

CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N.Y. 10005

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RECORDATION NO. .... Filed 1425

DEC 8 1978 - 11 55 AM

INTERSTATE COMMERCE COMMISSION

9892 - A  
RECORDATION NO. .... Filed 1425

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INTERSTATE COMMERCE COMMISSION

Date DEC 8 1978

Fee \$ 1.00

CC Washington, D.C.

9892 - B  
RECORDATION NO. .... Filed 1425

DEC 8 1978 - 11 55 AM  
December 5, 1978

INTERSTATE COMMERCE COMMISSION

9892 - B  
RECORDATION NO. .... Filed 1425

DEC 8 1978 - 11 55 AM

INTERSTATE COMMERCE COMMISSION

Georgia Power Company  
Lease Financing Dated as of November 17, 1978  
9.5% Conditional Sale Indebtedness Due April 1, 1994

[CS&M Ref: 2043-875]

Dear Sir:

Pursuant to 49 U.S.C. § 11303(a) (formerly Section 20c of the Interstate Commerce Act) I enclose herewith on behalf of Georgia Power Company, for filing and recordation, counterparts of the following:

(1) (a) Conditional Sale Agreement dated as of November 17, 1978, between GATX/G.P. Leasing Corporation and Ortner Freight Car Company;

(1) (b) Agreement and Assignment dated as of November 17, 1978, between The Connecticut Bank and Trust Company and Ortner Freight Car Company;

(2) (a) Lease of Railroad Equipment dated as of November 17, 1978, between Georgia Power Company and GATX/G.P. Leasing Corporation; and

(2) (b) Assignment of Lease and Agreement dated as of November 17, 1978, between GATX/G.P. Leasing Corporation and The Connecticut Bank and Trust Company.

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*David W. Keller*  
*Countryman*

The addresses of the parties to the aforementioned agreements are:

Lessor-Vendee:

GATX/G.P. Leasing Corporation,  
One Embarcadero Center,  
San Francisco, California 94111.

Builder-Vendor:

Ortner Freight Car Company,  
2652 Erie Avenue,  
Cincinnati, Ohio 45208.

Lessee:

Georgia Power Company,  
270 Peachtree Street  
(P.O. Box 4545),  
Atlanta, Georgia 30302.

Agent-Vendor-Assignee:

The Connecticut Bank and Trust Company,  
One Constitution Plaza,  
Hartford, Connecticut 06115.

The equipment covered by the aforementioned agreements consists of 150 100-ton "Rapid Discharge" coal hopper cars bearing the road numbers of the lessee GGPX 78001-GGPX 78150, inclusive, and also bearing the legend "Ownership Subject to a Security Agreement filed with the Interstate Commerce Commission".

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

Very truly yours,

*Laurance V. Goodrich*

Laurance V. Goodrich  
As Agent for Georgia  
Power Company

H. G. Homme, Jr., Acting Secretary,  
Interstate Commerce Commission,  
Washington, D. C. 20423

Encls.

63

BY HAND

**Interstate Commerce Commission**  
Washington, D.C. 20423

12/8/78

OFFICE OF THE SECRETARY

Laurence V. Goodrich  
Cravath, Swaine & Moore  
One Chase Manhattan Plaza  
New York, N.Y. 10005

Dear

**Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act,

49 U.S.C. 20(c), on

12/8/78

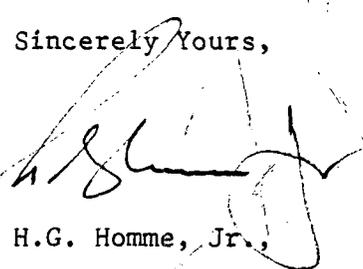
at

11:55am

and assigned recordation number(s)

9892, 9892-A, 9892-B & 9892

Sincerely Yours,



H.G. Homme, Jr.,

Secretary

Enclosure(s)

SE-30-T  
(2/78)

RECORDATION NO. 9892 Filed 1425

DEC 8 1978 - 11 55 AM

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INTERSTATE COMMERCE COMMISSION

[CS&M Ref. 2043-875]

CONDITIONAL SALE AGREEMENT

Dated as of November 17, 1978

between

GATX/G.P. LEASING CORPORATION,

as Vendee,

and

ORTNER FREIGHT CAR COMPANY,

as Builder.

9.5% Conditional Sale Indebtedness due April 1, 1994

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CONDITIONAL SALE AGREEMENT

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Table of Contents\*

	<u>Page</u>
ARTICLE 1. ASSIGNMENT; DEFINITIONS .....	C-1
1.1. Contemplated Sources of Purchase Price; Assignment .....	C-1
1.2. Lease Assignment .....	C-1
1.3. Meaning of "Builder" and "Vendor" .....	C-2
ARTICLE 2. CONSTRUCTION AND SALE .....	C-2
ARTICLE 3. INSPECTION AND DELIVERY .....	C-2
3.1. Place of Delivery .....	C-2
3.2. Force Majeure .....	C-3
3.3. Exclusion of Equipment .....	C-3
3.4. Inspection .....	C-4
3.5. Builder's Responsibilities After Delivery .	C-4
ARTICLE 4. PURCHASE PRICE AND PAYMENT .....	C-4
4.1. Meaning of "Purchase Price"; Exclusion of Units .....	C-4
4.2. Designation of Equipment; Settlement and Closing Dates .....	C-5
4.3. Indebtedness of Vendee to Vendor .....	C-6
4.4. CSA Indebtedness; Payment Dates; Interest .....	C-6
4.5. Calculation of Interest .....	C-7
4.6. Penalty Interest .....	C-7
4.7. Currency of Payment; Limitation on Prepayment .....	C-7
4.8. Liability of Vendee Limited to "Income and Proceeds from Equipment".....	C-7
ARTICLE 5. SECURITY INTEREST IN THE EQUIPMENT ....	C-9

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

	<u>Page</u>
5.1. Vendor To Retain Security Interest; Accessions Are Part of Equipment .....	C-9
5.2. Obligations Upon Payment of CSA Indebtedness .....	C-10
ARTICLE 6. TAXES .....	C-11
6.1. Indemnification for Nonincome Taxes .....	C-11
6.2. Claims; Contests; Refunds .....	C-12
6.3. Reports or Returns .....	C-12
6.4. Survival .....	C-12
ARTICLE 7. MAINTENANCE, TERMINATION AND CASUALTY OCCURRENCES .....	C-13
7.1. Maintenance .....	C-13
7.2. Termination and Casualty Occurrences .....	C-13
7.3. Casualty Value .....	C-14
7.4. Termination Value .....	C-14
7.5. Obligations upon Payment of Casualty Value or Termination Value .....	C-15
ARTICLE 8. INSURANCE PROCEEDS AND CONDEMNATION PAYMENTS .....	C-15
ARTICLE 9. REPORTS AND INSPECTIONS .....	C-15
ARTICLE 10. MARKING OF EQUIPMENT .....	C-16
10.1. Marking of Equipment .....	C-16
10.2. No Designations of Ownership .....	C-16
ARTICLE 11. COMPLIANCE WITH LAWS AND RULES .....	C-16
ARTICLE 12. POSSESSION AND USE .....	C-17
12.1. Possession and Use of Equipment by Vendee .....	C-17
12.2. Lease Permitted; Lease Subordinate; No Amendment or Termination .....	C-17
12.3. Other Leases of Equipment .....	C-17

	<u>Page</u>
ARTICLE 13. PROHIBITION AGAINST LIENS .....	C-18
13.1. Vendee To Discharge Liens .....	C-18
13.2. No Breach for Certain Liens .....	C-18
13.3. Article 13 Subject to Article 23 Except in Certain Instances .....	C-18
ARTICLE 14. INDEMNITIES AND WARRANTIES .....	C-19
14.1. Indemnification .....	C-19
14.2. Survival; No Subrogation .....	C-21
14.3. Vendee Not Released If Equipment Damaged or Lost .....	C-21
14.4. Warranties of Builder; Patent Indemnities .....	C-21
ARTICLE 15. ASSIGNMENTS .....	C-21
15.1. Assignment by Vendee .....	C-21
15.2. Assignment by Vendor .....	C-21
15.3. Notice of Assignment by Vendor .....	C-22
15.4. No Setoff Against Indebtedness .....	C-22
ARTICLE 16. DEFAULTS .....	C-23
16.1. Events of Default; Termination of Lease; Declaration of Default; Acceleration ....	C-23
16.2. Waiver of Defaults .....	C-25
ARTICLE 17. REMEDIES .....	C-25
17.1. Vendor May Take Possession of Equipment ...	C-25
17.2. Assembling of Equipment for Vendor .....	C-26
17.3. Vendor May Dispose of or Retain Equipment .	C-27
17.4. Vendor May Sell Equipment; Vendee's Right of Redemption .....	C-27
17.5. Sale of Equipment by Vendor .....	C-28
17.6. Effect of Remedies and Powers and Exercise Thereof .....	C-29
17.7. Deficiencies .....	C-29
17.8. Expenses .....	C-30
17.9. Remedies Subject to Legal Requirements ....	C-30

	<u>Page</u>
ARTICLE 18. APPLICABLE STATE LAWS .....	C-30
18.1. Conflicts with State Laws .....	C-30
18.2. Waiver of Notices .....	C-30
ARTICLE 19. RECORDING .....	C-30
ARTICLE 20. BUILDER'S REPRESENTATIONS AND WARRANTIES .....	C-31
ARTICLE 21. HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT .....	C-31
21.1. Headings for Convenience Only .....	C-31
21.2. Effect and Modification of Agreement .....	C-31
ARTICLE 22. NOTICE .....	C-31
ARTICLE 23. IMMUNITIES; SATISFACTION OF UNDERTAKINGS .....	C-32
23.1. No Recourse Against Certain Persons .....	C-32
23.2. Satisfaction of Certain Covenants .....	C-32
ARTICLE 24. LAW GOVERNING .....	C-33
ARTICLE 25. EXECUTION .....	C-33
Schedule I .....	C-36
Annex A--Miscellaneous .....	C-37
Annex B--Description of Equipment .....	C-40
Annex C--Lease	
Annex D--Assignment of Lease and Agreement	

CONDITIONAL SALE AGREEMENT dated as of November 17, 1978, between ORTNER FREIGHT CAR COMPANY, a Delaware Corporation (the "Builder" or the "Vendor" as the context may require, all as more particularly set forth in Article 1 hereof), and GATX/G.P. LEASING CORPORATION, a Delaware corporation (the "Vendee").

WHEREAS the Builder agrees to construct, sell and deliver to the Vendee, and the Vendee agrees to purchase, subject to the terms and conditions hereof, the equipment described in Annex B hereto (the "Equipment");

WHEREAS the Vendee is entering into a lease with GEORGIA POWER COMPANY, a Georgia corporation (the "Lessee") substantially in the form annexed hereto as Annex C (the "Lease"); and

WHEREAS THE CONNECTICUT BANK AND TRUST COMPANY (the "Assignee" or the "Vendor"), is acting as agent for certain investors pursuant to a Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Lessee, the Assignee, the Vendee and the parties named in Appendix I thereto (the "Investors");

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

#### ARTICLE 1. ASSIGNMENT; DEFINITIONS

1.1. Contemplated Sources of Purchase Price; Assignment. The parties hereto contemplate that the Vendee will furnish approximately 20% of the Purchase Price (as defined in paragraph 4.1 hereof) of the Equipment and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment dated as of the date hereof (the "CSA Assignment") between the Builder and the Assignee.

1.2. Lease Assignment. The Vendee will assign to the Vendor, as security for the payment and performance of all the Vendee's obligations hereunder, all right, title, and interest of the Vendee in and to the Lease, pursuant to an

Assignment of Lease and Agreement in substantially the form of Annex D hereto (the "Lease Assignment").

1.3. Meaning of "Builder" and "Vendor". The term "Builder", whenever used in this Agreement, means, both before and after any assignment of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business. The term "Vendor", whenever used in this Agreement, means, before any such assignment, the Builder, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights, as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment.

## ARTICLE 2. CONSTRUCTION AND SALE

Pursuant to this Agreement, the Builder shall construct the Equipment at its plant described in Annex B hereto, and will sell and deliver the Equipment to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the "Specifications"). The Builder represents and warrants that (i) the design, quality and component parts of each unit of the Equipment to be delivered by the Builder under this Agreement shall conform, on the date of delivery and acceptance thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit and (ii) each such unit will be new railroad equipment.

## ARTICLE 3. INSPECTION AND DELIVERY

3.1. Place of Delivery. The Builder will deliver the Equipment to the Vendee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or

places, at the place or places designated from time to time by the Vendee), freight charges and storage charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto, which the Builder will use its best efforts to adhere to; provided, however, that the Builder shall not have any obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) of paragraph 16.1 hereof; subsequent to the occurrence of any event of default (as described in paragraph 16.1 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default; or subsequent to any notice to the Builder that the Assignee does not have on deposit, pursuant to the Participation Agreement, sufficient funds available to make payment for such units as provided in Section 4 of the CSA Assignment or shall not make, or has not made, payment for any unit assigned to it pursuant to the CSA Assignment, unless the Builder has been assured to its satisfaction that it will receive on the Closing Date (as defined in paragraph 4.2 hereof) the full Purchase Price thereof. The Builder agrees not to deliver any unit of its Equipment hereunder (a) following receipt of written notice from the Vendee or the Assignee of the commencement of any such proceedings or the occurrence of any such event, as aforesaid or (b) until it receives notice (i) from the Assignee that the conditions contained in Paragraph 7 of the Participation Agreement have been met and (ii) from the Vendee that the conditions contained in Paragraph 8 of the Participation Agreement have been met.

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

3.3. Exclusion of Equipment. Any Equipment not delivered pursuant to paragraph 3.1 hereof and any Equipment not delivered and accepted hereunder on or before September 30, 1979, shall be excluded from this Agreement, and the Vendee shall be relieved of its obligation to purchase and pay for such Equipment. If any Equipment shall be excluded herefrom pursuant to the preceding sentence, the parties hereto shall execute an agreement supplemental hereto limiting this agreement to the Equipment not so excluded herefrom.

In the event of any such exclusion of any unit of Equipment herefrom pursuant to the foregoing provisions of this paragraph 3.3 or pursuant to paragraph 4.1 hereof, the Vendee will be obligated pursuant to Paragraph 1 of the Participation Agreement to accept all such units completed and delivered by the Builder and to pay the full purchase price therefor when due, all in accordance with the terms of its prior contractual arrangements with such Builder relating to the Equipment (the "Purchase Order").

3.4. Inspection. During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee), and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon or after completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications and requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (the "Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of the Vendee and are marked in accordance with paragraph 10.1 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in paragraph 14.4 hereof. By § 2.1 of the Lease, the Vendee is appointing the Lessee its agent to inspect and accept delivery of the Equipment. Acceptance of any unit of Equipment by the Lessee (or its employees or agents, as aforesaid) pursuant to § 2 of the Lease shall be deemed to be acceptance of such unit by the Vendee.

3.5. Builder's Responsibilities After Delivery. On delivery by the Builder hereunder of units of Equipment and acceptance of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in paragraph 14.4 hereof.

#### ARTICLE 4. PURCHASE PRICE AND PAYMENT

4.1. Meaning of "Purchase Price"; Exclusion of Units. The base price or prices per unit of the Equipment

are set forth in Annex B hereto. Such base price or prices are subject to such increase (including, without limitation, storage charges and prepaid freight charges, if any, at regular rates) or decrease as is provided in the Purchase Order or as otherwise may be agreed to by the Builder, the Vendee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased as set forth in the invoice of the Builder delivered to the Vendee and, if the Purchase Price is other than the base price or prices set forth in said Annex B, the invoice or invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the Vendee (such invoice or invoices being hereinafter called the "Invoices"). If on any Closing Date the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto, the Builder (and any assignee of the Builder) will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee and the Lessee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price to not more than said Maximum Purchase Price and the Vendee shall have no further obligation or liability in respect of the units so excluded.

4.2. Designation of Equipment; Settlement; and Closing Dates. All Units of Equipment delivered and accepted hereunder (i) on or prior to December 31, 1978, shall be designated Schedule A Equipment, (ii) after December 31, 1978, but on or prior to June 30, 1979, shall be designated Schedule B Equipment and (iii) after June 30, 1979, but on or prior to September 30, 1979, shall be designated Schedule C Equipment. The Schedule A Equipment, the Schedule B Equipment and the Schedule C Equipment shall be settled for in such number of Groups of Equipment, as is provided for in Item 2 of Annex A hereto. The term "Closing Date" with respect to any Group shall be such date as is specified by the Lessee by six days' notice thereof with the concurrence of the Lessee, the Assignee and the Builder, but in no event shall such date be later than September 30, 1979. Such notice shall specify the aggregate Purchase Price of such Group and a copy thereof shall be sent by the Lessee to the Builder, the Assignee and the Vendee. The term "Group", as used herein, shall mean the group of units of Equipment being settled for on any Closing Date. The place of each closing shall be determined by mutual agreement among the parties hereto. At least five business days prior to the Closing Date with respect to a

Group of Equipment, the Builder shall present to the Lessee and the Vendee the Invoices for the Equipment to be settled for. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Hartford, Connecticut, Atlanta, Georgia, San Francisco, California, or New York, New York, are authorized or obligated to remain closed. Prior to the first Closing Date, the Vendee shall furnish to the Builder a Kentucky sales tax exemption certificate, in form and substance satisfactory to the Builder's counsel, certifying that all units of Equipment being purchased pursuant to this Agreement are exempt from the application of the Kentucky sales tax.

4.3. Indebtedness of Vendee to Vendor. Subject to the terms of this Agreement, the Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash or immediately available funds to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on the Closing Date with respect to each Group (i) an amount equal to 20% of the aggregate Purchase Price of the units of Equipment in such Group plus (ii) the amount, if any, by which (x) 80% of the Purchase Price of the Equipment for which settlement has theretofore and is then being made, as set forth in the invoice or invoices therefor (said invoiced prices being herein called the "Invoiced Purchase Prices"), exceeds (y) the Maximum CSA Indebtedness specified in Item 6 of Annex A and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this clause (ii); and

(b) in 30 semiannual installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the portion of the Purchase Price payable under this subparagraph (b) being hereinafter called the "CSA Indebtedness").

4.4. CSA Indebtedness; Payment Dates; Interest.  
 (1) The installments of the CSA Indebtedness shall be payable semiannually on April 1 and October 1 in each year, commencing October 1, 1979, to and including April 1, 1994,

each such date being hereinafter called a "Payment Date". The unpaid balance of the CSA Indebtedness shall bear interest from the Closing Date in respect of which such Indebtedness was incurred at the rate of 9.5% per annum. Interest on the unpaid balance of the CSA Indebtedness shall be payable to the extent accrued on April 1, 1979, and on each Payment Date thereafter. The amounts of CSA Indebtedness payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal and interest shall completely amortize the CSA Indebtedness at maturity. Schedule I is based on the assumption that all Equipment accepted hereunder will be Schedule A Equipment since, as of the date hereof, it is not possible to determine the extent to which Schedule B Equipment and Schedule C Equipment will be accepted hereunder. To the extent that Schedule B or Schedule C Equipment is accepted hereunder, the Vendee will apply the higher rental payments in respect thereof under the Lease to accomplish a faster amortization of the CSA Indebtedness, which will result in a slightly shorter average life without changing the maturity date. Schedule I, therefore, illustrates the longest average life possible in this transaction. After the last Closing Date hereunder, when actual deliveries of Schedule A, Schedule B and Schedule C Equipment can be determined, the Vendee will promptly furnish to the Vendor and the Lessee a revised schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date based on the actual deliveries of Equipment hereunder.

(2) If any of the dates for payment of principal or interest is not a business day, such payment shall be payable on the next business day.

4.5. Calculation of Interest. Interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months except that interest payable on April 1, 1979, shall be computed on an actual elapsed day, 365-day year, basis.

4.6. Penalty Interest. The Vendee will pay interest, to the extent legally enforceable, at the rate

of 10.5% per annum (the "Penalty Rate") upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

4.7. Currency of Payment; Limitation on Prepayment. All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Articles 7 and 16 hereof, the Vendee shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to the date it becomes due.

4.8. Liability of Vendee Limited to "Income and Proceeds from Equipment". Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 16 and 17 hereof) but not limiting the effect of Article 23 hereof, the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under this Agreement, with the exception only of the payments to be made pursuant to paragraph 4.3(a) hereof and the proviso to paragraph 13.3 hereof, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Vendee only to the extent that the Vendee or any assignee of the Vendee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the preceding sentence, the Vendee shall not have any liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Vendee or any assignee of the Vendee. In addition, the Vendor agrees that the Vendee

(i) makes no representation or warranty as to, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease, insofar as it relates to the Lessee (or any document relative thereto) or of any of the Lessee's obligations thereunder, and

(ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease; it being agreed that as to all such matters the Vendor will look solely to the Vendor's

rights under this Agreement against the Equipment and to the Vendor's rights under the Lease and the Lease Assignment against the Lessee and the Equipment.

As used herein the term "income and proceeds from the Equipment" shall mean

(i) if one of the events of default specified in paragraph 16.1 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee or any assignee of the Vendee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of a Termination and/or Casualty Occurrences (as defined in paragraph 7.2 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 13 or any other provision of the Lease (except the Excluded Indemnity defined in Section 1 of the Lease Assignment) and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and

(ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee or any assignee of the Vendee and as shall equal the portion of the CSA Indebtedness (including prepayments thereof required in respect of a Termination and/or Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement;

it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Vendee or any assignee of the Vendee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including prepayments thereof required in respect of a Termination and/or Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable

under this Agreement at the time such amounts were payable under the Lease. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Article 16 or 17 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph and cause such judgment to be marked satisfied as to all amounts in excess of such limitations.

#### ARTICLE 5. SECURITY INTEREST IN THE EQUIPMENT

5.1. Vendor To Retain Security Interest; Accessions are Part of Equipment. The Vendor shall and hereby does retain a security interest in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Lessee as provided in this Agreement and the Lease. Such retention of security interest is solely to secure performance by the Vendee of its obligations under this Agreement (without regard to any provision of this Agreement limiting the liability of the Vendee), and, subject thereto, ownership of the Equipment shall be and remain in the Vendee subject to such performance. Any and all parts installed on and additions and replacements made to any unit of the Equipment (i) which are not readily removable without causing material damage to such unit, (ii) the cost of which is included in the Purchase Price of such unit or (iii) which are required for the operation or use of such unit by the Association of American Railroads and/or the Interstate Commerce Commission, the United States Department of Transportation or any other applicable regulatory body, shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

5.2. Obligations Upon Payment of CSA Indebtedness. Except as otherwise specifically provided in Article 7

hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor or the Vendee. However, the Vendor, if so requested by the Vendee at that time, will (a) execute an instrument releasing its security interest in the Equipment and transferring such interest to the Vendee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such instrument to the Vendee at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

#### ARTICLE 6. TAXES

6.1. Indemnification for Nonincome Taxes. Whether or not any of the transactions contemplated hereby are consummated, the Vendee agrees to pay, and to indemnify and hold the Vendor (which term shall include the Investors for the purposes of this paragraph 6.1) harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Vendee, the Vendor, the Lessee or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to: any unit of the Equipment or any part thereof; the purchase, ownership,

delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the indebtedness with respect thereto; the rentals, receipts or earnings arising therefrom; or this Agreement, the CSA Assignment, the Lease, the Lease Assignment, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to the Equipment (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however: (i) Taxes of the United States or of the state or political subdivision thereof wherein the Vendor maintains its principal place of business; (ii) Taxes imposed on or measured solely by the net income or excess profits of the Vendor or franchise taxes to the extent measured by or based on gross receipts or net income of the Vendor or gross receipts taxes on the Vendor other than gross receipts taxes in the nature of sales or use taxes; (iii) Taxes described in (i) and (ii) of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or subdivision on its worldwide income without regard to the transactions contemplated by this CSA, whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (iv) Taxes imposed on or measured by any fees or compensation received by the Vendor; provided, however, that the Vendee shall not be required to pay any Taxes during the period the Vendee (or the Lessee on behalf of the Vendee) may be contesting the same in the manner provided in paragraph 6.2 hereof.

6.2. Claims; Contests; Refunds. If claim is made against the Vendor for any Taxes indemnified against under this Article 6, the Vendor shall promptly notify the Vendee. If reasonably requested by the Vendee in writing, the Vendor shall, upon receipt of any indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Vendee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts

to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Vendee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Vendor; provided that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Vendor in any such proceeding or action) without the prior written consent of the Vendor. If the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Vendee in connection with any such contest or an amount representing interest thereon, the Vendor shall pay the Vendee the amount of such refund or interest net of expenses; provided, however, that no event of default set forth in paragraph 16.1 hereof and no event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing.

6.3. Reports or Returns. In case any report or return is required to be made with respect to any obligation of the Vendee under or arising out of this Article 6, the Vendee shall either make such report or return in such manner as will show the interests of the Vendor in the Equipment or shall promptly notify the Vendor of such requirement and shall make such report or return in such manner as shall be satisfactory to the Vendor. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Vendee.

6.4. Survival. All of the obligations of the Vendee under this Article 6 shall survive and continue, notwithstanding payment in full of all other amounts due under this Agreement.

#### ARTICLE 7. MAINTENANCE, TERMINATION AND CASUALTY OCCURRENCES

7.1. Maintenance. The Vendee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order, repair and condition, ordinary wear and tear excepted.

7.2. Termination and Casualty Occurrences. In the event that the Lease is terminated pursuant to § 7.9 thereof (a "Termination") or any unit of Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, from any cause

whatsoever or the Purchase Price of any unit shall have been refunded by the Builder pursuant to the Builder's patent indemnities therefor as set forth in Item 4 of Annex A hereto or any unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of the Lease (any such occurrence being hereinafter called a "Casualty Occurrence"), the Vendee shall, promptly after it shall have received notice from the Lessee or has otherwise been informed of a Termination or that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding date for the payment of an installment on the CSA Indebtedness after such notice from the Lessee has been received or on the Termination Date (as defined in § 7.9(1) of the Lease) in the case of a Termination (each such date hereinafter called a "Settlement Date"), the Vendee shall, subject to the limitations contained in paragraph 4.8 hereof, pay to the Vendor (i) in the case of a Casualty Occurrence, a sum equal to the Casualty Value (as defined in paragraph 7.3 hereof) of such unit suffering a Casualty Occurrence as of such Settlement Date, together with an amount equal to accrued interest thereon, and (ii) in the case of a Termination, a sum equal to the Termination Value (as defined in paragraph 7.4 hereof) of all units subject to the Lease as of such Settlement Date. The Vendee shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit or the Termination Value of all units subject to the Lease, as the case may be. Any money paid to the Vendor pursuant to this paragraph shall be applied on the date of such payment to prepay, without penalty or premium except in the case of a Termination, ratably in accordance with the unpaid balance of each installment, the CSA Indebtedness, together with all interest accrued on the portion of the CSA Indebtedness being prepaid. The Vendee shall promptly cause to be furnished to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor and the Lessee may request, calculated as provided in paragraph 4.4 hereof.

7.3. Casualty Value. The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof referred to in paragraph 4.3(b) hereof remaining unpaid on the date as of which such Casualty Value shall be

determined (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit). For the purpose of this paragraph and paragraph 7.4 hereof, each payment of the Purchase Price made pursuant to Article 4 hereof shall be deemed to be a payment with respect to each unit of Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of all the Equipment.

7.4. Termination Value. The Termination Value of all the units subject to the Lease shall be the sum of (i) the Casualty Values thereof and accrued interest thereon plus (ii) a prepayment penalty premium equal to the product of the multiplication of such Casualty Value by the applicable percentage set forth below.

<u>Settlement Date</u>	<u>Percentage</u>
April 1, 1982	7.6000
October 1, 1982	7.2834
April 1, 1983	6.9667
October 1, 1983	6.6500
April 1, 1984	6.3334
October 1, 1984	6.0167
April 1, 1985	5.7000
October 1, 1985	5.3834
April 1, 1986	5.0667
October 1, 1986	4.7500
April 1, 1987	4.4334
October 1, 1987	4.1167
April 1, 1988	3.8000
October 1, 1988	3.4834
April 1, 1989	3.1667
October 1, 1989	2.8500
April 1, 1990	2.5334
October 1, 1990	2.2167
April 1, 1991	1.9000
October 1, 1991	1.5834
April 1, 1992	1.2667
October 1, 1992	0.9500
April 1, 1993	0.6334
October 1, 1993	0.3167
April 1, 1994	0.0000

7.5. Obligations upon Payment of Casualty Value or Termination Value. Upon payment by the Vendee to the Vendor (i) of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence or (ii) of the Termina-

tion Value of all the units subject to the Lease, absolute right to the possession of, title to and property in each such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor or the Vendee, and the provisions of the second and third sentences of paragraph 5.2 hereof shall apply.

#### ARTICLE 8. INSURANCE PROCEEDS AND CONDEMNATION PAYMENTS

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of any units suffering a Casualty Occurrence, the Vendor shall promptly pay such insurance proceeds or condemnation payments to the Vendee; provided, however, that no event of default shall have occurred and be continuing hereunder and the Vendee shall have made payment (i) of the Casualty Value of such units, together with accrued interest thereon, and/or (ii) of the Termination Value of such units, to the Vendor. All insurance proceeds received by the Vendor in respect of any unit of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

#### ARTICLE 9. REPORTS AND INSPECTIONS

On or before March 31 in each year, commencing with the year 1980, the Vendee shall, subject to the provisions of Article 23 hereof, cause to be furnished to the Vendor an accurate statement to the effect set forth in § 8 of the Lease. The Vendor shall have the right, by its agents, to inspect the Equipment and the Vendee's and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

#### ARTICLE 10. MARKING OF EQUIPMENT

10.1. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered and marked as provided in § 5 of the Lease. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement

previously shall have been filed with the Vendor and filed, recorded and deposited by or on behalf of the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

10.2. No Designations of Ownership. Except as provided in paragraph 10.1 hereof, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

#### ARTICLE 11. COMPLIANCE WITH LAWS AND RULES

During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any unit of the Equipment, the Vendee will or will cause the Lessee to conform therewith at no expense to the Vendor; provided, however, that the Vendee or the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

#### ARTICLE 12. POSSESSION AND USE

12.1. Possession and Use of Equipment by Vendee. The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the

Builder to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

12.2. Lease Permitted; Lease Subordinate; No Amendment or Termination. The Vendee simultaneously with the execution hereof is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Lease shall not be amended in any material respect or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

12.3. Other Leases of Equipment. Subject to the rights of the Lessee under the Lease, the Vendee may also lease the Equipment to any other entity, but only with the prior written consent of the Vendor, which consent may be subject to the conditions, among others, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States and (iii) such lease shall be assigned to the Vendor as security on terms consistent with those set forth in Annex D hereto, and in any event satisfactory to the Vendor.

#### ARTICLE 13. PROHIBITION AGAINST LIENS

13.1. Vendee To Discharge Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges

or security interests upon the Equipment shall be secured by and under this Agreement.

13.2. No Breach for Certain Liens. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

13.3. Article 13 Subject to Article 23 Except in Certain Instances. The obligations of the Vendee under this Article 13 are subject to the limitations contained in Article 23 hereof; provided, however, that the Vendee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Vendee or its successors or assigns, not arising out of the transactions contemplated hereby or in other documents mentioned herein (but including tax liens arising out of the receipt of the income and proceeds from the Equipment), equal or superior to the Vendor's security interest therein, but the Vendee shall not be required to pay or discharge any such claim, lien, charge or security interest so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement.

#### ARTICLE 14. INDEMNITIES AND WARRANTIES

14.1. Indemnification. The Vendee shall pay, and shall protect, indemnify and hold the Vendor (including the Investors) and any assignee hereof, and their respective successors, assigns, agents and servants ("Indemnified Persons"), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising, or alleged to arise out of this Agreement or the Equipment, including without limitation those in any way relating to or arising or alleged to arise

out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any unit of Equipment or portion thereof, (ii) any latent and other defects whether or not discoverable by the Vendee or the Vendor, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Equipment or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Equipment or of any other equipment in connection with the Equipment (whether owned or under the control of the Vendee, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Agreement or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Equipment or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of the Vendor's retention of a security interest under this Agreement or the Lease Assignment; except that the Vendee shall not be liable to the Builder in respect of any of the foregoing matters to the extent liability in respect thereof arises from an act or omission of the Builder or is covered by the Builder's patent indemnification referred to in paragraph 14.4 hereof. The Vendee shall be obligated hereunder, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Vendee hereunder without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Vendee may and, upon such Indemnified Person's request, will at the Vendee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Vendee and approved by such Indemnified Person and, in the event of any failure by the Vendee to do so, the Vendee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Vendee is required to make any payment hereunder, the Vendee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by

such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Vendor and the Vendee agree to give each other, promptly upon obtaining knowledge thereof, written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities hereunder by the Vendee, and provided that no event of default set forth in paragraph 16.1 hereof (or other event which with lapse of time or notice or both would constitute such an event of default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (other than the Vendee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to the Lease shall be paid over to the Vendee to the extent necessary to reimburse the Vendee for indemnification payments previously made in respect of such matter.

14.2. Survival; No Subrogation. The indemnities contained in this Article 14 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this Article 14 shall be deemed to create any rights of subrogation in any insurer or third party against the Vendee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

14.3. Vendee Not Released If Equipment Damaged or Lost. The Vendee will bear the responsibility for, and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

14.4. Warranties of Builder; Patent Indemnities. The agreement of the parties relating to the Builder's warranties of material and workmanship and the agreement

of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto. The Builder represents and warrants that, at the time of delivery and acceptance of each unit of the Equipment under this Agreement, the Builder will have good and marketable title to such Unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights created by this Agreement, the CSA Assignment and the Lease.

#### ARTICLE 15. ASSIGNMENTS

15.1. Assignment by Vendee. The Vendee will not (a) except as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement.

15.2. Assignment by Vendor. Any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 14 hereof, or relieve the Vendee of its obligations to the Builder contained in Articles 2, 3, 4, 6 and 14 hereof, Annex A hereto and this Article 15, or any other obligation which, according to its terms or context, is intended to survive an assignment.

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

15.4. No Setoff Against Indebtedness. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the assignee to the entire unpaid Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever by the Vendee arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee against and only against the Builder.

#### ARTICLE 16. DEFAULTS

16.1. Events of Default; Termination of Lease; Declaration of Default; Acceleration. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Vendee shall fail to pay or cause to be paid in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Vendee) and such default shall continue for 15 days after the date such payment is due and payable; or

(b) the Vendee or the Lessee shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other provision of this Agreement (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Vendee), the Lease Assignment or any provision of the Participation Agreement made expressly for the benefit of the Vendor, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) any proceeding shall be commenced by or against the Vendee or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Vendee hereunder or the Lessee under the Lease under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Vendee under this Agreement or the Lessee under the Lease), 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 Vendee under this Agreement or the Lessee under the 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 Trustee or the Lessee, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced;

then at any time after the occurrence of such an event of default the Vendor may, upon five days' written notice to the Vendee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, subject to the Lessee's rights under §§ 4 and 15 of the Lease, (i) cause the term of the Lease immediately upon such notice to terminate (and the Vendee acknowledges the right of the Vendor to terminate the term of the Lease); provided, however, that such termination shall not be in derogation of or impair the rights of the Vendee or the Vendor (under the assignment thereof), as the case may be, to enforce compliance by the Lessee with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under § 13 of the Lease (subject to the Vendor's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Vendee or the Vendor (under the assignment thereof), as the case may be, to sue for and recover damages provided for in § 13 of the Lease upon the occurrence of an event of default under the Lease, and/or (ii) declare (hereinafter called a

"Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of the CSA Indebtedness and interest shall bear interest from the date of such Declaration of Default at the Penalty Rate to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee, subject to the provisions of Articles 4 and 23 hereof, wherever situated.

If an Event of Default under § 13 of the Lease shall occur, the Vendee shall have the option, for a period of 30 days after the commencement of such Event of Default, to prepay all, but not less than all, the then outstanding CSA Indebtedness plus interest accrued to the date of such payment, and the obligations upon payment of the CSA Indebtedness in paragraph 5.2 hereof shall apply; it being understood and agreed, however, that unless the Vendee has unconditionally agreed with the Vendor (by written notice to the Vendor) to exercise such option, the Vendor may exercise all of its rights and remedies upon the occurrence of an event of default under this Agreement.

16.2. Waiver of Defaults. The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. It is agreed that time is of the essence of this Agreement and no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

## ARTICLE 17. REMEDIES

17.1. Vendor May Take Possession of Equipment. At any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal require-

ments then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Vendee, the Lessee or any other person and for such purpose may enter upon the premises of the Vendee or the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee or the Lessee, subject to all mandatory requirements of due process of law.

17.2. Assembling of Equipment for Vendor. In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee shall at its own expense and risk:

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

(b) cause such units to be stored on such tracks without charge for insurance, rent or storage until all such units of Equipment have been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the same to be transported to any reasonable place, as directed by the Vendor.

During any storage period, the Lessee has agreed pursuant to § 14.1 of the Lease, at its own cost and expense, to insure, maintain and keep each such unit in good order and repair and to permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence to the agreement between the parties, and the Vendee acknowledges that upon application to any court of equity having juris-

diction in the premises, the Vendor shall be entitled under the Lease as assignee of the rights of the Vendee thereunder to a decree against the Lessee requiring specific performance hereof. The Vendee hereby waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

17.3. Vendor May Dispose of or Retain Equipment.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore provided) may, at its election, retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee and the Lessee by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided, further, that if the Vendee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

17.4. Vendor May Sell Equipment; Vendee's Right of Redemption. At any time during the continuance of a

Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Lessee or any other party claiming from, through or under the Vendee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less any reasonable attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

17.5. Sale of Equipment by Vendor. Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Vendee or the Lessee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Vendee and the Lessee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 22 hereof. In addition, if such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees

have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee and the Vendee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

17.6. Effect of Remedies and Powers and Exercise Thereof. Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity not inconsistent herewith, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

17.7. Deficiencies. If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Penalty Rate, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such

surplus shall be paid to the Vendee.

17.8. Expenses. The Vendee will pay all reasonable fees, costs and expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

17.9. Remedies Subject to Legal Requirements. The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

#### ARTICLE 18. APPLICABLE STATE LAWS

18.1. Conflicts with State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

18.2. Waiver of Notices. Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights and any and all rights of redemption.

#### ARTICLE 19. RECORDING

The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303; and the Vendee will from time to

time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

#### ARTICLE 20. BUILDER'S REPRESENTATIONS AND WARRANTIES

The Builder hereby represents and warrants to the Vendee, its successors and assigns, that this Agreement is duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee, this Agreement is, insofar as the Builder is concerned, a legal, valid and binding agreement, enforceable against the Builder in accordance with its terms.

#### ARTICLE 21. HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT

21.1. Article and Paragraph Headings for Convenience Only. All article and paragraph headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

21.2. Effect and Modification of Agreement. Except for the Participation Agreement, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Vendee.

#### ARTICLE 22. NOTICE

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if deliv-

ered or mailed to it by first class mail, postage prepaid, at its chief place of business at the following specified addresses:

(a) to the Vendee, in care of GATX Leasing Corporation, One Embarcadero Center, San Francisco, California 94111, Attention of Contracts Administration,

(b) to the Builder, at the address specified in Item 1 of Annex A hereto,

(c) to any assignee of the Vendor or of the Vendee, at such address as may have been furnished in writing to the Vendee or the Vendor, as the case may be, by such assignee,

(d) to the Lessee at 270 Peachtree Street (P. O. Box 4545), Atlanta, Georgia 30302, Attention of Vice President-Treasurer, with a copy to Southern Company Services, Inc., 64 Perimeter Center East (P. O. Box 720071), Atlanta, Georgia 30346, Attention of Financial Vice President,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

#### ARTICLE 23. IMMUNITIES; SATISFACTION OF UNDERTAKINGS

23.1. No Recourse Against Certain Persons. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

23.2. Satisfaction of Certain Covenants. The obligations of the Vendee under paragraphs 7.1, 17.2, 17.7 and 17.8 and under Articles 6, 9, 10, 11, 13, 14 and 19 hereof and any and all obligations at any time arising thereunder shall be deemed satisfied in full in

all respects (except, in the case of Article 13 hereof, as set forth in paragraph 13.3 thereof) by the Lessee's execution and delivery of the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations; but if the same shall not be performed, they shall constitute the basis for an event of default hereunder pursuant to Article 16 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor; provided, however, that the Vendor shall consent to any agreement in writing between the Lessee and the Vendee increasing or decreasing the rentals or casualty values payable pursuant to §§ 3 and 7 of the Lease so long as the amounts payable thereunder are not reduced below those necessary to satisfy the obligations of the Vendee hereunder, such consent to be given by the Vendor within 30 days of delivery of a copy of any such agreement to the Vendor.

#### ARTICLE 24. LAW GOVERNING

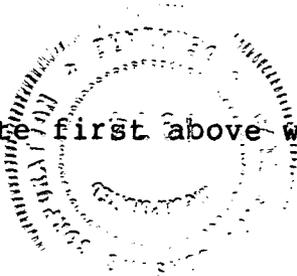
This Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Ohio; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303, such additional rights, if any, arising out of the filing, recording or deposit hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited or in which any unit of Equipment shall be located, and such rights, if any, arising out of the marking of Equipment.

#### ARTICLE 25. EXECUTION

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated, for convenience, 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.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the

date first above written.



[Corporate Seal]

GATX/G.P. LEASING CORPORATION,

by

[Signature]  
Executive Vice President

Attest:

Thomas C. Wood  
Assistant Secretary

ORTNER FREIGHT CAR COMPANY,

by

[Signature]  
Vice President

[Corporate Seal]

Attest:

[Signature]  
Assistant Secretary



STATE OF *New York*, )  
CITY OF *New York*, ) ss.:

On this *1st* day of *December* 1978, before me personally appeared *Douglas C. Kay*, to me personally known, who, being by me duly sworn, says that he is the Executive Vice President of GATX/G.P. LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Rita J. Bradley*  
Notary Public  
RITA J. BRADLEY  
NOTARY PUBLIC, State of New York  
No. 50-6339431  
Qualified in Nassau County  
Certificate Filed in New York County  
Commission Expires March 30, *1980*

[Notarial Seal]  
My Commission expires

STATE OF OHIO, )  
 ) ss. :  
COUNTY OF HAMILTON, )

On this *4th* day of *December* 1978, before me personally appeared *J.L. ORTNER, Jr.*, to me personally known, who, being by me duly sworn, says that he is a Vice President of ORTNER FREIGHT CAR 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.

*Howard E. Parr*  
Notary Public  
HOWARD E. PARR  
Notary Public, State of Ohio  
My Commission Expires August 20, 1983

[Notarial Seal]  
My Commission expires

## SCHEDULE I\*

Allocation Schedule of Each \$1,000,000 of CSA  
Indebtedness Payable in (i) One Interim Payment  
of Interest Only on April 1, 1979, and  
(ii) 30 Semiannual Installments of Principal  
and Interest Commencing October 1, 1980

<u>Installment No.</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Ending Principal</u>
(4/1/79)	\$ **	\$ **	\$ -0-	\$1,000,000.00
1 (10/1/79)	65,575.59	47,500.00	18,075.59	981,924.41
2 (4/1/80)	65,575.59	46,641.41	18,934.18	962,990.23
3 (10/1/80)	65,575.59	45,742.04	19,833.55	943,156.68
4 (4/1/81)	65,575.59	44,799.94	20,775.65	922,381.03
5 (10/1/81)	65,575.59	43,813.10	21,762.49	900,618.54
6 (4/1/82)	65,575.59	42,779.38	22,796.21	877,822.33
7 (10/1/82)	65,575.59	41,696.56	23,879.03	853,943.30
8 (4/1/83)	65,575.59	40,562.31	25,013.28	828,930.02
9 (10/1/83)	65,575.59	39,374.18	26,201.41	802,728.61
10 (4/1/84)	65,575.59	38,129.61	27,445.98	775,282.63
11 (10/1/84)	65,575.59	36,825.93	28,749.66	746,532.97
12 (4/1/85)	65,575.59	35,460.32	30,115.27	716,417.70
13 (10/1/85)	65,575.59	34,029.84	31,545.75	684,871.95
14 (4/1/86)	65,575.59	32,531.42	33,044.17	651,827.78
15 (10/1/86)	65,575.59	30,961.82	34,613.77	617,214.01
16 (4/1/87)	65,575.59	29,317.67	36,257.92	580,956.09
17 (10/1/87)	65,575.59	27,595.42	37,980.17	542,975.92
18 (4/1/88)	65,575.59	25,791.36	39,784.23	503,191.69
19 (10/1/88)	65,575.59	23,901.61	41,673.98	461,517.71
20 (4/1/89)	65,575.59	21,922.09	43,653.50	417,864.21
21 (10/1/89)	65,575.59	19,848.55	45,727.04	372,137.17
22 (4/1/90)	65,575.59	17,676.52	47,899.07	324,238.10
23 (10/1/90)	65,575.59	15,401.31	50,174.28	274,063.82
24 (4/1/91)	65,575.59	13,018.03	52,557.56	221,506.26
25 (10/1/91)	65,575.59	10,521.55	55,054.04	166,452.22
26 (4/1/92)	51,434.86	7,906.48	43,528.38	122,923.84
27 (10/1/92)	34,464.90	5,838.88	28,626.02	94,297.82
28 (4/1/93)	34,464.90	4,479.15	29,985.75	64,312.07
29 (10/1/93)	34,464.90	3,054.83	31,410.07	32,902.00
30 (4/1/94)	34,464.85	1,562.85	32,902.00	.00
	<u>\$1,828,684.16</u>	<u>\$828,684.16</u>	<u>\$1,000,000.00</u>	

\* As indicated in paragraph 4.4 of the CSA, this Schedule is based on the assumption that all Equipment accepted thereunder will be Schedule A Equipment and is subject to revision as provided in said paragraph 4.4.

\*\* Interest only on the CSA Indebtedness shall be paid to the extent accrued on this date.

Annex A  
to  
Conditional Sale Agreement

- Item 1: Ortner Freight Car Company, a Delaware corporation, having an address at 2652 Erie Avenue, Cincinnati, Ohio 45208, attention of President.
- Item 2: The Equipment shall be settled for in three Groups on or about December 18, 1978, January 15, 1979, and February 15, 1979, unless the parties otherwise agree.
- Item 3: The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter called this "Agreement") and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Lessee and not manufactured by the Builder) and workmanship under normal use and service, the Builder's obligation under this Item 3 being limited to making good at its factory any part or parts of any unit of the Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Lessee, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. THE FOREGOING WARRANTY OF THE BUILDER IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT FOR ITS OBLIGATIONS OR LIABILITIES UNDER ARTICLES 2, 3, 4 AND 14 OF THE AGREEMENT, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid. In no event shall the Builder be liable for special or consequential damages.

The Builder further agrees with the Vendee and the Lessee that neither the inspection as provided in

Article 3 of this Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Vendee and the Lessee of any of their rights under this Item 3.

Item 4: The Builder agrees to indemnify, protect and hold harmless the Vendee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, its assigns or the Lessee because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right, except any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, its assigns, or the Lessee because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination specified by the Lessee and not developed or purported to be developed by the Builder or any article or material specified by the Lessee and not manufactured by the Builder. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Lessee every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment, on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

- Item 5: The Maximum Purchase Price referred to in Article 4 of the CSA is \$6,300,000.
- Item 6: The Maximum CSA Indebtedness referred to in Article 4 of the CSA is \$4,500,000 plus the amount, if any, by which the Investors' investments are increased pursuant to Paragraph 2 of the Participation Agreement.

Annex B  
to  
Conditional Sale Agreement

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
100-ton "Rapid Discharge" Coal Hopper Cars	HTS	S-5023 11/28/78	Covington, Kentucky	88	GGPX-78001- 78088	\$40,200	\$3,537,600	November 13, 1978, through December 31, 1978, at Covington, Kentucky
100-ton "Rapid Discharge" Coal Hopper Cars	HTS	S-5023 11/28/78	Covington, Kentucky	62	GGPX-78089- 78150	40,200	2,492,400	January 1, 1979, through March 31, 1979, at Covington, Kentucky
				----- 150			----- \$6,030,000	

ANNEX C  
to Conditional  
Sale Agreement

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[CS&M Ref. 2043-875]

LEASE OF RAILROAD EQUIPMENT

Dated as of November 17, 1978

Between

GEORGIA POWER COMPANY,

as Lessee,

and

GATX/G.P. LEASING CORPORATION,

as Lessor.

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LEASE OF RAILROAD EQUIPMENT

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TABLE OF CONTENTS\*

	<u>Page</u>
SECTION 1. NET LEASE .....	L-1
SECTION 2. DELIVERY .....	L-2
2.1. Delivery and Acceptance of Units .....	L-2
2.2. Designation of Schedule A, Schedule B and Schedule C Units .....	L-3
SECTION 3. RENTALS .....	L-3
3.1. Amount and Date of Payment .....	L-3
3.2. Payments on Nonbusiness Days .....	L-6
3.3. Instructions To Pay Vendor and Vendee .....	L-6
3.4. Payment in Immediately Available Funds .....	L-6
SECTION 4. TERM OF LEASE .....	L-6
4.1. Beginning and Termination; Survival .....	L-6
4.2. Rights and Obligations of Lessee Subject to CSA .....	L-7
SECTION 5. IDENTIFICATION MARKS .....	L-7
5.1. Identifying Numbers; Legend; Changes .....	L-7
5.2. Insignia of Lessee .....	L-8
SECTION 6. TAXES .....	L-8
6.1. Indemnification for Nonincome Taxes .....	L-8
6.2. Claims; Contests; Refunds .....	L-10
6.3. Reports or Returns .....	L-11
6.4. Survival .....	L-11

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

	<u>Page</u>
SECTION 7. PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE; TERMINATION .....	L-11
7.1. Definitions of Casualty Occurrence; Payments .....	L-11
7.2. Requisition by United States Government .....	L-13
7.3. Lessee Agent for Disposal .....	L-13
7.4. Payments After Expiration of Lease .....	L-13
7.5. Amount of Casualty Value .....	L-13
7.6. No Release .....	L-14
7.7. Insurance To Be Maintained .....	L-14
7.8. Insurance Proceeds and Condemnation Payments .....	L-15
7.9. Termination .....	L-15
SECTION 8. REPORTS .....	L-18
SECTION 9. DISCLAIMER OF WARRANTIES .....	L-18
SECTION 10. LAWS AND RULES .....	L-19
10.1. Compliance .....	L-19
10.2. Reports by Lessor .....	L-20
SECTION 11. MAINTENANCE .....	L-20
11.1. Units in Good Operating Order .....	L-20
11.2. Additions and Accessions .....	L-20
SECTION 12. INDEMNIFICATION .....	L-21
12.1. Indemnified Persons .....	L-21
12.2. Indemnification of Builder .....	L-23
12.3. Survival .....	L-23
SECTION 13. DEFAULT .....	L-23
13.1. Events of Default; Remedies .....	L-23
13.2. Remedies Not Exclusive; Waiver .....	L-26
13.3. Failure To Exercise Rights Is Not Waiver .....	L-26
SECTION 14. RETURN OF UNITS UPON DEFAULT .....	L-27
14.1. Return of Units .....	L-27
14.2. Lessor Appointed Agent of Lessee .....	L-28

	<u>Page</u>
SECTION 15. ASSIGNMENT, POSSESSION AND USE .....	L-28
15.1. Assignment; Consent .....	L-28
15.2. Lessee's Rights To Use the Units, To Permit Use Thereof by Others and To Sublease the Units .....	L-28
15.3. Transfers by Lessee Through Merger, Acquisition or Consolidation .....	L-29
SECTION 16. RENEWAL OPTIONS .....	L-30
16.1. Renewal for Successive Periods .....	L-30
16.2. Determination of Fair Market Rental .....	L-30
SECTION 17. RETURN OF UNITS UPON EXPIRATION OF TERM OR TERMINATION .....	L-31
SECTION 18. RECORDING .....	L-32
SECTION 19. INTEREST ON OVERDUE RENTALS .....	L-33
SECTION 20. LESSOR'S RIGHT TO PERFORM FOR THE LESSEE .....	L-33
SECTION 21. NOTICES .....	L-33
SECTION 22. SEVERABILITY .....	L-34
SECTION 23. EFFECT AND MODIFICATION OF LEASE .....	L-34
SECTION 24. THIRD PARTY BENEFICIARIES .....	L-34
SECTION 25. EXECUTION .....	L-35
SECTION 26. LAW GOVERNING .....	L-35
APPENDIX A Units Leased .....	L-37
APPENDIX B Schedule of Casualty Values .....	L-38
APPENDIX C Schedule of Termination Values .....	L-39

LEASE OF RAILROAD EQUIPMENT dated as of November 17, 1978, between GEORGIA POWER COMPANY, a Georgia corporation (the "Lessee"), and GATX/G.P. LEASING CORPORATION, a Delaware corporation (the "Lessor").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with ORTNER FREIGHT CAR COMPANY, a Delaware corporation (the "Builder"), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Appendix A hereto;

WHEREAS the Builder is assigning its interests in the CSA pursuant to an Agreement and Assignment dated the date hereof (the "CSA Assignment") to THE CONNECTICUT BANK AND TRUST COMPANY, acting as agent for certain investors under a Participation Agreement dated as of the date hereof (the "Participation Agreement") among said agent, the Lessee, the Lessor and the parties named in Appendix I thereto (the "Investors") (said agent as so acting, being hereinafter, together with its successors and assigns, called the "Vendor");

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

WHEREAS the Lessor will assign this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement (the "Lease Assignment") dated as of the date hereof;

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. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein specifically

provided, the Lessee shall not be entitled to any abatement of rent or such other amounts, reduction thereof or setoff against rent or such other amounts, 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 the CSA including the Lessee's rights by subrogation thereunder to 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 or the Vendor for any reason whatsoever.

## § 2. DELIVERY

2.1. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. Each delivery of a Unit to the Lessor under the CSA shall be

deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is so delivered to the Lessor. Upon such delivery, the Lessee will cause an agent of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Lessor under the CSA and on behalf of itself hereunder and execute and deliver to the Lessor a certificate of acceptance (the "Certificate of Acceptance") in accordance with the provisions of Article 3 of the CSA, 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 § 5.1 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

2.2. Designation of Schedule A, Schedule B and Schedule C Units. All Units which are accepted hereunder on or prior to December 31, 1978, shall be called Schedule A Units, all Units which are accepted hereunder after December 31, 1978, and on or prior to June 30, 1979, shall be called Schedule B Units and all Units which are accepted hereunder after June 30, 1979, and on or prior to September 30, 1979, shall be called Schedule C Units. The Lessor and the Lessee shall enter into a supplement hereto promptly after final settlement for all Units setting forth the road numbers of the Units which are designated Schedule A, Schedule B and Schedule C Units.

### § 3. RENTALS

3.1. Amount and Date of Payment. (1) The Lessee agrees to pay to the Lessor, as rental for each Schedule A Unit subject to this Lease, one interim rental payment on April 1, 1979, and 30 consecutive semiannual payments payable, in arrears, on April 1 and October 1 in each year, commencing October 1, 1979, to and including April 1, 1994. In respect of each Schedule A Unit subject to this Lease, (a) the interim rental payment shall be in an amount equal to the product of the Purchase Price (as defined in paragraph 4.1 of the CSA) for each such Schedule A Unit subject to this Lease multiplied by 0.0291447% for each day (computed on the basis of a 360-day year of twelve 30-day months) elapsed from the Closing Date (as defined in paragraph 4.2 of the

CSA) for such Unit to, but not including, April 1, 1979, and (b) the 30 semiannual rental payments shall each be in an amount equal to 5.246047% of the Purchase Price of each such Schedule A Unit; provided, however, that the aggregate rental payments payable under this § 3 shall not be in an amount less than that which is necessary to satisfy the obligations of the Lessor under paragraphs 4.3(b) and 4.4 of the CSA.

(2) The Lessee agrees to pay to the Lessor, as rental for each Schedule B Unit subject to this Lease, one interim rental payment on April 1, 1979, and 30 consecutive semiannual payments payable, in arrears, on April 1 and October 1 in each year, commencing October 1, 1979, to and including April 1, 1994. In respect of each Schedule B Unit subject to this Lease, (a) the interim rental payment shall be an amount equal to (i) the product of the Purchase Price for each such Schedule B Unit subject to this Lease multiplied by 0.0295962% for each day (computed on the basis of a 360-day year of twelve 30-day months) elapsed from the Closing Date for such Unit to, but not including, April 1, 1979, and (b) the 30 semiannual payments shall each be in an amount equal to 5.327326% of the Purchase Price of each such Schedule B Unit; provided, however, that if any Schedule B Unit is accepted hereunder after April 1, 1979, there shall be deducted from the first such semiannual payment an amount equal to the product of the Purchase Price for each such Schedule B Unit multiplied by 0.0059192% for each day (computed on the basis of a 360-day year of twelve 30-day months) elapsed from April 1, 1979, to, but not including, the Closing Date for such Unit; and provided, further, however, that the aggregate rental payments payable under this § 3 shall not be in an amount less than that which is necessary to satisfy the obligations of the Lessor under paragraphs 4.3(b) and 4.4 of the CSA.

(3) The Lessee agrees to pay to the Lessor as rental for each Schedule C Unit subject to this Lease, 30 consecutive semiannual payments payable, in arrears, on April 1 and October 1 in each year commencing October 1, 1979, to and including April 1, 1994. Such 30 semiannual payments shall each be in an amount equal to 5.5525% of the Purchase Price of each such Schedule C Unit; provided, however, that the aggregate rental payments payable under this § 3 shall not be in an amount less than that which is

necessary to satisfy the obligations of the Lessor under Paragraphs 4.3(b) and 4.4 of the CSA.

(4) The foregoing rentals have been calculated on the assumption that 80% of the aggregate Purchase Price of all Units will be provided by the Investors. If the Lessor pays more than 20% of such aggregate Purchase Price pursuant to paragraph 4.3(a) of the CSA, the Lessee agrees to pay the Lessor, as supplemental rent, 30 consecutive semiannual payments payable, in arrears, on April 1 and October 1 in each year commencing October 1, 1979, to and including April 1, 1994. Each such semiannual payment shall be in an amount equal to 6.0245% multiplied by an amount equal to the amount the Lessor shall have paid in excess of 20% of such aggregate Purchase Price; provided, however, that if and to the extent that any such excess is paid by the Lessor after April 1, 1979, there shall be deducted from the first such semiannual payment an amount equal to the product of such excess multiplied by 0.024114% for each day (computed on the basis of a 360-day year of twelve 30-day months) elapsed from April 1, 1979, to, but not including, the Closing Date on which such excess is paid by the Lessor. In the event that these supplemental rentals become payable hereunder, the Casualty Values set forth in Appendix B and the Termination Values set forth in Appendix C hereto will be appropriately adjusted.

(5) In the event that there is any loss or liability arising out of or resulting from the Investments made pursuant to Paragraph 2 of the Participation Agreement, including, but not limited to, any Investment Deficiency in respect thereof, the next rental payment payable by the Lessee after the amount of such loss or liability shall be determined shall be increased by such amount as will compensate the Lessor on an after-tax basis for such loss or liability.

(6) In addition to the foregoing rentals, the Lessee will pay to the Lessor as additional rent amounts equal to the amounts required by the Lessor to make the payments provided for in the last sentence of the first paragraph and in the last paragraph of Paragraph 9 of the Participation Agreement on the dates required for such

payments in said Paragraph 9 (without regard to the limitation of the obligation of the Lessor set forth therein) and the Lessor agrees to apply such rentals for such purposes.

3.2. Payments on Nonbusiness Days. If any of the semiannual rental payment dates referred to in § 3.1 is not a business day the semiannual rental payment otherwise payable on such date shall be payable on the next 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 Hartford, Connecticut, Atlanta, Georgia, or New York, New York, are authorized or obligated to remain closed.

3.3. Instructions To Pay Vendor and Vendee. Upon execution and delivery of the Lease Assignment and until the Vendor shall have advised the Lessee in writing that all sums due from the Lessor under the CSA have been fully satisfied and discharged, the Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease to the Vendor, for the account of the Lessor, in care of the Vendor, with instructions to the Vendor (a) first to apply such payments to satisfy the obligations of the Lessor under the CSA known to the Vendor to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor or to the order of the Lessor at such place as the Lessor shall specify in writing. If the Lease Assignment is not executed and delivered, or if the Lessee shall have been advised by the Vendor in writing that all sums due from the Lessor under the CSA have been fully discharged and satisfied, the semiannual installments of rental due hereunder and any Casualty Payments thereafter due pursuant to § 7 hereof shall be made to the Lessor in the manner provided in § 3.4 hereof.

3.4. Payment in Immediately Available Funds. The Lessee agrees to make each payment provided for herein as contemplated by § 3.1 in immediately available funds at or prior to 11:00 a.m. in the city where such payment is to be made.

#### § 4. TERM OF LEASE

4.1. Beginning and Termination; Survival. The term of this Lease as to each Unit shall begin on the date

of delivery of such Unit under the CSA and, subject to the provisions of §§ 7, 13 and 16 hereof, shall terminate on the date when all Units have been returned pursuant to § 17 hereof and all obligations of the Lessee under § 17 hereof have been fully satisfied. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 10, 11, 12 and 17 hereof) shall survive the expiration of the term of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration.

4.2. Rights and Obligations of Lessee Subject to CSA. Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination) without affecting the indemnities which by the provisions of this Lease survive the termination of its term, all as provided herein; provided, however, that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent, and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, this Lease may not be terminated, the Lessee shall be entitled to the rights provided under § 15 hereof and the Lessee shall be entitled to the right of quiet enjoyment and possession of each Unit. The Lessor covenants that so long as an Event of Default hereunder or an event which, with the passage of time or the giving of notice, or both, would constitute an Event of Default hereunder shall not have occurred and be continuing, it will not interfere in the Lessee's quiet enjoyment or possession of any Unit and agrees that the Lessee shall not be deprived of its right of quiet enjoyment and possession of any Unit as a result of any act of, or claim against, the Lessor.

## § 5. IDENTIFICATION MARKS

5.1. Identifying Numbers; Legend; Changes. The Lessee will cause each Unit to be kept numbered with the identification number set forth in Appendix A hereto, or in the case of any Unit not there listed such identification 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 WITH THE INTERSTATE COMMERCE COMMISSION", 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 property in such Unit and the rights of the Lessor under this Lease and of the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced, obliterated or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recording and deposit will protect the Vendor's and the Lessor's interests in such Units and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Lessor in such Units.

5.2. Insignia of Lessee. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates, but the Lessee will not allow the name of any other person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

## § 6. TAXES

6.1. Indemnification for Nonincome Taxes. Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay, and to indemnify and hold the Lessor and the Vendor (which term shall include the Investors for the purposes of this § 6) harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Lessor, the Vendor, the Lessee or otherwise, by any Federal, state or local government or governmental subdivi-

sion in the United States or by any foreign country or subdivision thereof, upon or with respect to: any Unit or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the indebtedness with respect thereto; the rentals, receipts or earnings arising therefrom; or this Lease, the Participation Agreement, the CSA, the CSA Assignment, the Lease Assignment, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to the Units (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however: (i) Taxes of the United States or of the state or political subdivision thereof wherein the Lessor or Vendor maintains its principal place of business; (ii) Taxes imposed on or measured solely by the net income or excess profits of the Lessor or the Vendor or franchise taxes to the extent measured by or based on gross receipts of the Vendor or net income of the Lessor or the Vendor or gross receipts taxes on the Vendor other than gross receipts taxes in the nature of sales or use taxes; (iii) franchise taxes to the extent measured by gross receipts of the Lessor or net income based on gross receipts of the Lessor, or gross receipts taxes on the Lessor other than gross receipts taxes in the nature of sales and use taxes, and other, in the case of (i) through (iii), than Taxes arising out of or imposed in respect of indemnification payments pursuant to this Lease, provided that such Taxes described in (i) through (iii) of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or subdivision on its worldwide income without regard to the transactions contemplated by this Lease shall be excluded in all cases, whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (iv) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by Lessor or any transfer or disposition by Lessor resulting from bankruptcy or other proceedings for the relief of debtors in which Lessor is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease; (v) any Taxes imposed on or measured by any fees or compensation received by the Vendor; provided, however, that the Taxes described in (iii) above shall not be excluded from this indemnity for so long as Lessor's sole activity, business and source of income shall be from the leasing of property to Lessee and Lessor does not assign or otherwise transfer by any means any of its rights or benefits under this Lease

except to the Vendor as contemplated by the Participation Agreement. However, the Lessee shall not be required to pay any Taxes during the period the Lessee may be contesting the same in the manner provided in § 6.2 hereof. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee under the laws of the United States or of any state or political subdivision thereof, or of any foreign country or subdivision thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; provided, however, that the Lessee shall not be required to pay any such tax during the period it may be contesting the same. The Lessee covenants, for the benefit of the Builder, that the Lessee will indemnify and hold the Builder harmless from any Kentucky sales taxes which might be imposed in respect of the sale of Units under the CSA.

6.2. Claims; Contests; Refunds. If claim is made against the Lessor or the Vendor for any Taxes indemnified against under this § 6, such party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, the Lessor or the Vendor, as the case may be, shall, upon receipt of any indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Lessor or the Vendor; provided that, no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Lessor or the Vendor in any such proceeding or action) if in the opinion of the Lessor or the Vendor such contest or the nonpayment of the Taxes would adversely affect the title, property or rights of the Lessor hereunder or of the Vendor under the CSA. The Lessee agrees to give the Lessor and the Vendor reasonable notice of such contest prior to the commencement thereof. If the Lessor or the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon, the Lessor or the Vendor, as the case may be, shall pay the Lessee the amount of such refund or interest net of expenses; provided, however, that

no Event of Default and no event which with notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing.

6.3. Reports or Returns. In case any report or return is required to be made with respect to any obligation of the Lessee under or arising out of this § 6 (except obligations resulting from the last sentence of § 6.1), the Lessee will, where permitted to do so under applicable rules and regulations, make and timely file (or cause the same to be accomplished) such reports and returns in such manner as to show the interest of the Lessor and the Vendor in the 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 time prior to the time such reports are to be filed. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

6.4. Survival. All the obligations of the Lessee under this § 6 shall survive and continue, notwithstanding payment in full of all amounts due under the CSA or the termination of this Lease, with respect to all events, facts, conditions or other circumstances occurring or existing prior to such termination. Payments due from the Lessee to the Lessor or the Vendor under this § 6 shall be made directly to the party indemnified.

## § 7. PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE; TERMINATION

7.1. Definitions of Casualty Occurrence; Payments. In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever during the term of this Lease or any renewal term hereof or until such Unit is returned pursuant to §§ 14 or 17 hereof, or the Purchase Price of any Unit shall have been refunded by the Builder of such Unit pursuant to the terms of its patent indemnity therefor or any Unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of this Lease (any such occurrences being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the next succeeding semiannual rental payment date (each such date being hereinafter called a "Casualty Payment Date"), the

Lessee shall pay to the Lessor a sum equal to the Casualty Value (as defined in § 7.5 hereof) of any such Unit as of such Casualty Payment Date, plus the semiannual rental in respect of such Unit accrued as of such rent payment date; provided, however, that in the event of a Casualty Occurrence during the period any Unit is being returned pursuant to §§ 14 and 17 hereof, the Lessee shall make such payment to the Lessor on a date 30 days after such Casualty Occurrence. 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 except as otherwise provided in § 7.3 hereof.

In addition to the occurrences constituting a Casualty Occurrence under the preceding paragraph, if any Unit shall have been taken or requisitioned by the United States Government or any other governmental entity and such taking or requisition shall not theretofore constitute a Casualty Occurrence as aforesaid, such taking or requisition shall be deemed a Casualty Occurrence if the same shall be continuing at the end of the term of this Lease, in which event the Lessee shall promptly and fully notify the Lessor with respect thereto and pay the Lessor, as the Casualty Value therefor, an amount equal to 32.50% of the Purchase Price of such Unit. Following such payment, the Lessee shall be entitled to receive condemnation payments in respect of such Unit up to an amount equal to such Casualty Value (plus an amount necessary to make the Lessee whole on an after-tax-basis for any Investment Tax Credit recapture suffered by the Lessee) and any balance of such payments shall be the property of the Lessor. In the event such Unit shall be returned by the governmental entity prior to the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, then the Lessee shall dispose of such Unit as agent for the Lessor, and shall retain the net proceeds of such disposition to the extent that the aggregate of the amounts so retained and the condemnation payments theretofore received by the Lessee shall equal such Casualty Value (plus an amount necessary to make the Lessee whole on an after-tax-basis for any Investment Tax Credit recapture suffered by the Lessee) and any balance of such proceeds shall be promptly paid to the Lessor. In the event such Unit shall be returned by the governmental entity following the time the Lessee shall have been reimbursed by such applica-

tion of condemnation payments in an amount equal to such Casualty Value, such Unit shall be returned by the Lessee to the Lessor in the manner provided in § 17 hereof.

7.2. Requisition by United States Government. In the event of the requisition for use by the United States Government of any Unit for a period which does not exceed the term of this Lease or for an indefinite period (except where deemed a Casualty Occurrence pursuant to the last paragraph of § 7.1 hereof), 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. All payments received by the Lessor or the Lessee from the United States 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.

7.3. Lessee Agent for Disposal. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof before and after expiration of the Lease, 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 (i) the Lessee shall be entitled to the net proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit plus an amount necessary to make the Lessee whole on an after-tax basis for any Investment Tax Credit recapture suffered by the Lessee, and shall pay any excess to the Lessor and (ii) 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 CSA an amount equal to any payment made by the Builder to the Lessor in respect thereof under the CSA.

7.4. Payments After Expiration of Lease. If the date upon which the making of the payment by the Lessee in § 7.1 hereof in respect of any Unit is required as aforesaid shall be after the term of this Lease or any renewal term thereof in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term.

7.5. Amount of Casualty Value. The Casualty Value of each Unit as of the Casualty Payment Date on which payment is to be made as aforesaid shall be an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Appendix B hereto opposite the rental payment date next

succeeding the actual date of such Casualty Occurrence, or if there is no such rental payment date, the last rental payment date; but in no event shall such amount be less than the Casualty Value (as defined in the CSA) as of such rental payment date.

7.6. No Release. 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.

7.7. Insurance To Be Maintained. (1) The Lessee will, at all times prior to the return of the Units to the Lessor at its own expense, cause to be carried and maintained (i) property insurance in respect of the Units at the time subject hereto; provided, however, that the Lessee may self-insure such Units to the extent it self-insures equipment similar to the Units and to the extent such self-insurance is consistent with prudent industry practice, and (ii) public liability insurance with respect to third party personal and property damage and the Lessee will continue to carry such insurance in such amounts and for such risks and with such insurance companies as is consistent with prudent industry practice but in any event at least comparable in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Units, in each case satisfactory to the Lessor. The proceeds thereof shall be payable to the Vendor, the Lessor and the Lessee, as their interests may appear, so long as the indebtedness, if any, evidenced by the CSA shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice of cancelation or material change in coverage to the Lessor and the Vendor and (ii) name the Lessor and the Vendor as additional named insureds as their respective interests may appear and, in the event such policies shall contain breach of warranty provisions, such policies shall provide that in respect of the interests of the Lessor and the Vendor in such policies the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Lessor or the Vendor) and shall insure the Lessor and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Lessor or the Vendor). Prior

to the first date of delivery of any Unit pursuant to the CSA, and thereafter not less than 15 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to this § 7, the Lessee shall deliver to the Lessor duplicate originals of all policies (or in the case of blanket policies, certificates thereof issued by the insurers thereunder) for the insurance maintained pursuant to this § 7; provided, however, that if the delivery of a formal policy or certificate, as the case may be, is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the formal policy or certificate, as the case may be, upon receipt thereof.

(2) In the event that the Lessee shall fail to maintain insurance as herein provided, the Lessor may at its option provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand from time to time, reimburse the Lessor for the cost thereof together with interest, on the amount of the cost to the Lessor of such insurance which the Lessee shall have failed to maintain, at the rate per annum specified in § 19 hereof.

7.8. Insurance Proceeds and Condemnation Payments. If the Lessor shall receive (directly or from the Vendor) any insurance proceeds or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Lessor shall pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value theretofore paid by the Lessee plus an amount necessary to make the Lessee whole on an after-tax basis for any Investment Tax Credit recapture suffered by the Lessee, and any balance of such proceeds or condemnation payments shall remain the property of the Lessor; provided, however, that no Event of Default shall have occurred and be continuing and the Lessee shall have made payment of the Casualty Value thereof, and accrued rentals in respect of such Units, to the Lessor. All insurance proceeds received by the Lessor (directly or from the Vendor) 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.

7.9. Termination. (1) The Lessee shall have the right, at its option and on at least 120 days' prior written notice to the Lessor, to terminate (hereinafter called a "Termination") this Lease as to all Units then subject hereto (subject to the survival of the obligations described in

§ 4.1 hereof) as of any succeeding rent payment date specified in such notice (the termination date specified in such notice being hereinafter called the "Termination Date"); provided, however, that (i) the Termination Date shall not be earlier than April 1, 1982, (ii) no Event of Default or other event which after the lapse of time or notice or both would become an Event of Default shall have occurred and be continuing, (iii) on the Termination Date such Units shall be in the same condition as if being redelivered pursuant to § 14.1 hereof and (iv) on the Termination Date the Lessor shall have paid to the Vendor a sum sufficient to prepay the CSA Indebtedness in accordance with Paragraph 7.2 of the CSA.

(2) If the Lessee shall exercise its option to terminate under § 7.9(1), the Lessor may, by written notice to the Lessee given within 30 days after the termination notice is given to the Lessor, elect to retain the Units then subject to this Lease for its own account or for resale, in which case on the Termination Date (a) the Lessee shall pay to the Lessor an amount equal to the prepayment penalty premium, if any, payable pursuant to Paragraph 7.2 of the CSA on such date in respect of the CSA Indebtedness to be prepaid by the Lessor on such date and (b) the Lessor shall pay to the Vendor a sum sufficient to prepay the CSA Indebtedness in accordance with Paragraph 7.2 of the CSA; provided, however, that the Lessor may not make such election unless it can demonstrate, to the reasonable satisfaction of the Lessee and the Vendor within said 30-day notice period, that it has made firm arrangements with a creditworthy entity to cause the CSA Indebtedness to be prepaid in accordance with paragraph 7.2 of the CSA on the Termination Date.

(3) If prior to the Termination Date the Lessor shall have made arrangements with the Investors to waive the CSA Indebtedness prepayment requirements of Paragraph 7.2 of the CSA, the Lessor shall not be obligated under any of the provisions of this § 7.9 to pay to the Vendor a sum sufficient to prepay the CSA Indebtedness.

(4) If the Lessor shall not make the election described in § 7.9(2), during the period from the 90th day of the giving of the notice until the fifth business day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids for the purchase of all Units then subject to this Lease, and the Lessee shall at least five business days prior to the Termination Date certify to the Lessor the amount of each such bid and the name and address

of the party submitting such bid (which shall not be a person affiliated with the Lessee or any party from whom the Lessee or any such affiliate intends thereafter to lease such Units). Unless the Lessee shall have directed that all such bids be rejected, on the Termination Date the Lessor shall sell all such Units for cash to the bidder which shall have submitted the highest bid prior to the Termination Date. The net sales proceeds realized shall be retained by the Lessor. On the Termination Date (a) the Lessee shall pay to the Lessor (i) an amount equal to the prepayment penalty premium, if any, payable pursuant to Paragraph 7.2 of the CSA on such date in respect of the CSA Indebtedness to be prepaid by the Lessor on such date and (ii) the excess, if any, of the Termination Value for such Units computed as of such date over the net sales proceeds of such Units, after the deduction of all expenses incurred in connection with such sale, and (b) the Lessor shall pay to the Vendor a sum sufficient to prepay the CSA Indebtedness in accordance with Paragraph 7.2 of the CSA.

(5) If the Lessee shall have directed that all bids be rejected or no sale shall occur pursuant to § 7.9(3), this Lease shall continue in full force and effect without change unless and until (a) the Lessee shall pay to the Lessor an amount equal to the greater of the Fair Market Value or the Termination Value of all Units then subject to this Lease and (b) the Lessor shall pay to the Vendor a sum sufficient to prepay the CSA Indebtedness in accordance with Paragraph 7.2 of the CSA.

(6) The Termination Value of each Unit as of the payment date on which payment is to be made shall be that percentage of the Purchase Price of such Unit as is set forth in Appendix C hereto opposite such date, but in no event shall such amount be less than the Termination Value (as defined in paragraph 7.4 of the CSA) as of such date. The Fair Market Value of each Unit shall be determined on the basis of, and shall be equal in amount to, the price which would obtain in an arm's length transaction between an informed and willing purchaser and an informed and willing seller under no compulsion to sell and, in such determination, the cost of removal from the location of current use shall not be a deduction from such price. If, after 25 days from the giving of the Lessee's notice of Termination, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined by the procedure described in Section 16.2(2) hereof.

#### § 8. REPORTS

On or before March 31 in each year, commencing with the calendar year 1980, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the total number, description and identification numbers of all Units then leased hereunder and covered by the CSA, the total number, description and identification 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 repair (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, (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 § 5.1 hereof and by the CSA have been preserved or replaced and (c) further stating that the Lessee is in compliance under the Lease and has performed or has caused to be performed the required maintenance of the Unit and that no event has occurred which with the lapse of time or notice or both would constitute an Event of Default. The Lessor and the Vendor shall each 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 or the Vendor may request during the continuance of this Lease.

#### § 9. DISCLAIMER OF WARRANTIES

THE LESSOR DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR 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 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 CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, 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 respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor or the Vendor based on any of the foregoing matters.

#### § 10. LAWS AND RULES

10.1. Compliance. 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 laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or addition 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 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 CSA.

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

## § 11. MAINTENANCE

11.1. Units in Good Operating Order. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted, and in the same condition as other similar Equipment owned or leased by the Lessee.

11.2. Additions and Accessions. (1) Except as set forth in §§ 10.1 and 11.1 hereof, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units and do not adversely and materially affect the value of the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, except to the extent such additions, modifications or improvements are made in order to comply with § 11.2(2) hereof.

(2) Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of the Lessee's agreements contained in § 11.2(1) hereof, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the regulations of the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA) shall immediately be vested in the Lessor and the Vendor as their respective interests may appear in the Unit itself.

## § 12. INDEMNIFICATION

12.1. Indemnified Persons. The Lessee shall pay, and shall protect, indemnify and hold the Lessor, the Vendor (including the Investors) and any assignee thereof, and their respective successors, assigns, agents and servants ("Indemnified Persons"), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising, or alleged to arise out of this Lease, the CSA or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent and other defects whether or not discoverable by the Lessor, the Vendor or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof, except to the extent any such violation arises from the negligence or misconduct of the Indemnified Person claiming indemnity hereunder; or (vii) any claim arising out of any of the Lessor's obligations under the Lease Assignment or the Vendor's retention of a security interest under the CSA or the Lease Assignment or the Participation Agreement, except to the extent such claim arises from the negligence or misconduct of the Indemnified Person claiming indemnity hereunder. The Lessee shall be obligated hereunder, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce

the indemnification may proceed directly against the Lessee hereunder, without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment hereunder, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Lessor each agrees to give each other, promptly upon obtaining knowledge thereof, written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities hereunder by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute such an Event of Default) shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant hereto shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made. Nothing herein shall constitute a guarantee by the Lessee of the CSA Indebtedness of the Lessor under the CSA or a guarantee of the residual value of any Unit. As used herein, the term Indemnified Persons shall in no event include General American Transportation Corporation in its capacity as a supplier of services under a separate contract of even date herewith with the Lessee in respect of the Units, any assignee or successor thereof, or any other person at any time under contract with the Lessee to supply services in respect of the Units.

12.2. Indemnification of Builder. The Lessee agrees to indemnify, protect and hold harmless the Builder as a third party beneficiary hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Builder because of the use in or about the construction or operation of any Unit of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder hereunder.

12.3. Survival. The indemnities contained in this § 12 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this § 12 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

### § 13. DEFAULT

13.1. Events of Default; Remedies. If, during the continuance of this Lease or any extension or renewal thereof, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:

A. default shall be made in payment of any amount provided for in §§ 3, 7 or 16 hereof, and such default shall continue for 10 days;

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

C. default shall be made in the observance or performance of any other of the covenants, conditions and

agreements on the part of the Lessee contained herein or in the Participation Agreement and such default shall continue for 15 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

D. any representation or warranty made by the Lessee herein, in the Participation Agreement or in any certificate or statement furnished to the Lessor pursuant to or in connection with any such agreements proves untrue in any material respect as of the date of issuance or making thereof;

E. any 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 60 days after such proceedings shall have been commenced; or

F. an event of default set forth in Article 16 of the CSA shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder and such event of default shall not have been waived by the Vendor;

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, insofar as the Lessee may be lawfully authorized to so permit, where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts that the Lessor, in its sole discretion shall specify, (i) a sum, with respect to each Unit, which represents (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit, such present value to be computed on the basis of a 6.43% per annum discount, compounded semiannually from the respective dates upon which rental would have been payable hereunder had this Lease not been terminated over the then present value of the rental which the Lessor reasonably estimates to be obtainable for each Unit during such period, such present value to be computed on the basis of a 6.43% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or, if such

Unit is sold, the net proceeds of the sale plus (y) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) an amount equal to the excess, if any, of the Casualty Value as of the Casualty 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 by the Lessee pursuant to the preceding clause (ii) 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 Casualty Payment Date on or next preceding the date of termination over the net proceeds of such sale.

13.2. Remedies Not Exclusive; Waiver. 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 until all sums due from the Lessor under the CSA have been fully discharged and satisfied.

13.3. Failure To Exercise Rights Is Not Waiver. 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.

## § 14. RETURN OF UNITS UPON DEFAULT

14.1. Return of Units. If this Lease shall terminate pursuant to § 13 hereof or Article 16 of the CSA, 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, reasonable wear and tear excepted, and shall have attached or affixed thereto any special device considered an accession thereto as provided in § 11 and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 11, is owned by the Lessee. For the purpose of delivering possession of any Unit or Units as above required, the Lessee shall at its own cost, expense and risk:

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

(b) cause such Units to be stored on such tracks at the risk of the Lessee without charge for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) cause the same to be transported to any reasonable place, 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 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.

14.2. Lessor Appointed Agent of Lessee. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 14, 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 whosoever shall be in possession of such Unit at the time.

#### § 15. ASSIGNMENT, POSSESSION AND USE

15.1. Assignment; Consent. This Lease shall be assignable in whole or in part by the Lessor upon prior written consent of the Lessee, which consent shall not be unreasonably withheld. The Lessee hereby consents to the assignment of this Lease pursuant to the Lease Assignment.

15.2. Lessee's Rights To Use the Units, To Permit Use Thereof by Others and To Sublease the Units. (1) So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent, and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the CSA. Without the prior written consent of the Lessor and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them except as provided in § 15.2(2); and the Lessee shall not, without the prior written consent of the Lessor and the Vendor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of § 15.2(2) hereof. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units or any encumbrance on the leasehold estate of the Lessee which is subject and subordinate to the interests

of the Lessor and the Vendor) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

(2) So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent, and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, the Lessee shall be entitled to the possession and use of the Units by it or any affiliate upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and to assign its rights to the Units or to sublease the Units, but only upon and subject to all the terms and conditions of this Lease and the CSA; provided, however, that the Lessee shall not assign, sublease or permit the assignment, sublease or use of any Unit predominantly outside the United States of America within the meaning of Section 48(a) of the Internal Revenue Code of 1954, as amended to the date hereof, nor shall the Lessee assign or sublease to, or permit the sublease or use of the Units by, any person in whose hands such Units would not qualify as "section 38 property" within the meaning of said Code. The Lessee may receive and retain compensation for the use of any of the Units from railroads or other entities so using such Units. Any sublease permitted by this paragraph 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 and subordinate to the rights and remedies of the Vendor under the CSA and the Lessor under this Lease in respect of the Units covered by such sublease.

15.3. Transfers by Lessee Through Merger, Acquisition or Consolidation. Nothing in this § 15 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation 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 the property of the Lessee as an entirety or substantially as an entirety, provided that such successor will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease and shall have assumed all the obligations of the Lessee under this Lease, the Consent and the Participation Agreement.

#### § 16. RENEWAL OPTIONS

16.1. Renewal for Successive Periods. 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 120 days prior to the end of the original term, the first extended term or the second extended term of this Lease in respect of the Units still subject to this Lease, elect to extend such original or extended term of this Lease in respect of all but not less than all the Units then covered by this Lease for a period of one year commencing on the scheduled expiration of such original or extended term of this Lease, at a "Fair Market Rental" payable, in arrears, in semiannual payments on the month and day such rentals were payable for the Units in each year of the original term.

16.2. Determination of Fair Market Rental.  
(1) Fair Market Rental shall be determined for each extended term of this Lease 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.

(2) If, after 25 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined 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 10 days after such notice is given, each party shall appoint an independent appraiser within 15 days after such notice is given, and the two appraisers so appointed shall within 20 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 20 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 Fair Market Rental 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 as the Fair Market Rental. 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.

§ 17. RETURN OF UNITS UPON EXPIRATION OF TERM  
OR TERMINATION

As soon as practicable on or after the date on which the final payment of semiannual rent is due during the original or any extended term of this Lease with respect to any Unit or after a Termination of this Lease pursuant to § 7.9 hereof, and in any event not later than 45 days thereafter, 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 as the Lessor may reasonably designate in the ICC Southern District, or, in the absence of such designation, as the Lessee may select, and pay the cost of the Lessor to store such Unit on such tracks for a period not exceeding 45 days, commencing on the date of the

delivery of the last Unit, and transport the same upon disposition of the Units, at any time within such 45-day period, to the nearest railroad interconnection, interchange point, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. If the Lessee fails to so deliver any Unit into storage within said 45 days, the Lessee thereafter shall pay rent to the Lessor with respect to such Unit on a bi-weekly basis through and including the date such Unit is so delivered at the daily equivalent of the semiannual rent for such Unit in effect immediately prior to the date on which the obligation to so deliver such Unit arose. 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 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 or user, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant hereunder shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) meet the standards then in effect under the applicable rules of any governmental agency or other organization with jurisdiction and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in § 11 hereof and have removed therefrom any such device not so considered an accession. During any such storage period the Lessee shall maintain the Units in such manner as the Lessee normally maintains similar units of railroad equipment owned or leased by it in similar storage circumstances. 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.

#### § 18. RECORDING

The Lessee, at its own expense, will cause this Lease, the CSA, the CSA Assignment and the Lease Assignment to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Lessee will undertake the filing, registering, deposit and recording required of the Lessor under the CSA. The Lessee in addition 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 CSA, the CSA Assignment and the Lease Assignment; 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, the CSA, the CSA Assignment and the Lease Assignment shall be filed with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

#### § 19. INTEREST ON OVERDUE RENTALS

Any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to interest at 10.5% per annum of 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.

#### § 20. LESSOR'S RIGHT TO PERFORM FOR THE LESSEE

If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor (including reasonable counsel fees, if any) incurred in connection with such performance or compliance, together with interest on such amount at 10.5% per annum, shall be payable by the Lessee upon demand except as otherwise provided in this Lease. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor or any assignee of the Lessor against the Lessee hereunder.

#### § 21. 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, c/o GATX Leasing Corporation, One Embarcadero Center, San Francisco, California 94111, Attention of Contracts Administration; and

(b) if to the Lessee, at 270 Peachtree Street, (P. O. Box 4545), Atlanta, Georgia 30302, Attention of Purchasing Department, with a copy to Southern Company Services, Inc., 64 Perimeter Center East, Atlanta, Georgia 30346, Attention of Financial Vice President, and with a copy to Southern Companies Services, Inc., P. O. Box 2625, Birmingham, Alabama 35202, Attention of Manager, Fuel Supply Department,

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

#### § 22. SEVERABILITY

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.

#### § 23. EFFECT AND MODIFICATION OF LEASE

Except for the Participation Agreement, 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.

#### § 24. THIRD PARTY BENEFICIARIES

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the

Vendor, the Builder and the permitted successors and assigns of a party) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

§ 25. 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 Lease Assignment 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.

§ 26. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Georgia; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

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

GEORGIA POWER COMPANY,

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

GATX/G.P. LEASING CORPORATION,

by

\_\_\_\_\_  
Executive Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

STATE OF GEORGIA, )  
 ) ss.:  
CITY OF , )

On this            day of            1978, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is a Vice President of GEORGIA POWER 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.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires

STATE OF            , )  
 ) ss.:  
CITY OF            , )

On this            day of            1978, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is the Executive Vice President of GATX/G.P. LEASING CORPORATION, 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.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires

APPENDIX A TO LEASE

<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
100-ton "Rapid Discharge" Coal Hopper Cars	S-5023 11/28/78	Covington, Kentucky	88	GGPX-78001- 78088	\$40,200	\$3,537,600	November 13, 1978 through December 31, 1978, at Covington, Kentucky
100-ton "Rapid Discharge" Coal Hopper Cars	S-5023 11/28/78	Covington, Kentucky	62	GGPX-78089- 78150	\$40,200	\$2,492,400	January 1, 1979 through March 31, 1979, at Covington, Kentucky
			<u>150</u>			<u>\$6,030,000</u>	

## APPENDIX B TO LEASE

Casualty Values

<u>Casualty Payment Dates</u>	<u>Percentage of Purchase Price*</u>	
	<u>Schedule A Units</u>	<u>Schedule B Units</u>
April 1, 1979	105.88	106.04
October 1, 1979	106.31	106.54
April 1, 1980	106.55	106.85
October 1, 1980	106.58	106.94
April 1, 1981	106.42	106.83
October 1, 1981	106.05	106.52
April 1, 1982	105.49	106.01
October 1, 1982	104.73	105.29
April 1, 1983	103.77	104.36
October 1, 1983	102.61	103.23
April 1, 1984	101.26	101.90
October 1, 1984	99.70	100.37
April 1, 1985	97.95	98.63
October 1, 1985	96.00	96.68
April 1, 1986	93.85	94.53
October 1, 1986	91.50	92.18
April 1, 1987	88.95	89.63
October 1, 1987	86.20	86.87
April 1, 1988	83.26	83.90
October 1, 1988	80.11	80.73
April 1, 1989	76.77	77.36
October 1, 1989	73.23	73.79
April 1, 1990	69.49	70.01
October 1, 1990	65.55	66.02
April 1, 1991	61.42	61.83
October 1, 1991	57.08	57.44
April 1, 1992	52.55	52.85
October 1, 1992	47.81	48.04
April 1, 1993	42.88	43.04
October 1, 1993	37.75	37.83
April 1, 1994, and thereafter	32.50	32.50

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\* As defined in paragraph 4.1 of the CSA.

## APPENDIX C TO LEASE

Termination Values

<u>Termination Dates</u>	<u>Percentage of Purchase Price*</u>	
	<u>Schedule A Units</u>	<u>Schedule B Units</u>
April 1, 1982	103.55	104.07
October 1, 1982	102.03	102.59
April 1, 1983	100.34	100.94
October 1, 1983	98.49	99.11
April 1, 1984	96.45	97.10
October 1, 1984	94.25	94.92
April 1, 1985	91.88	92.56
October 1, 1985	89.34	90.02
April 1, 1986	86.62	87.31
October 1, 1986	83.74	84.42
April 1, 1987	80.68	81.36
October 1, 1987	77.45	78.12
April 1, 1988	74.05	74.70
October 1, 1988	70.49	71.11
April 1, 1989	66.74	67.34
October 1, 1989	62.83	63.39
April 1, 1990	58.75	59.27
October 1, 1990	54.50	54.97
April 1, 1991	50.07	50.49
October 1, 1991	45.48	45.84
April 1, 1992	40.71	41.01
October 1, 1992	35.77	36.00
April 1, 1993	30.66	30.82
October 1, 1993	25.38	25.47
April 1, 1994, and thereafter	20.00	20.00

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\* As defined in paragraph 4.1 of the CSA.

ANNEX D  
to Conditional  
Sale Agreement

ASSIGNMENT OF LEASE AND AGREEMENT dated as of November 17, 1978 (this "Assignment"), by and between GATX/G. P. LEASING CORPORATION (the "Lessor"), and THE CONNECTICUT BANK AND TRUST COMPANY, as Agent (the "Vendor") under a Participation Agreement dated as of the date hereof.

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with ORTNER FREIGHT CAR COMPANY (the "Builder"), providing for the sale to the Lessor of such units of railroad equipment (the "Units") described in the Annex B thereto as are delivered to and accepted by the Lessor thereunder;

WHEREAS the Lessor and GEORGIA POWER COMPANY (the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease"), providing for the leasing of the Units by the Lessor to the Lessee;

WHEREAS, in order to provide security for the obligations of the Lessor under the CSA and as an inducement to the Vendor to invest in the CSA Indebtedness (as defined in paragraph 4.3(b) of the CSA), the Lessor agrees to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor under the CSA, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease (other than the Lessor's rights under § 20 of the Lease), including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the

provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease; provided, however, that, notwithstanding the foregoing, the Lessor shall be entitled to receive directly from the Lessee any indemnification provided for the Lessor under §§ 6 and 12 of the Lease, which indemnification is excluded from this Assignment (the "Excluded Indemnity"). In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. Subject to the timely receipt by the Vendor of available funds, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the CSA, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default thereunder, shall have occurred and be continuing, any balance shall be paid to the Lessor on the same date such Payment is applied to satisfy such obligations of the Lessor, by bank wire to the Lessor at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Lessor; provided, however, that the amount of such balance payable to the Lessor shall not include any portion of any Payment which is properly allocable to satisfy obligations of the Lessor under the CSA not then due. If the Vendor shall not receive any rental payment under § 3.1 of the Lease when due, the Vendor shall notify the Lessor at the address set forth in the Lease; provided, however, that the failure of the Vendor to so notify the Lessor shall not affect the obligations of the Lessor hereunder or under the CSA.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment

shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides is to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Lessor does hereby constitute the Vendor the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums due from the Lessor under the CSA, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor. Promptly following such full discharge and satisfaction, the Vendor will advise the Lessee in writing thereof and instruct the Lessee that no further payments under the Lease are to be made to the Vendor.

6. The Lessor will, from time to time, execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure, the interest of the Vendor hereunder.

7. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

8. This Assignment shall be governed by the laws of the State of California, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

9. The Lessor shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor.

10. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no event of default under the CSA has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Lessor to the Vendor by this Assignment, except the right to receive and apply the Payments as provided in Paragraph 1 hereof, and that, subject to the terms of the Lease and the CSA, the Lessor may, so long as no event of default under the CSA has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, its rights, powers, privileges, and remedies arising out of § 13.1(a) of the Lease; provided, however, that the Lessor shall not, without the prior written consent of the Vendor, terminate the Lease or otherwise exercise or enforce, or seek to exercise or enforce, any rights, powers, privileges and remedies arising out of § 13.1(b) of the Lease.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate

names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

GATX/G. P. LEASING CORPORATION,

by

[CORPORATE SEAL]

\_\_\_\_\_  
Executive Vice President

ATTEST:

\_\_\_\_\_  
Assistant Secretary

THE CONNECTICUT BANK AND TRUST  
COMPANY, as Agent,

by

[CORPORATE SEAL]

\_\_\_\_\_  
Authorized Officer

ATTEST:

\_\_\_\_\_  
Authorized Officer



## CONSENT AND AGREEMENT

GEORGIA POWER COMPANY (the "Lessee"), the lessee named in the Lease (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Lease Assignment"), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities (except the Excluded Indemnity) and other moneys provided for in the Lease (which moneys are hereinafter called the "Payments") due and to become due under the Lease directly to THE CONNECTICUT BANK AND TRUST COMPANY, as Agent (the "Vendor"), the assignee named in the Lease Assignment, at One Constitution Plaza, Hartford, Connecticut 06115, attention of Corporate Trust Department (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Vendor were named therein as the Lessor;

(3) the Vendor shall not, by virtue of the Lease Assignment, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Vendor, be terminated or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of

Georgia and, for all purposes, shall be construed in accordance with the laws of said State.

GEORGIA POWER COMPANY,

[Corporate Seal]

by

\_\_\_\_\_  
Vice President

Attest:

\_\_\_\_\_  
Assistant Secretary

The foregoing Consent and Agreement is hereby  
accepted as of November 17, 1978.

THE CONNECTICUT BANK AND TRUST  
COMPANY, not in its individual  
capacity but solely as Agent,

by

\_\_\_\_\_  
Authorized Officer

SECTION 7.09. The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the manufacturer or manufacturers thereof or of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation in respect of the value thereof or in respect of the title thereto.

The Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall appoint, and shall be entitled to rely upon the advice of counsel (who may be counsel to the Company), and shall be answerable for only its own acts, negligence and wilful defaults and not for the default or misconduct of any attorney, agent or servant appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained or for the execution or validity of this Agreement or of the Trust Certificates (except for its own execution thereof), or for the guaranty by the Company, or for any mistake of fact or law.

The Trustee shall be entitled to receive payment of all of its expenses and disbursements hereunder, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of the trust hereby created, all of which shall be paid by the Company.

The Trustee in its individual capacity may own, hold and dispose of Trust Certificates with the same rights which it would have if it were not Trustee.

Upon Request, any moneys held by the Trustee which shall have been deposited or are held for the payment of the principal amount of or dividends on any Trust Certificates remaining unclaimed for six years after the date of maturity of such Trust Certificates or the date such dividends were due and payable, as the case may be, shall be repaid by the Trustee

to the Company, and all liability of the Trustee with respect to such money shall thereupon cease and the holders of such Trust Certificates shall thereafter be entitled to look only to the Company for payment thereof; *provided, however*, that the Trustee, before being required to make any such repayment may, at the expense of the Company, cause notice that said moneys have not been claimed and that after a date specified therein, which shall be not less than thirty days after the date of publication, any unclaimed balance of such moneys then remaining upon deposit with the Trustee will be repaid to the Company, to be published once in a daily newspaper printed in the English language and published in the Borough of Manhattan, the City of New York. In no event shall the holders of such Trust Certificates be entitled to interest upon such money whether held by the Trustee or so repaid to the Company.

Any moneys at any time held by the Trustee hereunder shall, until paid out or invested by the Trustee as herein provided, be held by it in trust as herein provided for the benefit of the holders of the Trust Certificates.

SECTION 7.10. If at any time the Trustee or any successor to it in the trust hereby created shall desire to divest itself of title to the Trust Equipment, and to terminate its duties and obligations and rights hereunder and under the Trust Certificates, it shall so notify the Company in writing, and the Company shall thereupon designate in writing to the Trustee a bank or a trust company, qualified as below specified, to serve until a successor is appointed by the holders of Trust Certificates as hereinafter provided, to which may be assigned the entire right, title and interest of the Trustee or such successor in the Trust Equipment, and in which may be vested the rights, powers, duties and obligations of the Trustee hereunder and under the Trust Certificates. Upon the transfer and delivery of all moneys, any Government Securities in which

any of said moneys may then be invested and Trust Equipment held by the retiring trustee, and the execution by the retiring trustee of such instruments of transfer as may be reasonably requested by the successor trustee, and upon acceptance by the successor trustee of the assignment and of the trust, the retiring trustee shall be relieved and discharged of all the title, rights, powers, duties and obligations of the trust hereunder and under the Trust Certificates, and the same shall become vested in such successor trustee, and every provision hereof applicable to the retiring trustee shall apply to such successor trustee with like effect as if such successor trustee had been originally named herein in the place and stead of the retiring trustee. In the event that the Company shall fail to designate such a successor trustee by instrument in writing delivered to the retiring trustee within two weeks from the time of receiving such notice in writing from the retiring trustee, the retiring trustee may thereupon designate such successor trustee or apply to any court of competent jurisdiction for appointment of a successor trustee. The foregoing provisions are, however, subject to the right of the holders of the majority in principal amount of the then outstanding Trust Certificates by an instrument in writing to appoint any successor trustee, if such appointment is made within one year from the date of the giving of such notice to the Company. The Company shall execute all writings recognizing the transfer of title as aforesaid and all instruments of further assurance or otherwise as reasonably may be requested by the successor trustee in the premises, and will do and perform any and all acts necessary to establish and maintain the title and rights of the successor trustee in and to the Trust Equipment. Every successor trustee shall be a bank or a trust company doing business in the Borough of Manhattan, City and State of New York, having a capital and surplus aggregating at least \$5,000,000, if there be such bank or trust company willing and able to ac-

cept the trust upon reasonable and customary terms and duly qualified to act as such trustee.

SECTION 7.11. Any corporation resulting from any merger, conversion or consolidation to which the Trustee or any successor to it shall be a party, or any corporation in any manner succeeding to all or substantially all of the business of the Trustee or any successor trustee, provided such corporation shall be a bank or a trust company doing business in the City of St. Paul, State of Minnesota or in the Borough of Manhattan, City and State of New York, and shall have a capital and surplus aggregating at least \$5,000,000, shall be the successor trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

#### ARTICLE VIII

#### MISCELLANEOUS

SECTION 8.01. Any request or other instrument provided by this Agreement to be signed or executed by holders of Trust Certificates may be in any number of concurrent instruments of similar tenor, and may be executed by such holders in person or by an agent or attorney appointed by an instrument in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent or attorney, or of the holding by any person of Trust Certificates, shall be sufficient for any purpose hereof and shall be conclusive in favor of the Trustee with regard to any action taken by the Trustee under such request or other instrument if made in the following manner, viz.:

(a) The fact and date of the execution by any person of any such request or of any other instrument in writing may be proved by the affidavit of a witness to such execution, or by the certificate of any notary public or of any other officer authorized to take acknowledgments of deeds to be recorded in the state where the acknowledg-

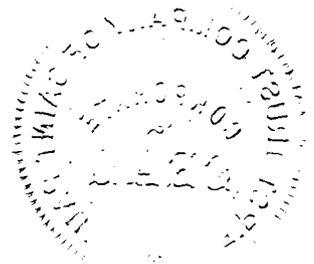
ment may be taken, certifying that the person signing such request or other instrument acknowledged to him the execution thereof.

(b) The ownership of Trust Certificates shall be determined by the registry books to be kept as provided in Section 7.03 hereof.

SECTION 8.02. Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any person, firm or corporation, other than the parties hereto and the holders of the Trust Certificates any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates.

SECTION 8.03. Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 8.04. All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by first class mail postage prepaid to (a) in the case of the Company, 176 East Fifth Street, St. Paul, Minnesota 55101, or such other address as may hereafter be furnished to the Trustee in writing by the Company, and (b) in the case of the Trustee, at its corporate trust office in the First National Bank Building, at 332 Minnesota Street, St. Paul, Minnesota 55101, or such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee, as to such mailing, shall be conclusive evidence of the giving of such demand, notice or communication.



SECTION 8.05. This Agreement has been executed in several counterparts each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

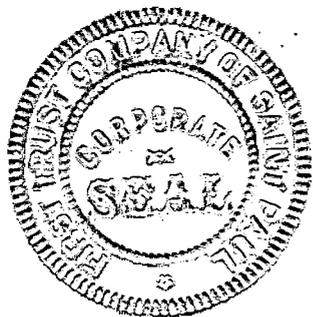
SECTION 8.06. This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Trustee who signed it on behalf of the Trustee.

SECTION 8.07. The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the Trustee and the Company have caused their names to be signed hereto by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year first written.

FIRST TRUST COMPANY OF SAINT PAUL,  
Trustee,

By *D. J. Day*  
Senior Vice President



ATTEST:

*David W. Robinson*  
Assistant Secretary

BURLINGTON NORTHERN INC.

By *Frank H. Coyne*

EXECUTIVE VICE PRESIDENT - FINANCE  
AND ADMINISTRATION



ATTEST:

*David W. Robinson*  
Assistant Secretary

STATE OF MINNESOTA }  
COUNTY OF RAMSEY } ss.

On this 8<sup>th</sup> day of December, 1978, before me personally appeared D. L. Doyon to me personally known, who, being by me duly sworn, says that he is a Senior Vice President of First Trust Company of Saint Paul, 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.

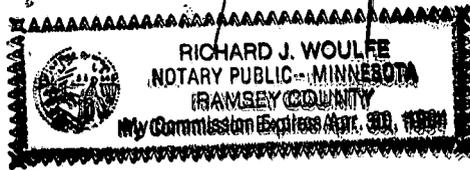
*Sherron K. Melander*

XX  
SHERRON K. MELANDER  
NOTARY PUBLIC - MINNESOTA  
RAMSEY COUNTY  
My Commission Expires Jan. 9, 1981  
XX

STATE OF MINNESOTA }  
COUNTY OF RAMSEY } ss.

On this 8<sup>th</sup> day of December, 1978, before me personally appeared Frank H. Coyne, to me personally known, who, being by me duly sworn, says that he is Executive Vice President-Finance and Administration of Burlington Northern Inc., 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.

*Richard J. Wolfe*



SCHEDULE A

DESCRIPTION OF TRUST EQUIPMENT

Number and Description	Per Unit	Estimated Cost	Total
500 Open-top hopper cars, BN 528900 to 529399, both in- clusive .....	34,300		17,150,000
25 Airslide covered hopper cars, 100-ton capacity, Road Nos. 410515 to 410539, both in- clusive .....	45,350		1,133,750
			<u><u>\$18,283,750</u></u>