

**CONRAIL**

No. 8-101A100

Date APR 11 1978

Fee \$ 50

ICC Washington, D.C.

April 10, 1978

9318

RECORDATION NO. .... Filed & Recorded

Robert L. Oswald. Secretary  
Interstate Commerce Commission  
12th & Constitution Avenue  
Washington, D.C. 20423

APR 11 1978 -2 00 PM

INTERSTATE COMMERCE COMMISSION

Dear Mr. Oswald:

Pursuant to Section 20c of the Interstate Commerce Act and as provided by Volume 49 Code of Federal Regulations Sections 1116.1 through 1116.01, we present the following document for recordation:

Lease of Railroad Equipment dated as of April 1, 1978

Lessor: Pocahontas Kentucky Corporation  
8 North Jefferson Street  
Roanoke, Virginia 24042

Lessee: Consolidated Rail Corporation  
1310 Six Penn Center Plaza  
Philadelphia, PA. 19104

The equipment covered by the lease is 168 - 100 ton open top hopper cars with an AAR mechanical designation of HT and marked CR486801 to 486968.

This equipment was originally covered under the Norfolk and Western Railway Company Equipment Trust, Series No. 6 which was filed on December 15, 1977 and received recordation number 9120. The equipment was designated to have been numbered NW 142308 to 142475. A copy of the Equipment Trust is enclosed.

Enclosed is our check for \$50.00 to cover the recordation fee.

RECEIVED

APR 11 12 27 PM '78

CERTIFICATION UNIT

*J. J. Taylor*

*Consolidated Rail Corporation*

Robert L. Oswald  
April 10, 1978  
page two .....

After recording a counterpart original of these documents please return the remaining copy, stamped with your re-  
cordation number, to the individual presenting it for  
recording.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Rowan", written in a cursive style.

Joseph T. Rowan  
Assistant Corporate Counsel

JTR/smg

Enclosures

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

4/11/78

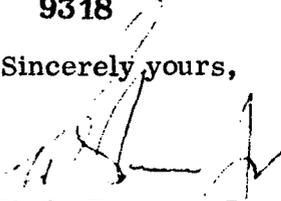
OFFICE OF THE SECRETARY

**Joseph T. Rowan**  
**Assistant Corp. Counsel**  
**Consolidated Rail Corp.**  
**1310 Six Penn Center Plaza**  
**Phila. Pa. 19104**

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 **4/11/78** at **2:30pm** and assigned recordation number(s) **9318**

Sincerely yours,

  
**H. G. Homme, Jr.**  
**Acting Secretary**

Enclosure(s)

**SE-30-T**  
**(6/77)**

8  
RECORDATION NO. 9318 Filed & Recorded

APR 11 1978 -2 20 PM

INTERSTATE COMMERCE COMMISSION

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LEASE OF RAILROAD EQUIPMENT

Dated as of April 1, 1978

between

POCAHONTAS KENTUCKY CORPORATION

and

CONSOLIDATED RAIL CORPORATION

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LEASE OF RAILROAD EQUIPMENT dated as of April 1, 1978, between POCAHONTAS KENTUCKY CORPORATION, a Kentucky corporation (hereinafter called the Lessor), and CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (hereinafter called the Lessee).

WHEREAS Norfolk and Western Railway Company, a Virginia corporation, has entered into an Equipment Trust Agreement with First Pennsylvania Bank N.A., as Trustee (hereinafter the Equipment Trust Trustee), dated as of December 1, 1977 (hereinafter the Equipment Trust Agreement), a copy of which has been furnished to the parties and the receipt of which is hereby acknowledged; and

WHEREAS, Sections 4.08 and 5.01 of the Equipment Trust Agreement permit Norfolk and Western Railway Company to assign its rights to any Affiliate as defined in Section 1.02 thereof, and with the consent of the Equipment Trust Trustee to lease trust equipment to other parties; and

WHEREAS, Norfolk and Western Railway Company has assigned, prior to the construction and delivery of the railroad equipment described in Schedule A hereto (hereinafter called the Equipment), its executory rights with respect to the Equipment (which is subject to the Equipment Trust Agreement) to the Lessor, its Affiliate (hereinafter Affiliate or Affiliates means Norfolk and Western Railway Company and any corporation which it directly or indirectly controls or is controlled by or is under common control with); and the Equipment Trust Trustee has consented to the lease of the Equipment to Lessee; and

WHEREAS the Lessee agrees to lease from the Lessor all the units of the Equipment at the rentals and for the term and upon the conditions hereinafter provided (each such unit being hereinafter called a Unit);

NOW, THEREFORE, in consideration 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:

Section 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 provided, the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor or its Affiliates or the Equipment Trust Trustee, whether under this Lease, under the Equipment Trust Agreement or otherwise, including any Lessee's rights by subrogation against either the builder of the Equipment 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 the 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 its Affiliates or the Equipment Trust Trustee for any reason whatsoever.

Section 2. Delivery and Acceptance of Units.

Lessor shall deliver the Units to the account of Lessee in Hagerstown, Maryland, commencing on or after April 1, 1978, but Lessee shall be responsible for and pay freight on the Units from Roanoke, Virginia, to Hagerstown, Maryland, and Lessor shall incur no liability for delay in delivery of the units for any reason beyond its control.

A joint inspection of each Unit by representatives of both Lessor and Lessee shall be made in Roanoke, Virginia, immediately upon manufacture of each Unit or as may otherwise be agreed in writing. Two copies of a joint inspection report shall be properly executed by both Lessor's and Lessee's representatives if the Unit is acceptable, and one copy retained by Lessor and one by Lessee. Lessor and Lessee shall each bear their own expenses of inspection. Upon arrival of one or more Units on Lessee's lines at Hagerstown, an authorized representative of Lessee shall sign, date as of the date of the arrival of the Unit on Lessee's lines (not the date the Unit is put in service unless such date is the date of arrival) and deliver to Lessor a certificate of confirmation (Certificate of Confirmation) confirming that the particular Unit or Units listed therein have been accepted by Lessee. A Unit will come under this lease when it is delivered in Hagerstown, Maryland.

Any Unit for which a Certificate of Confirmation has not been completed on or before December 31, 1978, shall be excluded from this lease but the lease shall remain in full force and effect as to all Units for which a Certificate of Confirmation is completed before December 31, 1978.

Section 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit confirmed under Section 2 hereof, rentals on the following basis, during the term hereof. Rent shall begin to accrue on the Average Date of Confirmation of the Units as defined in Section 4 hereof. An initial rental payment shall be due, within five days of determination of the Average Date of Confirmation, with respect to the calendar month in which rent begins to accrue (hereinafter, the Initial Month) and for each Unit shall be that sum obtained by multiplying by \$318.33 a fraction whose denominator is 30 and whose numerator is 30 minus the Average Date of Confirmation. Subsequent rental shall be paid, in arrears, in 30 consecutive semiannual

installments beginning on the last day of the sixth month after the Initial Month, and on the last day of each six-month period thereafter. The first five such semiannual payments shall be \$1,910 per Unit; the second five, \$1,710 per Unit; the third five, \$1,510 per Unit; and the last fifteen, \$1,085 per Unit.

If any of the semiannual rental payment dates referred to above is not a business day in Philadelphia or Roanoke, the semiannual rental payment otherwise payable on such date shall then be payable on the next succeeding business day, and no interest shall be payable for the period from and after the nominal date for payment thereof to such next succeeding business day.

The Lessee agrees to make each payment provided for herein as contemplated by this Section 3 in immediately available federal funds at or prior to 11:00 a.m. Philadelphia time at the office of the Lessor, 8 North Jefferson Street, Roanoke, Virginia 24042.

Section 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery of the Unit to the account of Lessee at Hagerstown, Maryland, and, subject to the provisions of Sections 7, 10 and 13 hereof, shall terminate fifteen years after the last day of the Initial Month. The Average Date of Confirmation shall be determined by counting back from (not including) the date (which date is the date of the arrival of the Unit on Lessee's line) of the last Certificate of Confirmation prepared under Section 2 hereof a number of days which shall be calculated as follows: (a) the number of Units confirmed under each Certificate of Confirmation shall be multiplied by the number of days from (and including) the date of that Certificate of Confirmation to (and including) the date of the last Certificate of Confirmation, (b) all of the products obtained by so multiplying the number of Units by the number of days shall be added together, (c) the sum of all the products so obtained shall then be divided by the total number of Units confirmed, and (d) the figure so determined if fractional shall be rounded to the next highest whole number. Except for obligations of the Lessee hereunder which are not specifically stated to terminate at a fixed

time, the obligations of the Lessee hereunder (including, but not limited to, the obligations under Sections 3, 6, 7, 9, 11, 14 and 19 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Equipment Trust Trustee under the Equipment Trust Agreement. If an event of default should occur under the Equipment Trust Agreement, the Equipment Trust Trustee may terminate this Lease.

Section 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying 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, "Owned by a Bank or Trust Company under a Security Agreement Filed Under Interstate Commerce Act, Section 20c", with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested in order to protect the Lessor's and the Equipment Trust Trustee's interests in such Unit and the rights of the Lessor under this Lease and of the Equipment Trust Trustee under the Equipment Trust Agreement. The Lessee will not place or permit any such Unit to be placed 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 or cause to be replaced promptly any such name and words which may be removed, defaced, obliterated or destroyed. The Lessee will not change or permit to be changed the identifying 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 Lessor and the Equipment Trust Trustee and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Equipment Trust Agreement shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Lessor an opinion of counsel to the effect that such statement has been so

filed, recorded and deposited, such filing, recordation and deposit will protect the Lessor's and the Equipment Trust Trustee'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 Lessor and the Equipment Trust Trustee in such Units.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may permit the Equipment to be lettered with the names, trademarks, initials or other insignias customarily used by the Lessee on railroad equipment used by it of the same or a similar type for convenience of identification of its rights to use the Equipment under this Lease, and the Equipment may be lettered in an appropriate manner for convenience of identification of the interest of the Lessee therein.

Section 6. Taxes. The Lessee agrees to pay and to indemnify and hold the Lessor and the Equipment Trust Trustee harmless on an after tax basis from all taxes, assessments, fees, and charges of any nature whatsoever, including any penalties, fines, additions to tax, or interest thereon (all such amounts hereinafter called "Taxes"), howsoever imposed, by any Federal, state, or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof and levied or assessed upon or with respect to any Units or Additions or parts thereof arising from the manufacture, delivery, possession, lease, use, ownership, operation, return, or disposition thereof pursuant to or in connection with this Lease and all such Taxes imposed upon the Rentals or receipts or earnings arising in respect of the Units or this Lease; provided, however, that there shall be no indemnification hereunder for (i) Federal income taxes and Taxes imposed on or measured by the net income of the Lessor by the jurisdiction in which Lessor has its principal place of business, other than Taxes arising out of or imposed in respect of indemnification payments made under this Lease, or (ii) any Taxes imposed on or measured by any trustee or agency fees received by the Equipment Trust Trustee.

The Lease has been entered into on the assumption that the Federal rate of taxable income of corporations in excess of \$50,000 will be 48% and that the Lessor, as a beneficial owner of the Units for Federal income tax purposes, shall be entitled (A) to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended (the "Code"), and state and local taxing statutes to an owner of property, including, without limitation, (i) deductions for depreciation (commencing in the half of the Lessor's taxable year during which the Units become subject to the Lease) with respect to the basis of the Units under Section 167(g) of the Code, which basis shall be at least equal to the entire cost as defined in the Equipment Trust Agreement ("Cost") of the Units, using the modified half-year convention and computed on the basis of the double-declining balance method of depreciation authorized by Section 167(b)(2) of the Code, switching to the sum-of-the-years-digits method of depreciation authorized by Section 167(b)(3) of the Code when most beneficial to the Lessor and without obtaining the prior consent of the Commissioner of Internal Revenue, over an asset depreciation period of 12 years, to a net salvage value of zero after the reduction permitted by Section 167(f)(1) of the Code (the "ADR Deduction"), (ii) deductions for interest with respect to indebtedness under the Equipment Trust Agreement as authorized by Section 163 of the Code (the "Interest Deduction") and (iii) the investment credit in the year in which the Units become subject to the Lease pursuant to Section 38 of the Code for "new section 38 property" equal to at least 10% of the Cost of the Units (the "Investment Credit") and (B) to treat each item of income, deduction and credit with respect to the Units and the transactions contemplated by this Agreement as derived from, or allocable to, sources within the United States. The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing assumptions and that the Lessee and any corporation controlled by it, in control of it or under common control with it, directly or indirectly, will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof.

If under any circumstances or for any reason whatsoever, Lessor shall not have, shall lose the right to claim (including a good faith determination based upon the advice of tax counsel that such claim is not allowable), shall suffer a disallowance of or shall be required to recapture all or any portion of the ADR Deduction, the Interest

Deduction, or the Investment Credit, or if Lessor, in computing its taxable income for Federal income tax purposes, shall not have, shall lose the right to claim (including a good faith determination based upon advice of tax counsel that such claim is not allowable), shall suffer a disallowance of or shall be required to recapture an amount of foreign tax credit which would have been allowable to Lessor if it had not participated in the transactions contemplated by this Agreement ("Foreign Tax Credit") (any such event being hereinafter called a "Loss"), then the Lessee shall pay to such Lessor such amount or, from time to time, such amounts as, after deduction of all taxes required to be paid in respect of the receipt of such amounts under the laws of any Federal, state, local or foreign government or taxing authority, shall be equal to the sum of the aggregate additional Federal, state and local income taxes, interest, penalties and additions to tax payable by Lessor from time to time as a result of any such Loss. The amount payable to Lessor pursuant to this paragraph shall be paid within 30 days after receipt of a written demand therefor accompanied by a written statement describing in reasonable detail such Loss and the computation of the amount so payable (but not prior to the earlier of (i) the filing of a return or the acceptance of an audit report in which such Loss is reflected and (ii) the payment of additional tax that becomes due as the result of the Loss. Notwithstanding anything to the contrary set forth in this paragraph, no amounts shall be paid by the Lessee to the Lessor in respect of any Loss solely attributable to one or more of the following: (i) the adjustment by any taxing authority of the basis or Cost of the Units to the extent that such adjustment does not reduce the basis below the cost as defined in the Equipment Trust Agreement; (ii) the failure of the Units to qualify as "new Section 38 property"; (iii) the failure of the Units to have been first placed in service by the Lessor within the meaning of Section 1.167(a)-11(e)(1)(i) of the Regulations; (iv) a disposition by the Lessor of its interest in the Units except after an event of default under the Lease and except that the acquisition of an interest in the Units by the Equipment Trust Trustee pursuant to Section 3.01 of the Equipment Trust Agreement shall not be deemed a disposition; (v) the failure of the Lessor or any of its Affiliates to claim, unless it or they shall have received an opinion of tax counsel that they are not entitled to claim, or to have sufficient income or income tax liability against which to claim or credit, the ADR Deduction, the Interest Deduction, or the Investment Credit; (vi) a Casualty Occurrence if the Lessee shall have paid the Casualty Value but only to the extent that tax indemnification payments have been included

in the Casualty Value; (vii) any other act or omission of the Lessor with respect to the Units prior to their acceptance by the Lessee for which the Lessee is not responsible causing a Loss; (viii) any change in law having an effective date (whether or not retroactive) subsequent to the delivery date of the last Unit under this Lease.

If at any time Lessor determines that it is required by the Internal Revenue Service or any state, local or foreign taxing authority to include in its gross income an amount in respect of any replacement, improvement or addition made to a Unit or action required to be taken by the Lessee pursuant to the Lease or otherwise ("Capital Expenditures"), then the Lessee shall pay to Lessor, as an indemnity, such amount or amounts as, after deduction of all taxes required to be paid by Lessor in respect of the receipt of such amounts under the laws of any Federal, state, local or foreign government or taxing authority, shall be equal to the sum of the aggregate additional Federal, state, local and foreign income taxes, interest, penalties and additions to tax payable by Lessor from time to time as a result of such Capital Expenditures. The amount payable to Lessor shall be paid within 30 days after receipt of the written demand therefor accompanied by a written statement describing in reasonable detail such inclusion and the computation of the amount so payable (but not prior to the payment of the additional Federal, state, local or foreign income tax which becomes due as a result of said inclusion).

Whenever it is necessary under this Section 6 to compute the amount of any tax liability of Lessor in respect of amounts paid to Lessor by the Lessee, such computation shall be based on the assumption that such tax is payable at the highest statutory rate in respect of such tax applicable to the taxable year to which such tax liability relates.

For purposes of this Section 6, the term "Lessor" shall include any member of an affiliated group of which Lessor is, or may become, a member if consolidated, joint or combined returns are filed for such affiliated group for Federal, state or local income tax purposes.

Without limiting the effect of any other provision of this Indemnity, if there is any amendment to, or change in, the Code or any Regulation thereunder or any published ruling or other document of the Treasury or the Internal Revenue Service which is enacted or adopted on or prior to the commencement of the Lease Term under the Lease with

respect to any Unit and if such amendment or change reduces the amount of Investment Credit allowable with respect to any Unit or the ADR Deduction allowable with respect to any Unit or the privilege of Lessor to file consolidated Federal, state and local income tax returns with corporations affiliated with it, or if such amendment or change affects the Federal rate of tax on taxable income of corporations, then the amounts of rentals and the Casualty Values under the Lease will be appropriately adjusted so that Lessor's return on investment shall not be less than the return on investment that would have been realized by Lessor if such amendment or change had not occurred.

The obligations and liabilities of the Lessee arising under this Section 6 shall continue in full force and effect, notwithstanding the expiration or early termination of the Lease, until all such obligations have been met and such liabilities have been paid in full.

Should any report or return be required with respect to any obligation of the Lessee under this Section 6, the Lessee shall either make such report or return in such a manner as will show the interests of the Lessor in the Units, or shall promptly notify the Lessor of such requirement and shall make such report or return in such manner as shall be satisfactory to the Lessor. All costs and expenses (including legal and accountant's fees) of preparing any such return or report shall be borne by the Lessee.

Section 7. Payment for Casualty Occurrences; Insurance. In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause other than obsolescence, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government for a period not in excess of the then remaining term of this Lease (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, or until such Unit shall have been returned in the manner provided in Section 11 or 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto. On the rental payment date next succeeding the delivery of such notice (or, in the event the term of this Lease has already expired or will expire within 15 days after delivery of such notice, on a date within 15 days of such delivery), the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty

Value of such Unit as of the rental payment date which first follows the actual date of the Casualty Occurrence (regardless of the date on which the determination that such Unit suffered the Casualty Occurrence is made) (such rental payment date being hereinafter called the Calculation Date). Upon the making of such payment by the Lessee in respect of any Unit and any payment required by Section 6 hereof, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

If the date upon which the making of such payment by the Lessee in respect of any Unit as required as aforesaid shall be after the term of this Lease in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term but the Lessee, in addition to paying the Casualty Value for such Unit shall pay interest thereon from the end of such term to the date of such payment at the rate of ten percent per annum.

The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, before or after the expiration of this 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, has made any payments required by Section 6 hereof and is not in default hereunder and an event which after notice or lapse of time or both would become a default hereunder has not occurred, the Lessee shall be entitled to the proceeds of such sale (or to the proceeds of any condemnation constituting a Casualty Occurrence) to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

The Casualty Value of each Unit as of the Calculation Date for each such Unit shall be set forth in Schedule B hereto opposite such date.

In the event of the requisition for use by the United States Government of any Unit during the term of this Lease or any renewal thereof, unless such requisition shall at the time of such requisition be scheduled to extend beyond the then remaining term of this Lease, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease, the Lessee shall be obligated to return such

Unit to the Lessor pursuant to Section 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease; but the Lessee shall in all other respects comply with the provisions of said Section 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease, shall be paid over to, or retained by, the Lessor.

The Lessee will, at all times prior to the return of the Equipment to the Lessor in accordance with the terms of this Lease, at its own expense, cause to be carried and maintained casualty insurance and public liability insurance, in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it. The policies with respect to such insurance shall name the Lessor and its Affiliates Norfolk and Western Railway Company and Shenandoah-Virginia Corporation as additional named insureds and loss payees, as their interests may appear.

Section 8. Reports. On or before April 1 in each year, commencing with the calendar year 1979, the Lessee will furnish to the Lessor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or, in the case of the first such statement, since the date of this Lease (specifying the dates of such Casualty Occurrences) or to the knowledge of the Lessee are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor may

reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by Section 5 hereof and the Equipment Trust Agreement have been preserved or replaced. The Lessor shall have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

Section 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification. NEITHER THE LESSOR OR ITS AFFILIATES NOR THE EQUIPMENT TRUST TRUSTEE MAKES, HAS MADE OR SHALL BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND NEITHER THE LESSOR OR ITS AFFILIATES NOR THE EQUIPMENT TRUST TRUSTEE MAKES ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OR ANY COMPONENT THEREOF 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 OR ANY COMPONENT THEREOF (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. The Lessor and its Affiliates 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 circumstance 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 Confirmation shall be conclusive evidence as between the Lessee and the Lessor and its Affiliates that the Units described therein are in all the foregoing respects satisfactory to the Lessee; and the Lessee will not assert any claim of any nature whatsoever against the Lessor or its Affiliates based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and its Affiliates and the Equipment Trust Trustee 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 operation 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, modification or addition of or to any part of any Unit, the Lessee will fully conform therewith at its own expense; provided, however, that the Lessee may upon written notice to the Lessor, 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, adversely affect the property or rights of the Lessor or the Equipment Trust Trustee under this Lease or under the Equipment Trust Agreement.

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 and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted.

The Lessee, at its own cost and expense, may from time to time make such alterations, modification and additions (hereinafter collectively called Additions) to the Units as the Lessee may deem desirable in the proper conduct of its business so long as such additions shall not be inconsistent with the continuing operation of the Units, and shall not diminish the value, utility or condition of the Units below the value, utility and condition thereof immediately prior to the making of such Additions, assuming the Units were then in the condition required to be maintained by the terms of this Lease; provided, however, that no such Addition shall be made if it is not readily removable from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which the Unit would have had immediately prior to such time had such Addition not been made.

Title to all Parts (as hereinbelow defined) incorporated in or installed as part of the Units shall without further act vest in the Equipment Trust Trustee or Lessor (as their interests appear) and be subject to the Equipment Trust Agreement in the following cases: (i) such Part is in replacement of or in substitution for, and not in addition to, any Part originally incorporated in or installed as part of a Unit at the time of the acceptance thereof hereunder or any Part in replacement of, or in substitution for any such original Part, (ii) such Part is required to be incorporated in or installed as part of the Units pursuant to the terms of the second or third paragraph of this Section 9, or (iii) notwithstanding the provisions of the fourth paragraph of this Section 9, such Part cannot be readily removed from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which such Unit shall have had at such time had such alteration or addition not occurred. In all other cases, if no Event of Default under Section 10 hereof (or other event which after lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, title to Parts incorporated in or installed as parts of the Units as a result of such alterations or additions shall vest in the Lessee. The term Part for the purposes of this paragraph and Section 14 hereof shall be defined to include any appliance, part, instrument, accessory, furnishing or other equipment of any nature which may from time to time be incorporated in or installed as part of any Unit.

The Lessee shall pay, and shall protect, indemnify and hold the Lessor and its Affiliates and the Equipment Trust Trustee and their respective successors, assigns, agents and servants (hereinafter called Indemnified Persons), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising or alleged to arise out of this Lease or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance,

rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent or other defects whether or not discoverable by any Indemnified Person or the Lessee; (iii) any claim for patent, trademark or copyright infringement as to any component or accessory not on a Unit at the time of its delivery; (iv) any claims based on strict liability in tort or by statute imposed; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Lease (except by the Lessor) or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof; (vii) any expense arising with respect to the Units as a result of the Lessee's use or possession thereof pertaining to any obligation by the Lessor or its Affiliates under the Equipment Trust Agreement, except to the extent such expense arises from an act or omission of the Lessor or its Affiliates; or (viii) any claim arising out of the Equipment Trust Trustee's holding an interest under the Equipment Trust Agreement, provided, however, that the indemnities in this sentence shall not extend to any loss or injury occurring before delivery of the Unit or Units involved to the Lessee. All payments hereunder shall be made directly to the Indemnified Person. The Lessee shall be obligated under this Section 9, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this Section 9 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, 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 under this Section 9, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof or any foreign country or subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Lessor each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this Section 9 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, 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 (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this Section 9 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter.

The indemnities contained in this Section 9 do not constitute a guarantee that the debt evidenced by the Equipment Trust Agreement will be paid or as to the residual value of the Equipment.

The indemnities contained in this Section 9 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by any Indemnified Person. None of the indemnities in this Section 9 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee or the Lessor, from or under any Indemnified

Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

The Lessee agrees at its expense to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor or Equipment Trust Trustee with any federal, state or other regulatory authority by reason of the interests of the Lessor or the Equipment Trust Trustee in the Units or the leasing thereof to the Lessee.

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

A. payment of any part of the rental provided in Section 3 or Section 13 hereof or payment in respect of any Casualty Occurrence pursuant to Section 7 hereof shall not be made by or on behalf of the Lessee, and such failure to make payment shall continue for five business days after such payment is due; or

B. 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, and such default shall continue for 25 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied; or

C. 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 under this Lease, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise

rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

D. an act or omission of the Lessee shall have resulted in an event of default under Section 5.01 of the Equipment Trust Agreement;

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

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such

termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum with respect to each Unit which represents the excess of (1) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (2) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 5.4% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, together with 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 the rental; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value (after deduction of all estimated expenses of such sale) of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination, over the net proceeds of such sale.

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

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

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies; and a waiver of any such right on one occasion shall not constitute a waiver of such right as to any other occasion and shall not be effective unless in writing signed by the Lessor.

The Lessee also agrees to furnish the Lessor, promptly upon any responsible officer's becoming aware of any condition which constitutes an Event of Default under the Lease or which, after notice or lapse of time or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this section, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate official of the Lessee who

in the normal performance of his operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

Section 11. Return of Units Upon Default. If this Lease shall terminate pursuant to Section 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor and shall give prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any Unit so to return such Units. Each Unit returned to the Lessor pursuant to this Section 11 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear and modifications, if any, permitted by this Lease excepted and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner cause such Units to be transported to such location as shall reasonably be designated by the Lessor and there assembled,

(b) furnish and arrange for the Lessor to store such Units on any lines of railroad or premises approved by the Lessor until such Units have been sold, leased or otherwise disposed of by the Lessor, and

(c) cause the Units to be moved to such interchange point or points as shall be designated by the Lessor upon any sale, lease or other disposal of all or any of the Units.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee (and the Lessee will maintain the insurance required by Section 7 of the Lease to be maintained during this period) and are of the essence of this Lease; and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance

of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. In the event that the Units or any thereof are sold, the Lessee shall pay to the Lessor the per diem interchange for each such Unit which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser thereof.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

Section 12. Assignment; Possession and Use.  
This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee; but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor.

So long as no Event of Default or event of default exists hereunder or under the Equipment Trust Agreement and the Lessee shall have fully complied with the provisions of this Section 12, the Lessee shall be entitled to the possession and use of the Units on its own lines of railroad or lines over which it has trackage rights, and upon connecting and other carriers but only in the usual interchange of traffic in the continental United States and Canada, only upon and subject to all the terms and conditions of this Lease but shall not sublease, assign, or otherwise make any disposition of the right to possession and use of the Units.

If an event of default exists under the Equipment Trust Agreement as a result of which the Equipment Trust Trustee terminates the rights of the Lessor and Lessee to possession and use of the Units and requires the Units to be delivered to it or its nominee, the Lessee shall at its own expense promptly move the Units to its nearest interchange to such point as may be designated pursuant to Section 5.05 of the Equipment Trust Agreement. This Lease shall terminate as to each Unit when the Unit reaches such interchange, but rent (prorated) shall cease to accrue as to each Unit fifteen days before such Unit reaches such interchange. Upon termination of this Lease as here provided and payment of all sums due under this Lease, Lessor and Lessee shall have no further obligation with respect to this Lease.

The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (together, "Encumbrances") (except an encumbrance resulting from claims against the Lessor not related to the ownership or leasing of, or the interest of the Equipment Trust Trustee in, the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interest of the Lessor, the Equipment Trust Trustee or the Lessee therein. The obligation of the Lessee to discharge Encumbrances does not extend to debt under the Equipment Trust Agreement, or to Encumbrances created by NW or its Affiliates, nor does it constitute a guarantee that the debt evidenced by the Equipment Trust Agreement will be paid. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of this Section 12.

Nothing in this Section 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have specifically assumed the obligations of the Lessee hereunder by an appropriate instrument in writing) 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 assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition be in default under any provision of this Lease.

Section 13. Renewal and First Refusal Options.

The Lessor intends to retain the Units for release at the expiration of the term of this Lease. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, Lessee may by written notice delivered to the Lessor not less than six months nor more than nine months prior to the end of the original or first extended term of this Lease elect to extend the term of this Lease in respect of all, but not fewer than all, the Units then covered by this Lease for one or two additional five-year periods (but all extensions may not aggregate more than ten years) commencing on the scheduled expiration of the original or extended term of this Lease, as the case may be, at a Fair Market Rental (as defined below) payable in semiannual payments on the last day of each six-month period of such extended term.

Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain at the expiration of the preceding term of the Lease 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. If, after 60 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 in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, 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 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 appointment. If the parties shall have appointed a single appraiser the determination of Fair Market Rental

of the single appraiser appointed shall be final. 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 procedure. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

Provided that this Lease has not earlier been terminated and the Lessee is not in default hereunder, in the event Lessor elects to sell any Units to third parties at the expiration of the original or any extended term of this Lease, and Lessee has not elected a further extension, the Lessee shall be given written notice of such intention 45 days prior to the expiration of such term. In the event the Lessor shall receive, prior to removal of the Units at the end of such term, a bona fide offer in writing from another party unrelated to the Lessor to purchase the Units and the Lessor elects to sell the Units pursuant to such offer, the Lessor shall give written notice to the Lessee of such offer, including the price and terms and conditions of payment. The Lessee shall have the sole right and option to purchase the Units for cash at the price at which the Units are proposed to be sold or under the other terms and conditions of payment offered by the other party. The Lessee shall exercise such purchase right by delivery to the Lessor of a written notice within 10 business days of receipt of notice from the Lessor, and the Lessee's notice shall specify a date of purchase, which date shall not be later than the later of (i) 15 days after the date of delivery of such notice by the Lessee to the Lessor or (ii) 90 days after expiration of such term of this Lease. In the event that the Lessee shall have delivered a notice of its election to purchase the Units, this Lease (including the obligation to pay rent prorated at the same rate as paid for the last six months of such term) shall be further extended upon the same terms and conditions until the date of purchase.

Upon payment of the purchase price of the Equipment pursuant to the preceding paragraph and all other sums due hereunder, the Lessee shall have no further liability or obligation of any kind whatsoever (except indemnities for events arising or relating to the period before such purchase) under or pertaining to this Lease and Lessor shall forthwith execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for the Units such as will transfer title to the Units free and clear of all liens, security interests, and other encumbrances created by the Lessor.

Section 14. Return of Units upon Expiration of Term. On or prior to the termination of the term of this Lease or as soon as practicable on or after the termination of the term of this Lease and in any event not later than 90 days after the termination of the term of this Lease the Lessee will, at its own cost and expense, at the request of the Lessor, cause each Unit to be transported to such point or points on Lessee's lines as shall be reasonably designated by the Lessor immediately prior to such termination and store each Unit for a period not exceeding 60 days from the date on which all of such Units are first placed in storage pursuant to this Section 14; the assembly, delivery, storage and transporting of each Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence or intentional act 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 Lessee, the rights of inspection granted under this sentence, and after any Unit has been stored for 60 days, any further storage of such Unit shall be at the Lessor's own risk and expense, except for cost or loss arising from the Lessee's negligent or intentional acts or omissions. The assembly, 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 cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Lessor pursuant to this Section 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) have attached or affixed thereto the legend required by Section 5 hereof, and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. If any Unit suffers a Casualty Occurrence during any storage period provided for in this Section 14, the Lessee shall pay to the Lessor the Casualty Value of such Unit as determined in accordance with Section 7 hereof. All gross amounts earned in respect of any Unit shall, from and after the termination of this Lease as to such Unit, belong to and be the property of the Lessor. In the event that by the 60th day after the termination of the original or any extended term of this Lease the Lessee has not, at the request of the Lessor, caused all the Units to be transported to such point or points as shall have been designated by the Lessor pursuant to this Section 14, the Lessee shall pay to the Lessor applicable per diem on all Units not so assembled for each day thereafter.

Section 15. Recording. The Lessee, at its own expense, will cause this Lease to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada. The Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to their satisfaction, of the Lessor's and Equipment Trust Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease and the Equipment Trust.

The Lessee will promptly furnish to 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 Lessor.

This Lease shall be filed and recorded with the Interstate Commerce Commission prior to the delivery hereunder of any Unit.

Section 16. Successors. The Lessee agrees not to merge or consolidate with any other corporation unless the survivor of such merger or consolidation shall be a corporation organized under the laws of the United States of America or a state thereof or the District of Columbia and such survivor (if not the Lessee) shall assume all the obligations and liabilities of the Lessee hereunder.

Section 17. Obligations of Lessor Under Equipment Trust; Additional Rentals. In the event that the Lessor shall become obligated to make any payment (other than payments in settlement for Equipment or for advance rental, rental or the principal of, dividends or interest on the Equipment Trust Certificates or for losses and expenses upon disposition of investments or for Trustee's fees or for casualty payments pursuant to the Equipment Trust Agreement) or to perform any obligations with respect to the Units pursuant to the Equipment Trust Agreement not covered by the provisions of this Lease, the Lessee shall pay such additional rentals hereunder and perform such obligations so that all of the Lessor's obligations (other than as aforesaid) pursuant to the Equipment Trust Agreement shall be fully complied with.

Section 18. 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 itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at the rate of 10% per annum or such lesser amount as may be legally enforceable, shall be payable by the Lessee upon demand, but no such performance by the Lessor shall constitute a waiver of its rights under Section 10.

Section 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 an amount equal to interest at a rate of 10% per annum on the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable, provided, however, that this provisions shall not create any right in the Lessee to delay rentals or other obligations upon the payment of interest.

Section 20. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered to such other party or deposited in the United States mails, first-class postage prepaid, addressed as follows:

if to the Lessor, at 8 North Jefferson Street,  
Roanoke, Virginia 24042, attention Vice  
President - Finance;

if to the Lessee, at 1310 Six Penn Center  
Plaza, Philadelphia, Pennsylvania 13103,  
attention Assistant Treasurer - Cash  
Mobilization;

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing. Any certificate, document or report required to be furnished by any party hereto to the other parties shall be delivered to the address set forth above for such party.

Section 21. Severability; Effect and Modification of Lease; Third Party Beneficiaries. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof; and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

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

Nothing in this Lease shall be deemed to create any right in any person not a party or Affiliate of a party hereto other than 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 any third party except as aforesaid.

Section 22. Execution. This Lease may be executed in several counterparts and each such counterpart shall be deemed an original. 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.

Section 23. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and Section 77(j) of the Bankruptcy Act.

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

POCAHONTAS KENTUCKY CORPORATION

ATTEST

B. E. Middleton  
Secretary

John R. King  
Vice President-Finance

CONSOLIDATED RAIL CORPORATION

ATTEST

A. P. [Signature]  
ASSISTANT SECRETARY

Richard T. [Signature]  
VP-Treas

COMMONWEALTH OF VIRGINIA )  
 ) ss.:  
CITY OF ROANOKE )

On this 7<sup>th</sup> day of April, 1978, before me personally appeared John R. Turbyfill to me personally known, who, being by me duly sworn, says that he is Vice President-Finance of POCAHONTAS KENTUCKY 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 by him on this date was the free act and deed of said corporation.

My Commission Expires June 28, 1980

Dezora M. Martin  
Notary Public  
Dezora M. Martin

COMMONWEALTH OF PENNSYLVANIA )  
 ) ss.:  
COUNTY )  
CITY OF PHILADELPHIA )

On this 10<sup>th</sup> day of April 1978, before me personally appeared R.T. Fox to me personally known, who, being by me duly sworn, says that he is Vice President & Treasurer of CONSOLIDATED RAIL 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 by him on this date was the free act and deed of said corporation.

Donald F. Feaster  
Notary Public

DONALD F. FEASTER  
Notary Public, Philadelphia, Philadelphia Co.  
My Commission Expires June 2, 1979

EQUIPMENT

<u>Quantity</u>	<u>Description</u>	<u>Price</u>	
		<u>Unit</u>	<u>Total</u>
168	100-ton open-top hopper cars, numbered CR 486801 to 486968, inclusive (originally designated NW 142308 to 142475, inclusive)	\$30,000	\$5,040,000

CASUALTY VALUES\*

<u>Rental Payment Period:</u>	<u>Amount</u>
Initial month	\$30,000
1st six-month period	28,906
2nd " " "	27,813
3rd " " "	26,720
4th " " "	25,626
5th " " "	24,533
6th " " "	23,554
7th " " "	22,575
8th " " "	21,596
9th " " "	20,617
10th " " "	19,639-
11th " " "	18,774
12th " " "	17,910
13th " " "	17,045
14th " " "	16,181
15th " " "	15,317
16th " " "	14,695
17th " " "	14,074
18th " " "	13,453
19th " " "	12,832
20th " " "	12,211-
21st " " "	11,590
22nd " " "	10,969
23rd " " "	10,348
24th " " "	9,727
25th " " "	9,106
26th " " "	8,484
27th " " "	7,863
28th " " "	7,243
29th " " "	6,621
30th " " "	6,000

\* The Casualty Value of each unit as of any rental payment date, after payment of rent due on the unit as of that date, shall be the amount set forth in the above schedule opposite each such rental payment date.