to any failure of payment of the principal of or interest on the Conditional Sale Indebtedness and shall not be deemed to operate as a guaranty of the residual value of any Unit. The amount the Lessee shall be required to pay with respect to any of its

obligations under this paragraph shall include a payment to the indemnified party sufficient to restore such party to the same position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that the indemnified party would have been in had the liability or expense indemnified against not been incurred.

The Lessee 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 date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns) 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.

§ 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 or § 7 of this Lease and such default shall continue for ten business days, or default shall be made in payment of any other amount provided for in this Lease and such default shall continue for ten days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

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 and shall fail or refuse to cause such assignment or transfer to be canceled by agreement of all parties having any interest therein and to recover possession of such Units within 15 days after written notice from the Lessor to the Lessee demanding such cancellation and recovery of possession;

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 Participation Agreement or the Purchase Commitment (as such term is defined 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 Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under 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 obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

E. any other proceedings 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 obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

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

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and 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 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, 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 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 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 failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessor may, upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Lessor, take or cause to be taken by its agent or agents, immediate possession of each of the Units, or one or more of the Units and may remove the same from possession and use of the Lessee or any other person and for such purpose may enter upon the premises of the Lessee or any other

premises where the Units may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Lessee, subject to all mandatory requirements of due process of Law.

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 same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner 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, 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 in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair 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 amounts 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 termina-

tion, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the product of (i) a fraction the numerator of which is 10-1/2% and the denominator of which is 360, and (ii) the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of 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 (including, but not limited to, the rights under §§ 6, 7, 10 and 16 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns.

So long as the Lessee shall not be in default under this Lease and the Lessee shall have fully complied with the provisions of the fourth paragraph of this § 12, the Lessee shall be entitled to the possession and use of the Units and, without the Lessor's consent, to sublease the Units to, or to 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 Lessor's consent, not to be unreasonably withheld, must be obtained for any sublease that is for a term longer than six months; provided, further,

however, that the Lessee shall not sublease or permit the sublease or use of any Unit to service involving regular operation and maintenance outside the United States of America; and provided further, however, that any such sublease or use shall be consistent with the provision of § 16 hereof. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of principal and not a surety.

Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; provided, however, that every such sublease shall be subject to the rights and remedies of the Vendor under the Security Document and the Lessor under this Lease in respect of the Units covered by such sublease upon the occurrence of an Event of Default thereunder or hereunder.

The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (except any sublease as aforesaid and other than an encumbrance resulting from claims against the Lessor, the Vendee or the Vendor not related to the ownership or leasing of, or the security title of the Vendor to, the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interest of the Lessor, the Vendor or the Lessee therein; except that this covenant will not be breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent; and, furthermore, the Lessee shall be under no obligation to discharge any such lien, charge, security interest or encumbrance so long as it is contesting the same in good faith and by appropriate legal proceedings and the failure to discharge the same does not, in the opinions of the Lessor and the Vendor, adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the Security Document.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District

of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all the lines of railroad of the Lessee; provided, however, that such assignee, lessee or transferee will not, upon the effectiveness of such merger, consolidation, lease or acquisition be in default under any provision of this Lease and that such acquisition or lease or railroad lines of the Lessee shall not alter in any way the Lessee's obligation to the Lessor and Vendor hereunder which shall be and remain those of a principal and not a surety.

13. Renewal Options and Right of First Refusal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease elect to extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for a three year period commencing on the scheduled expiration of the original term of this Lease, at a "Fair Market Rental" (as such term is defined in this § 13) payable quarterly in arrears.

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 initial extended term of this Lease elect to extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for an additional three year period commencing on the scheduled expiration of the initial extended term of this Lease, at a Fair Market Rental payable quarterly in arrears.

In the event that there is no extension of this Lease by the Lessee at the expiration of the original term or initial extended term thereof and the Lessor, in such event, elects to sell such Units to third parties after such expiration, the Lessor shall, in a commercially reasonable manner, solicit offers to buy such Units (excepting additions, modifications and improvements which may be removed by Lessee pursuant to § 9 hereof), and upon receipt thereof shall exhibit to the Lessee a true copy of the most favorable bona fide offer, and the Lessee shall have a right of first refusal, exercisable by written notice deliv-

ered within 15 days of the receipt of said copy, to purchase such Units at the sale price set forth in such offer. In the event that the Lessor elects to sell or lease such Units to third parties at the expiration of the second extended term of this Lease, the Lessor shall in a commercially reasonable manner solicit offers to buy or lease (for a term of at least two years) such Units (excepting additions, modifications and improvements which may be removed by Lessee pursuant to § 9 hereof), and upon receipt thereof shall exhibit to the Lessee a true copy of the most favorable bona fide offer, and the Lessee shall have a right of first refusal, exercisable by written notice delivered within 15 days of the receipt of said copy, to purchase or lease such Units at the sale price or lease terms set forth in such offer.

Upon purchase of the Units by the Lessee, the Lessor shall upon request of the Lessee execute and deliver to the Lessee or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interest and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units, from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such forms as may reasonably be requested by the Lessee, all at the Lessee's expense.

Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental but there shall be excluded any rental value attributable to additions, modifications and improvements which the Lessee is entitled to remove pursuant to § 9 hereof; provided, however, that Fair Market Rental shall be determined as provided in the preceding sentences on the basis of the term and other terms and conditions of the lease being considered.

If, after 45 days from the giving of notice by the the Lessee of the Lessee's election to extend the term of this Lease, as provided in the first or second paragraph of

this § 13, the Lessor and the Lessee are unable to agree upon a determination of Fair Market Rental, such 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 value 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 apply, to make such appointment, to the American Arbitration Association, 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 of the Units subject to the proposed extended term within 90 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 the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from 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. 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 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. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

§ 14. Return of Units upon Expiration of Lease Term. The Lessor intends to sell or lease the Units at the expiration of the term of this Lease. As soon as practicable on or after the expiration of the original term or the extended term of this Lease with respect to any Unit which Lessee does not purchase or re-lease pursuant to § 13, 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 Lessee may reasonably designate, in such city on the lines of Lessee as Lessor may reasonably designate, or in the absence of Lessor's designation, in such city on the lines of Lessee as Lessee may designate, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, 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. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, 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 of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, lessee or user, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, and (ii) except for additions, modifications and improvements which the Lessee is entitled to remove under the provisions of § 9 of this Lease, meet all operating standards then in effect under the applicable rules of any governmental agency or other organization with jurisdiction. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. All amounts 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 the product of (i) a fraction the numerator of which is 10-1/2% and the denominator of which is 360, and (ii) the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the Security Documentation and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Documentation 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 interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation and the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16. Income Taxes. I. Tax Assumptions. It is the intent of the parties to this Lease that it will be recognized as a lease for all Federal, state, city and local income taxes or franchise taxes imposed on or measured by net income, and that this Lease does not convey to the Lessee any right, title or interest in the Units except as lessee. In accordance with that intent this Lease and the Security Documentation have been entered into on the assumptions (each assumption hereinafter called the Tax Assumptions) that for United States income tax purposes (and to the extent applicable for state, city and local tax purposes) (A) the Lessor, as the owner of the Units, will be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including, without limitation (1) the maximum depreciation deduction with respect to the Units authorized under Section 167 of the Code (hereinafter called the ADR Deduction), (a) utilizing a 12-year depreciable life, which is the lower limit listed in Revenue Procedure 72-10, 1972-1 C.B. 721, for property in Asset Guideline Class No. 00.25, as in effect on the Closing Date (as defined in Article 4 of the Security Documentation),

in accordance with the Class Life Asset Depreciation Range System described in Section 167(m) of the Code and the Treasury Regulations promulgated thereunder as in effect on the date hereof, (b) employing initially the 200% declining balance method of depreciation with a change, not requiring the consent of the Commissioner of Internal Revenue, to the sum of the years-digits method of depreciation when most beneficial to the Lessor, as permitted by the Code and regulations on the Closing Date, and (c) including in the basis of the Units the entire Purchase Price thereof and all other items properly includible under Section 1012 of the Code (hereinafter called the Basis), (2) deductions with respect to interest payable under the Security Documentation pursuant to Section 163 of the Code (hereinafter called the Interest Deduction); and (3) the 10% investment credit with respect to 100% of the Purchase Price of the Units (hereinafter called the Investment Credit), pursuant to Section 38 and related sections of the Code; (B) the Units of Equipment will have a value at the termination of this Lease of at least 20% of the Purchase Price thereof.

II. Basic Indemnity. The Lessee represents, warrants and indemnifies that (i) on the Closing Date, all the Units constitute property the entire Purchase Price of which qualifies for the 10% Investment Credit under Sections 38, 46, 48 and 50 of the Code; (ii) on the Closing Date, the Units will constitute "new section 38 property" within the meaning of Sections 46 and 48 of the Code, and at the time the Lessor becomes the 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 Lessor; (iii) on the Closing Date, the Units will qualify for the ADR Deduction using the Tax Assumption as to useful life and methods as set forth in 1(a), and 1(b), of the first paragraph of this § 16; (iv) the Lessee will not at any time during the term of this Lease use or fail to use any Unit in such a way as to disqualify it as "section 38 property" within the meaning of Section 48(a) of the Code or as property eligible for the ADR Deduction; (v) the Lessee will maintain sufficient records to verify such use, which records will be furnished to the Lessor within 30 days after receipt of a written demand therefor.

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 (other than any action required by the terms of this Lease) or file any tax returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by the Lessor over the amount specified to be payable under this Lease on the dates due hereunder except as specifically provided in this Lease, and that each of such corporations will file such returns, take such action, and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. The Lessee agrees to keep and make available for inspection and copying upon demand by the Lessor such records as will enable the Lessor to determine the extent to which it is entitled to the full benefit of the ADR Deduction, the Interest Deduction and the Investment Credit with respect to the Units. Lessor agrees that it shall claim in its tax returns all the deductions, credits and benefits contemplated by the Tax Assumptions.

The Lessee also agrees to indemnify the Lessor, as provided for in the sixth paragraph of this § 16, for any Loss, reduction or delay in tax benefits caused by any act or omission of the Lessee or representations and warranties set forth in the preceding paragraphs of this § 16. Further, the Lessee will indemnify the Lessor if the deductions, credits or other tax benefits to which the Lessor would otherwise have been entitled to are decreased by a change in law that is enacted or becomes effective prior to the delivery of the Units of Equipment.

III. True Lease Indemnity. The Lessee represents, warrants and indemnifies that the transaction is a true lease for tax purposes and that for tax purposes the Lessor is the owner of the Units and as such shall be entitled to such deductions, credits and other benefits as are provided from time to time by tax law (including Internal Revenue Service (hereinafter called the IRS) Regulations and tax rules) in effect during the initial term of this Lease to a nonrailroad corporate owner of property; provided, however, that in the event the Lessor shall obtain a favorable ruling from the IRS that this Lease is a true lease and that the Lessor is entitled to such deductions, credits and other benefits, the liability of the Lessee under this indemnity shall terminate.

IV. Effect of Indemnities. The Lessee's indemnification of the Lessor under the Basic Indemnity and/or the True Lease Indemnity, as described above, will place the Lessor in the same position with respect to the transaction as if the condition indemnified against had not existed. If (except as a result of the occurrence of any Excluded Event set forth below) (a) the Lessor shall suffer a disallowance of, or shall be required to recapture, or due to such disallowance or recapture shall lose, or shall not have, or shall lose the right to claim (any such event being hereinafter called a Loss), all or any portion of such deductions, credits and benefits (hereinafter each called a Benefit) as are provided from time to time by tax law (including IRS Regulations and tax rules) in effect during the initial term of this Lease to a nonrailroad corporate owner of property, with respect to all or part of any Unit, at any time during the initial term of this Lease as a result of a Final Determination (as hereinafter defined) that this Lease is not a true lease and that during the tax years to which the Final Determination is applicable, the Lessor is not entitled to such Benefits for which the Lessee has indemnified the Lessor under the True Lease Indemnity, or (b) the Lessor shall incur a Loss of all or any portion of the Investment Credit, the ADR Deduction, or the Interest Deduction (hereinafter each called a Benefit) with respect to all or part of any Unit due to (i) the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee (or any officer, agent or employee thereof), (ii) the noncompliance, breach, or misrepresentation by the Lessee with or of any provision of the second, third, or fourth paragraphs of this § 16, (iii) the use of any Unit by the Lessee in such a way as to disqualify it as section 38 property within the meaning of Section 48(a) of the Code or as property eligible for the ADR Deduction, or (iv) any actions or omissions by the Lessee, except any actions or omissions permitted by the terms of this Lease; then in any such case of Loss of Benefit (either under the provisions of (a) or (b) of this paragraph), subject to the provisions of paragraph eight of this § 16 dealing with contesting a disallowance or recapture of a tax Benefit, the rental rate applicable to such Unit set forth in § 3 of this Lease shall, on and after the next succeeding rental date (1) after payment of the tax attributable to any Loss of Benefit under the provisions of (b) of this paragraph and (2) after a Final Determination of a Loss of Benefit under the provisions of (a) of this paragraph, and payment of the tax attributable thereto, be increased by such amount for such Unit as, in the reasonable opinion of the Lessor, after

due consultation with Lessee, will maintain the Lessor's Net Return (as defined in § 6 hereof) in respect of such Unit under this Lease; provided, however, that in case of a Loss of Benefit under the provisions of (a) of this paragraph, the increase in such rental rate shall not exceed the amount necessary to maintain the net rate of return the Lessor would have had if the Lessor were treated as the owner of such Unit and were entitled to such deductions, credits and other benefits as are provided by tax law (including IRS Regulations and tax rules) in effect from time to time during the term of this Lease to a nonrailroad corporate owner of property, and subsequent rentals shall be appropriately adjusted (reductions being limited by and subject to the two provisos contained in the ninth paragraph of this § 16) for each change in tax law (including IRS Regulations and tax rules) affecting such net rate of return, as of the effective date of such change. The Lessee shall forthwith pay to the Lessor the amount of any interest and penalty which may be assessed by the United States (or where applicable by any state or local taxing jurisdiction) against the Lessor attributable to the disallowance, recapture or loss of all or any portion of the Benefit.

Notwithstanding the provisions of the immediately preceding paragraph, there shall be no increase made in rentals nor any payment be required to be made by the Lessee if the Lessor shall have suffered such Loss with respect to all or part of such Unit as a result of the occurrence of any of the following events (hereinafter called Excluded Events):

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 7 hereof; or

(ii) a voluntary transfer or other voluntary disposition by the Lessor or any transfer or disposition by the Lessor resulting from bankruptcy or other proceedings for relief of debtors in which the Lessor is the debtor, whether voluntary or involuntary, of any interest in such Unit or the voluntary reduction by the Lessor of its interest in the rentals from such Unit under the Lease (other than pursuant to the assignment of this Lease to the Vendor), unless, in each case, an Event of Default shall have occurred and be continuing; or

(iii) the failure of the Lessor to claim in a timely and proper manner (including all appropriate elections) in its Federal income tax return the Investment Credit, the ADR Deduction or the Interest Deduction; or

(iv) the failure of the Lessor to have sufficient liability for Federal income tax against which to credit such Investment Credit or sufficient income to benefit from the ADR Deduction or the Interest Deduction, as applicable; or

(v) any amendments to the Code, IRS Regulations and tax rules enacted or promulgated and effective after the Closing Date (defined in the Security Documentation); or

(vi) any other action or omission by Lessor, except any actions or omissions permitted by the terms of this Lease.

The Lessor shall promptly, upon its knowledge thereof, give written notice to the Lessee of any claim or proceeding in respect of which the Lessee would be required to make indemnification payments (as hereinbefore defined). The Lessor agrees that if, in the opinion of the Lessee's tax counsel (herein referred to as Counsel) a reasonable basis to contest the disallowance or recapture of all or a portion of the tax Benefits described above with respect to any Unit exists in respect of which the Lessee would be required to make indemnification payments (as hereinbefore defined) to the Lessor pursuant hereto, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to contest such claim, and if the Lessor fails to contest, Lessee will not be required to indemnify Lessor for the Loss of tax Benefits as set forth in the sixth paragraph of this § 16; provided, however, that the Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all expenses which may be entailed therein. If after notice from the Lessor the Lessee does not request in a timely manner that Lessor contest the disallowance or recapture of the tax Benefits or in the opinion of Counsel no reasonable basis to contest such matter exists, then Lessee will have no further right of contest.

In the event Lessee requests that Lessor contest the disallowance or recapture of the tax Benefits and in the opinion of Counsel a reasonable basis to contest such matter exists, then the Lessor shall take such action to contest the disallowance or recapture prior to making payment of any tax and interest and/or penalty attributable to the disallowance or recapture with respect to the Lessor of all or any portion of the tax Benefits with respect to any Unit or, in case of a Loss of Benefit under the provisions of (b) of the sixth paragraph of this § 16, may make such tax payment (hereinafter called the "Tax Payment") and thereafter seek a refund. If the Lessor contests prior to making such Tax Payment, such indemnification payable hereunder need not be paid by the Lessee while such action is pending. In such case, if the Final Determination (as hereinafter defined) shall be adverse to the Lessor, the indemnification payable hereunder shall be computed by the Lessor as of the date of such Final Determination and the Lessee shall commence payment of indemnities on the date and in the manner and to the extent provided in the sixth paragraph of this § 16 and on or before such payment date, the Lessee shall pay to the Lessor as an additional payment hereunder an amount equal to all interest and penalty paid by the Lessor in respect of such Final Determination together with an amount sufficient to maintain the Lessor's Net Return. If the Lessor elects to make such Tax Payment prior to contesting the matter, such indemnification payable hereunder is to commence immediately in the manner and to the extent provided in the sixth paragraph of this § 16 and such payments by the Lessee due on and after the date of such Tax Payment shall be calculated on a basis so as to maintain Lessor's Net Return, and on or before such Tax Payment is due, the Lessee shall pay to the Lessor as an additional payment hereunder an amount equal to all interest and penalty paid by the Lessor included in such Tax Payment. If the Lessor seeks a refund after making such Tax Payment and the Final Determination shall be in favor of the Lessor, the Lessor shall forthwith upon receipt of refund of amounts previously paid, pay to the Lessee an amount consisting of the aggregate of the following; (1) the amount of the increase in rental payments which, under the Final Determination, would not have been payable by the Lessee to Lessor pursuant to the sixth paragraph of this § 16 and (2) the amount of interest and/or penalty paid or repaid to the Lessor by the taxing jurisdiction. In addition, the rentals for the Units shall, begin-

ning with the next rental payment due, and after receipt by the Lessor of such refund, be decreased to such amount or amounts as shall, in the reasonable opinion of the Lessor, cause the Lessor's Net Return to equal the net return that would have been realized by the Lessor if additional income taxes of the Lessor in the amount refunded had not been paid, provided, however, that such subsequent rentals shall not be reduced below the amounts required to satisfy the obligations of the Lessor under the Security Documentation; provided further, however, that the Lessor shall pay to the Lessee on the date it receives each of such subsequent rentals, an amount equal to the difference between the rentals that would have been payable but for the limitation specified in the preceding proviso and the rentals paid in accordance with this limitation. Lessee agrees to pay to the Lessor on demand any reasonable expense incurred by the Lessor in connection with such contest. For purposes of this § 16 "Final Determination" is defined as a final decision of a Court of competent jurisdiction after all allowable appeals have been exhausted by either party to the action.

The Lessee's and the Lessor's agreements and obligations to pay any sums which may become payable pursuant to this § 16 shall survive the expiration or other termination of this Lease.

In the event the rental rates shall be increased (or decreased) as hereinbefore provided, the Casualty Values set forth in § 7 hereof and the damages and amounts set forth in subparagraph (b) of § 10 hereof shall be adjusted accordingly; provided, however, that such Casualty Values shall not be reduced below the amounts required to satisfy the obligations of the Lessor under the Security Documentation; provided further, however, that the Lessor shall pay to the Lessee on the date it receives each of any payments with respect of a Casualty Occurrence an amount equal to the difference between the Casualty Value that would have been payable but for the limitation specified in the preceding proviso and the Casualty Value paid in accordance with this limitation.

§ 17. Interest on Overdue Rentals. Anything to the 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, interest at a rate per annum equal to 10-1/2% on the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 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 12755 State Highway 55, Minneapolis, Minnesota 55441, Attention of Richard E. Karkow, Treasurer; and

(b) if to the Lessee, at 400 West Madison Street, Chicago, Illinois 60606; Attention Treasurer;

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 at 33 North LaSalle Street, Chicago, Illinois 60690, 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 Agreement which appears as Exhibit E thereto, 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. 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 pursuant to the assignment hereof to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. 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.

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

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

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY,

by *J. M. Butler*  
Vice President

[Corporate Seal]

Attest:

*Diane Kohler-Rausch*  
Assistant Secretary

GOLD BOND STAMP COMPANY OF GEORGIA,

by *[Signature]*  
President

[Corporate Seal]

Attest:

*[Signature]*  
Assistant Secretary

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this *8th* day of *OCTOBER*, 1976, before me personally appeared *J. M. BUTLER*, to me personally known, who, being by me duly sworn, says that he is a Vice President of CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Marjorie Kayes*  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires *DEC. 7, 1977*

STATE OF MINNESOTA, )  
 ) ss.:  
COUNTY OF HENNEPIN, )

On this *15* day of *October* 1976, before me personally appeared *H. W. Greenough*, to me personally known, who, being by me duly sworn, says that he is President of GOLD BOND STAMP COMPANY OF GEORGIA, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*TERRI NIMS*  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires



SCHEDULE 1 TO LEASE

| <u>Type</u>  | <u>Quantity</u> | <u>Lessee's<br/>Road Numbers<br/>(Both Inclusive)</u> |
|--|-----------------|---|
| 3,000 hp.<br>diesel-electric<br>locomotive,<br>General Motors<br>model SD-40-2 | 10              | CNW 6926-6935   |

SCHEDULE 2 TO LEASE  
CASUALTY VALUES

| <u>Rent Payments</u> | <u>Percentage of<br/>Purchase Price</u> |
|----------------------|---|
| Interim Payment      | 101.75                                  |
| No. 1                | 105.06                                  |
| No. 2                | 105.18                                  |
| No. 3                | 105.24                                  |
| No. 4                | 105.24                                  |
| No. 5                | 105.24                                  |
| No. 6                | 105.25                                  |
| No. 7                | 105.26                                  |
| No. 8                | 105.23                                  |
| No. 9                | 105.17                                  |
| No. 10               | 105.10                                  |
| No. 11               | 104.98                                  |
| No. 12               | 104.66                                  |
| No. 13               | 97.53                                   |
| No. 14               | 97.06                                   |
| No. 15               | 96.47                                   |
| No. 16               | 95.80                                   |
| No. 17               | 95.08                                   |
| No. 18               | 94.35                                   |
| No. 19               | 93.52                                   |
| No. 20               | 92.62                                   |
| No. 21               | 85.00                                   |
| No. 22               | 84.03                                   |
| No. 23               | 82.99                                   |
| No. 24               | 81.89                                   |
| No. 25               | 80.75                                   |
| No. 26               | 79.58                                   |
| No. 27               | 78.37                                   |
| No. 28               | 77.11                                   |
| No. 29               | 69.17                                   |
| No. 30               | 67.86                                   |
| No. 31               | 66.52                                   |
| No. 32               | 65.16                                   |
| No. 33               | 63.74                                   |
| No. 34               | 62.31                                   |
| No. 35               | 60.86                                   |
| No. 36               | 59.40                                   |
| No. 37               | 57.92                                   |
| No. 38               | 56.43                                   |
| No. 39               | 54.92                                   |
| No. 40               | 53.40                                   |

| <u>Rent Payments</u> | <u>Percentage of<br/>Purchase Price</u> |
|----------------------|---|
| No. 41               | 51.87                                   |
| No. 42               | 50.32                                   |
| No. 43               | 48.75                                   |
| No. 44               | 47.16                                   |
| No. 45               | 45.56                                   |
| No. 46               | 43.95                                   |
| No. 47               | 42.31                                   |
| No. 48               | 40.66                                   |
| No. 49               | 38.99                                   |
| No. 50               | 37.30                                   |
| No. 51               | 35.59                                   |
| No. 52               | 33.86                                   |
| No. 53               | 32.11                                   |
| No. 54               | 30.34                                   |
| No. 55               | 28.54                                   |
| No. 56               | 26.75                                   |
| No. 57               | 24.92                                   |
| No. 58               | 23.07                                   |
| No. 59               | 21.20                                   |
| No. 60               | 20.00                                   |