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RECORDATION NO. 0300

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INTERSTATE COMMERCE COMMISSION
May 1, 1978

RECORDATION NO. 0300 - C

MAY 2 1978 -4 00 PM

Consolidated Rail Corporation
Participation Agreement Dated as of April 3, 1978
8.5% Conditional Sale Indebtedness

Dear Sir:

Pursuant to Section 20c of the Interstate Commerce Act and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Consolidated Rail Corporation for filing and recordation counterparts of the following documents:

1(a) Conditional Sale Agreement dated as of April 3, 1978, between United States Trust Company of New York, as trustee, vendee, and General Electric Company, as builder, vendor;

(b) Agreement and Assignment dated as of April 3, 1978, between General Electric Company, as builder, and Mellon Bank, N.A., as agent, assignee;

2(a) Lease of Railroad Equipment dated as of April 3, 1978, between Consolidated Rail Corporation, as lessee, and United States Trust Company of New

David W. Keller
Conventry

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CERTIFICATION UNIT

York, as trustee, lessor;

(b) Assignment of Lease and Agreement dated as of April 3, 1978, between United States Trust Company of New York, as trustee, lessor, and Mellon Bank, N.A., as agent, vendor.

The names and addresses of the parties to the aforementioned Agreements are as follows:

(1) Agent-Vendor-Assignee:

Mellon Bank, N.A.
Mellon Square
Pittsburgh, Pennsylvania 15230

(2) Trustee-Vendee-Lessor:

United States Trust Company
of New York
130 John Street
New York, N.Y. 10038

(3) Builder-Vendor:

General Electric Company
2901 East Lake Road
Erie, Pennsylvania 16531

(4) Lessee:

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

Please file and record the documents referred to in this letter and cross-index them under the names of the Agent-Vendor-Assignee, the Trustee-Vendee-Lessor, the Builder-Vendor and the Lessee.

The equipment covered by the aforementioned documents consists of the following:

Forty (40) 2,250 h.p. Model B23-7 diesel-electric locomotives bearing identifying numbers CR1900 through CR1939, both inclusive.

There is also enclosed a check for \$100 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document) and the Lease of Railroad Equipment, and related Assignment of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

Laurance V. Goodrich

Laurance V. Goodrich
As Agent for Consolidated
Rail Corporation

Robert L. Oswald, Esq., Secretary,
Interstate Commerce Commission,
Washington, D.C. 20423

Encls.

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BY HAND

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RECORDATION NO. Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

[CS&M Ref. 2043-821]

LEASE OF RAILROAD EQUIPMENT

Dated as of April 3, 1978

between

CONSOLIDATED RAIL CORPORATION

and

UNITED STATES TRUST COMPANY OF NEW YORK,
as Trustee Under a Trust Agreement

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

LEASE OF RAILROAD EQUIPMENT dated as of April 3, 1978, between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (the "Lessee"), and UNITED STATES TRUST COMPANY OF NEW YORK, a New York trust company, acting as Trustee (the "Lessor") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with L.I.M. Associates, a Connecticut limited partnership (the "Beneficiary") in which J. P. Morgan Interfunding Corp. and General Electric Credit Corporation are, respectively, the limited partner and the general partner (the "Partners" or individually a "Partner") pursuant to an Agreement of Limited Partnership dated as of December 29, 1977.

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

WHEREAS the Builder under an Agreement and Assignment dated as of the date hereof (the "CSA Assignment") is assigning its interests in the CSA to Mellon Bank, N.A., acting as Agent (hereinafter, together with its successors and assigns and the Investors, as hereinafter defined, called the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessee, the Lessor, the Beneficiary, the Partners and the investor named in Schedule A thereto (said investor, together with its successors and assigns, being hereinafter called the "Investors");

WHEREAS the Builder is willing to guarantee certain obligations of the Lessee under this Lease and of the Lessor under the CSA pursuant to a Guaranty Agreement dated as of the date hereof (the "Guaranty");

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

WHEREAS the parties contemplate that the Lessor will assign for security purposes certain of its rights in this Lease to the Vendor by an Assignment of Lease and

Agreement dated as of the date hereof (the "Lease Assignment"), and the Lessee will consent thereto by a Consent and Agreement (the "Consent");

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

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

shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

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

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for the Units, 31 consecutive payments payable (i) on the earlier of (x) the last Closing Date (under and as defined in the CSA) and October 4, 1978, whichever is later, and (y) December 15, 1978 (such date being hereinafter called the "Basic Rent Commencement Date"), and (ii) on the 30 consecutive dates occurring semiannually following the Basic Rent Commencement Date (each of such 30 consecutive dates being hereinafter called a "Rental Payment Date"). The rental payable on the Basic Rent Commencement Date for each Unit shall be in an amount equal to the product of (a) the number of days elapsed from and including the Closing Date for such Unit to, but not including, the Basic Rent Commencement Date, times (b) 0.026389% of the Purchase Price of such Unit, which rate includes the guarantee fee (equal to 0.002778% of the Purchase Price of each such Unit) to be paid by the Lessee to the Builder in respect of its obligations under the Guaranty. The next 30 rental payments shall each be in an amount equal to 5.0421% of the Purchase Price of each Unit then subject to this Lease, which rate includes the semiannual guarantee fee (equal to 0.50% of the Purchase Price of each such Unit) to be paid by the Lessee to the

Builder in respect of its obligations under the Guaranty. The Builder shall be a third-party beneficiary of the Lessee's obligation to pay the guarantee fee referred to in the two preceding sentences. If the Purchase Price of the Units shall exceed \$21,100,000 or the Lessor shall provide more than 33% of the Purchase Price of the Units out of funds provided by the Beneficiary (as distinguished from the CSA Indebtedness), the Lessee agrees that the rentals payable hereunder and the Casualty Value percentages set forth in Schedule B hereto will be appropriately adjusted so that each Partner's after-tax rate of return and periodic recovery of net cash flow will be at least the same as they would have been had the Purchase Price not exceeded \$21,100,000 or the Lessor not provided more than 33% of the Purchase Price as aforesaid. If there is a change effective prior to the first Rental payment Date after the Basic Rent Commencement Date for which the Partners are not responsible in the assumptions utilized by the Beneficiary and the Partners (as set forth in § 16 hereof) in originally calculating such rentals, the Lessor and the Lessee agree that the rentals payable hereunder and the Casualty Value percentages set forth in Schedule B hereto will be appropriately adjusted upward or downward so that each Partner's after-tax rate of return and periodic recovery of net cash flow will be at least the same as they would have been had there been no change in such assumptions. The Lessor and the Lessee further agree that if there is a reduction in the amounts payable by the Builder in respect of its obligations under the Guaranty, the portion of the rentals payable hereunder attributable to the guarantee fee referred to above will be adjusted downward to reflect such reduction. Notwithstanding anything to the contrary set forth herein, the rentals and Casualty Value percentages, as adjusted pursuant to the preceding two sentences, shall be sufficient to satisfy the obligations of the Lessor under the CSA, regardless of any limitation of liability set forth therein.

In addition to the foregoing rentals, the Lessee agrees to pay to the Lessor as additional rentals amounts which, after deduction of any taxes payable in respect of such amounts, will be equal to the amounts required by the Lessor to make the payments provided for (a) in the penultimate sentence of the third paragraph of Paragraph 2, (b) in the last sentence of the first paragraph of Paragraph 9 and (c) in the last paragraph of Paragraph 9 of the Participation Agreement on the dates the Lessor is required to make such payments (without regard to any limitation of the obligation of the Lessor set forth therein) and the

Lessor agrees to apply such rentals for such purposes.

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

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the CSA, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing; provided, however, that the Lessee shall make all payments provided for in § 6 and in § 16 hereof in immediately available funds directly to the person entitled to receive them, as provided in the Lease Assignment. The Lessee agrees to make each payment provided for herein (other than the payments described in the proviso to the preceding sentence) as contemplated by this paragraph in Federal or other funds immediately available to the Vendor by 11:00 a.m., Pittsburgh time, on the date such payment is due. Provided that no Event of Default described in § 10(A) hereof, or event which with notice or lapse of time or both would become such an Event of Default, shall have occurred and be continuing, the Lessor shall pay to the Builder, out of the payments received by it from the Vendor pursuant to the first sentence of this paragraph, an amount equal to the semiannual fee payable by the Lessee to the Builder, as referred to in the first paragraph of this § 3.

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

and 16 hereof) shall survive the expiration or termination of the term of this Lease and the full payment of all amounts payable under this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination), all as provided therein; provided, however, that, so long as (i) no Event of Default exists hereunder, (ii) 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 and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 12 hereof.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identification number set forth in Schedule A hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership subject to a Conditional Sale Agreement filed under the Interstate Commerce Act, Section 20c", with appropriate changes thereof as from time to time may be required by law, in the opinion of the Vendor, in order to protect the Lessor's and the Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect that such statement has been so filed and deposited, that such filing and deposit will protect the Vendor's and the Lessor's rights in such Units and that no other filing, deposit or giving of notice with or to any federal, state or local government or agency thereof is necessary to protect the rights of the Vendor and the Lessor in such Units.

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

§ 6. Taxes. The Lessee assumes responsibility for, and agrees to pay, hold harmless and indemnify on an after-tax basis the Lessor, the Beneficiary and the Partners and their successors and assigns (the "Indemnified Persons") against, all taxes, fees, withholdings and other governmental charges of any nature whatsoever, including without limitation penalties and interest (all such taxes, fees, withholdings, governmental charges, penalties and interest being herein-after called "Taxes"), imposed on, incurred by or asserted against any Indemnified Person or the Units or any thereof on account of, or with respect to, this Lease or the CSA or any document referred to herein or therein or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acceptance or rejection of the Units or any thereof or the ownership, delivery, nondelivery, leasing, re-leasing, subleasing, possession, use, operation, maintenance, repair, condition, sale, return or other disposition of the Units or any thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom; provided, however, that there shall be no indemnification hereunder for (i) any Taxes imposed on or measured by any fees or compensation received by the Lessor, and (ii) Federal income Taxes and income or franchise Taxes imposed on a Partner or its successors and assigns by any jurisdiction in which such Partner or its successors and assigns has an office, except to the extent that indemnification is provided for in § 16 hereof. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify each Indemnified Person to the extent required by this § 6 within ten days after receipt of a written request by such Indemnified Person for indemnification specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question; provided, however, that if any Taxes are being contested in accordance with the sixth paragraph of this § 6, any payment shall be made at the time therein provided.

In the event that the Lessor shall become obligated

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

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

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

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

If any taxing authority shall assert liability for any Taxes or propose an increase in the liability of any Indemnified Person for any Taxes (such assertion or such proposed increase being hereinafter called a "Claim"), indemnification for which would be required under this § 6, the Indemnified Person will notify the Lessee within a reasonable time of such Claim in writing. If the Lessee delivers to such Indemnified Person written notice of its desire to contest such Claim within 30 days after receipt of notice from such Indemnified Person, such Claim will be contested in accordance with this paragraph, except to the extent such Claim represents amounts payable to the Vendor under Article 6 of the CSA. The Lessor will permit the Lessee to contest such Claims under Article 6 of the CSA in accordance with the rights of the Lessor thereunder. The Indemnified Person shall have the exclusive right to conduct the contest unless such right is waived in writing, in which event the contest and all preparations therefor shall be the sole responsibility of the Lessee and, in either case, shall be conducted entirely at its expense. Such Indemnified Person will cooperate with any reasonable request made by the Lessee in connection therewith; provided, however, that such Indemnified Person may in its sole discretion determine in what court or other forum such contest will be conducted and whether such contest will proceed by payment of the Taxes in contemplation of a suit for refund and such Indemnified Person shall not be required to take any action pursuant to this paragraph unless and until the Lessee shall have agreed to indemnify such Indemnified Person in a manner satisfactory to such Indemnified Person for any liability or loss which such Indemnified Person may incur as a result of contesting the validity of any Claim and shall have agreed to pay such Indemnified Person on demand all costs and expenses which such Indemnified Person may incur in connection with contesting such Claim (including fees and disbursements of counsel). If in any such contest the decision is made to pay the Taxes and sue for a refund, the Lessee will advance to such Indemnified Person on an interest-free basis sufficient funds to pay the Taxes which are to be contested. Upon receipt by any Indemnified Person of a refund of any Taxes paid by the Lessee pursuant to this paragraph, the amount of such refund and any interest paid to such Indemnified Person with respect thereto shall be paid to the Lessee forthwith upon receipt by such Indemnified Person.

The Lessee agrees to pay all amounts due under this § 6 free of any Taxes and to indemnify each Indemnified

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

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

This § 6 may be enforced by the Lessor as provided in Paragraph 17 of the Participation Agreement.

§ 7. Maintenance; Casualty Occurrences; Insurance.
The Lessee at its own expense will maintain and service each Unit and comply with a preventive maintenance schedule consistent with the Builder's preventive maintenance schedules and which will include testing, repair and overhaul of each Unit so that each Unit will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations, and (c) desirable to and suitable for immediate purchase or lease and use by a Class I line-haul railroad (not then or prospectively a debtor in any insolvency or reorganization proceedings) in the event of resale or release upon default by the Lessee. In no event shall any Unit be maintained or scheduled for maintenance on a basis less frequent than the maintenance or maintenance scheduling basis employed as of the date hereof by the Lessee for similar equipment. No later than the last business day of February and August of each year, commencing in February 1979, the Lessee will furnish the Lessor with a certificate ("Maintenance Certificate A") of a qualified engineer satisfactory to the Lessor (i) setting forth the identification

numbers of all Units which are then in the condition required by clauses (a), (b) and (c) of the first sentence of this § 7 and certifying that all such Units are in such condition, and (ii) setting forth the identification numbers of all Units which are not in such condition together with the estimated cost required with respect to each such Unit in order to comply with the maintenance requirements of this § 7. No later than the last business day in April and October of each year, commencing in April 1979, the Lessee will furnish the Lessor with a certificate ("Maintenance Certificate B") of a qualified engineer satisfactory to the Lessor setting forth the identification number of each Unit that was not certified in the preceding February or August Maintenance Certificate A, as the case may be, as being in the condition required by clauses (a), (b) and (c) of the first sentence of this § 7, and, as to each such Unit, (i) certifying that such Unit is in such condition as of the date of such Maintenance Certificate B, or (ii) stating that such Unit is not in such condition. The Lessee, the Vendor and the Lessor have entered into a Maintenance Agreement dated as of the date hereof (the "Maintenance Agreement"), with respect to certain obligations of the Lessee in the event that any Unit listed on a Maintenance Certificate A as not being in the condition required by clauses (a), (b) and (c) of the first sentence of this § 7 is not certified on the next scheduled Maintenance Certificate B as being in such condition.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, permanently returned to the Builder pursuant to any patent indemnity provision of the CSA, or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term of this Lease (or, if such taking, requisition or condemnation shall occur during a renewal term, for a period which shall exceed the then remaining renewal term), or by any other government or governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days, or if a Default under Section 2 of the Maintenance Agreement shall have occurred with respect to such Unit (such occurrences being hereinafter called "Casualty Occurrences"), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly (but in any event within 30 days after such Casualty Occurrence) and fully notify the Lessor, the Beneficiaries and the Vendor with respect thereto. On the earlier of (i) the 60th day following such notice (but not

earlier than the first Rental Payment Date following the Basic Rent Commencement Date) and (ii) the rental payment date next succeeding such notice (but not earlier than the first Rental Payment Date following the Basic Rent Commencement Date) the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit then due and payable or accrued to such date (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) plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the rental payment date on or next preceding the date of such Casualty Occurrence in accordance with Schedule B hereto referred to below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or permanent return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis and the Lessee may be a purchaser of such Unit and shall notify the Lessor prior to any such purchase by the Lessee. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit permanently returned to the Builder pursuant to any patent indemnity provision of the CSA an amount equal to any patent indemnity payment in respect of such Unit made by the Builder to the Vendor under the CSA.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date.

Whenever any Unit shall suffer a Casualty Occurrence after the final payment of rent in respect thereof is due pursuant to § 3 or § 13 hereof and before such Unit

shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly (as provided above) and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 20% of the Purchase Price of such Unit, except that if the term of this Lease shall have been extended pursuant to § 13 hereof, then the applicable Casualty Value shall be (i) during the first five-year renewal term and, if there shall be no second five-year renewal period, thereafter, 20% of the Purchase Price of such Unit, (ii) during the second five-year renewal term, the fair market value of such Unit, as of the rental payment date on or next preceding the date of such Casualty Occurrence, determined as provided in the following sentence, and (iii) thereafter, the fair market value of such Unit as of the last rental payment date during such second five-year renewal period. For the purposes of the preceding sentence, the term "fair market value" of a Unit shall, at the beginning of such second five-year renewal period, be equal to the Fair Market Purchase Price of such Unit at such time determined in accordance with the provisions of § 13 hereof, and shall decline on a straight-line basis to the estimated Fair Market Purchase Price of such Unit at the end of such second five-year renewal period determined in accordance with the provisions of § 13 hereof. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit or return to the Builder of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence, or any component thereof, at the best price obtainable on an "as is, where is" basis and the Lessee may be a purchaser of such Unit and shall notify the Lessor prior to any such purchase by the Lessee. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition (other than a requisition which constitutes a Casualty Occurrence) for use by the United States Government or by any other government or governmental entity (hereinafter collectively called the "Government") of any Unit during the term of this Lease or

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

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Units to the Lessor, at its own expense, cause to be carried and maintained casualty insurance and public liability insurance in respect of the Units at the time subject hereto, against such risks, in such amounts and on such terms and conditions as are satisfactory to the Lessor and the Vendor, and, in any event, comparable in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it, but in no event shall such coverage be for amounts or against risks less than the prudent industry standard for Class I line-haul railroads. If the Casualty Value at any given time is less than what the deductible would be under the foregoing standard, then no casualty insurance need be carried. All policies with respect to such insurance shall name the Lessor, the Beneficiary, the Partners and the Vendor as additional named insureds or loss payees, as their interests

may appear, shall provide for at least 30 days' prior written notice by the insurance carrier to the Lessor, the Beneficiary, the Partners and the Vendor in the event of cancellation, expiration or amendment (and the Lessee shall provide 30 days' prior written notice to the Lessor, the Beneficiary, the Partners and the Vendor in any such event), shall include waivers by the insurer of all claims for premiums against the Lessor, the Beneficiary, the Partners and the Vendor and shall provide that losses are payable notwithstanding, among other things, any act of negligence of the Lessee, the Lessor, the Beneficiary, the Partners or the Vendor, more hazardous use or occupation of the Units than that permitted by such policies, any breach or violation by the Lessee, the Lessor, the Beneficiary, the Partners or the Vendor of any warranty, declaration, condition or other provision contained in any such policy, or foreclosure, notice of sale or any other proceeding in respect of the Units, or any change in the title to or ownership of any of the Units. Each such insurance policy shall expressly provide that all of the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Lessee) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by the Lessor, the Beneficiary, the Partners or the Vendor. The Lessee shall, not later than June 15 of each year, commencing June 15, 1979, furnish to the Lessor and the Vendor a certificate of an independent insurance broker acceptable to the Lessor evidencing the maintenance of the insurance required hereunder and shall furnish certificates evidencing renewal 15 days prior to the expiration date of such policy or policies. In the event that the Lessee shall fail to maintain insurance as herein provided, the Vendor, the Beneficiary or a Partner may at its option on five business days' prior written notice to the Lessee 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 Vendor or the Beneficiary or the Partners, as the case may be, for the cost thereof together with interest on the amount of such cost from the date of payment thereof at an annual rate of 10.5%. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of

Default) shall have occurred and be continuing, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

§ 8. Reports. On or before April 30 in each year, commencing with the calendar year 1979, the Lessee will furnish to the Lessor, the Builder and the Vendor a certificate signed by the Chief Executive Officer, Chief Operating Officer or Vice President of Operations or the Chief Mechanical Officer of the Lessee (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the CSA, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof have been preserved or replaced. The Lessor or the Builder, at its sole expense, shall have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Builder may request during the continuance of this Lease.

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

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO

United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal thereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, the Beneficiary, the Partners or the Vendor, adversely affect the property or rights of the Lessor, the Beneficiary, the Partners or the Vendor under this Lease or under the CSA. The Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value of the Units). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, except to the extent such additions, modifications or improvements are described in the following sentence. Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of the provisions contained hereinabove, (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 interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the United States Department of Transportation or any other regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA) shall immediately be vested in the Lessor.

The Lessee agrees to indemnify, protect and hold harmless the Lessor, the Beneficiary, the Partners and the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith,

United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal thereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, the Beneficiary, the Partners or the Vendor, adversely affect the property or rights of the Lessor, the Beneficiary, the Partners or the Vendor under this Lease or under the CSA. The Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value of the Units). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, except to the extent such additions, modifications or improvements are described in the following sentence. Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of the provisions contained hereinabove, (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 interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the United States Department of Transportation or any other regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA) shall immediately be vested in the Lessor.

The Lessee agrees to indemnify, protect and hold harmless the Lessor, the Beneficiary, the Partners and the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith,

including, but not limited to, counsel fees and expenses, patent, trademark and copyright liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default, an event of default or an Event of Default, under the CSA, the Participation Agreement, this Lease, the Maintenance Agreement or any sublease entered into pursuant to § 12 hereunder, the ownership of any Unit, the manufacture, ordering, acquisition, use, operation, condition, purchase, sublease, delivery, nondelivery, acceptance, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease, or the transfer of title to the Units by the Vendor pursuant to any provision of the CSA; provided, however, that the foregoing indemnification shall not apply to any failure to pay the principal of or interest on the CSA Indebtedness (as defined in the CSA) or constitute a guaranty of the residual value of the Units. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease.

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

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

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

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

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

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Consent or in the Participation Agreement or in Section 5 of the Maintenance Agreement, and such default shall continue for 30 days after the earlier of (i) written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied and (ii) the date on which such default shall first become known to any officer of the Lessee;

(D) a petition for reorganization under Section 77 of the Bankruptcy Act (as now constituted or as hereafter amended, including any successor provision thereto) shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

(E) any other proceeding shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such

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

(F) the occurrence of any of the following:

(i) Involuntary Bankruptcy Proceedings--a receiver, liquidator or trustee of the Lessee or of any of its property is appointed by court order and such order remains in effect for more than 30 days; or the Lessee is adjudicated bankrupt or insolvent; or any of its property is sequestered by court order and such order remains in effect for more than 30 days; or a petition is filed against the Lessee under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within 30 days after such filing;

(ii) Voluntary Petitions--the Lessee files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or

(iii) Assignments for Benefit of Creditors, etc.--the Lessee makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due, or consents to the appointment of a receiver, trustee or liquidator of the Lessee

or of all or any part of its property;

followed by a good faith determination by the Vendor or the Lessor and notification thereof to the Lessee within 45 days following knowledge by the Vendor or the Lessor of any such occurrence that, as a result, it will be inadequately secured;

(G) Section 77(j) of the Bankruptcy Act (or any successor provision thereto providing similar protection and benefits for creditors of railroads) is repealed, not carried forward in subsequent legislation or otherwise unavailable to the Lessor or the Vendor, and there shall then exist or thereafter be a default under, or an event shall occur or shall have occurred which, with the giving of notice or the lapse of time or both, would become a default under, any agreement or instrument then or thereafter binding upon the Lessee or to which it then is or thereafter becomes a party or to which any of its property is or thereafter becomes subject;

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

(a) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of Federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

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

Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts the Lessor, in its sole discretion, shall specify:

(x) a sum, with respect to each Unit, equal to (A) the excess of 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 the then present value of the rental 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 8.50% per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated plus (B) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of any Federal, state or local government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall, in the reasonable opinion of the Lessor, be equal to all or such portion of the Investment Credit (as defined in § 16 hereof) lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 16 or any other provision of this Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as shall cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the ADR Deductions and the Interest Deduction (as such deductions are defined in § 16 hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a direct or indirect result of the

breach of one or more of the representations, warranties and covenants made by the Lessee in § 16 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessee or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default plus such sum as will pay or reimburse the Lessor for any interest, penalties or additions to tax incurred in connection with such loss, failure to claim, inability to claim, disallowance or recapture; 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 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 shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited

by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf. The Lessee hereby waives any and all claims against the Lessor and the Vendor and their agent or agents for damages of whatever nature in connection with any retaking of any Unit in any reasonable manner. The Lessor and the Lessee agree that the Lessor shall be entitled to all rights (such rights being fundamental to the willingness of the Lessor to enter into this Lease) provided for in § 77(j) of the Bankruptcy Act or any comparable provision of any amendment thereto, or of any other bankruptcy act, so that the Lessor shall have the right to take possession of the Equipment upon an Event of Default under this Lease regardless of whether the Lessee is in reorganization.

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

Any Event of Default under this Lease caused by the failure of the Lessee to make any payment due hereunder shall not be deemed to be an Event of Default under this Lease permitting the Lessor to exercise the remedies specified in clauses (a) and (b) of the first paragraph of this § 10, or otherwise existing in its favor at law or in equity, if, prior to the exercise of any such remedies and prior to a Declaration of Default under and as defined in the CSA, the Builder pays to the Lessor an amount equal to all amounts then payable under this Lease, including any interest on overdue rentals.

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

- (a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units

have been interchanged or which may have possession thereof to return the Unit or Units) place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

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

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

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own expense, maintain and keep the Equipment in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All rent and per diem charges earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which 0.026389% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor with respect to such Unit for each such day.

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

possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's successors and assigns.

So long as (i) no Event of Default exists hereunder, (ii) 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, without the prior written consent of the Lessor and the Vendor, the Lessee may sublease the Units to, or permit their use by, a user incorporated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by the Lessee or such user or by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Vendor's and the Lessor's consent, not to be unreasonably withheld, must be obtained for any sublease that is for a term longer than six months; provided, further, however, that the Lessee shall not sublease or permit the sublease or use of any Unit to service involving operation or maintenance outside the United States of America except that occasional service in Canada shall be permitted so long as such service in Canada does not involve regular operation and maintenance outside the United States of America; and provided, further, however, that any such sublease or use shall be consistent with the provisions of § 16 hereof. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety.

The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if

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

§ 13. Renewal and Purchase Options. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term or any extended term of this Lease, as the case may be, (i) elect to extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for one or two additional five-year periods commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, provided that no such extended term shall extend beyond a date 25 years after the Basic Rent Commencement Date, at a Fair Market Rental (as defined below) payable in semiannual payments, commencing six months after the next preceding rental payment date, in each year of such extended term; or (ii) after the first additional five-year rental period, as provided above, purchase all but not fewer than all of the Units then subject to this Lease, at a Fair Market Purchase Price (as defined below) payable at the end of such first additional five-year rental period.

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

Upon payment of the purchase price of any Unit, pursuant to an election by the Lessee to purchase the Units, the Lessor shall upon request of the Lessee execute and

deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

§ 14. Return of Units upon Expiration of Term.

The Lessor intends to retain the Units for re-lease at the expiration of the term of this Lease. As soon as practicable on or after the expiration of the original or any extended term of this Lease with respect to any Unit, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding 60 days following notification to the Lessor by the Lessee that all the Units have been assembled and delivered for storage and transport the same, at any time within such 60-day period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee (except for the insurance required by § 7 hereof which shall be provided at the Lessor's expense); and in the event that any Unit shall suffer a Casualty Occurrence during such storage period, the Lessee shall pay the Lessor the Casualty Value thereof as provided in § 7 hereof. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence or strict liability of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor or any prospective purchaser, lessee or user, such rights of inspection. Each Unit returned to the Lessor pursuant to this § 14 shall be in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof. During any storage period, the Lessee

will, at its own expense, maintain and keep the Units in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof and will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All rent and per diem charges earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day from the date of such termination an amount equal to the amount, if any, by which 0.026389% of the Purchase Price of such Unit (or, in the case of Units returned following any renewal term, the amount which is the product of the Purchase Price of such Unit times a fraction the numerator of which is the semiannual rental factor (expressed as a percentage of the Purchase Price) for such Unit in effect for such preceding renewal term and the denominator of which is 180) for each such day exceeds the actual earnings received by the Lessor with respect to such Unit for each such day.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the CSA and any assignment hereof or thereof to be filed in accordance with Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada (and notice of such deposit to be given forthwith in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the CSA and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective rights in the Units, or for the purpose of carrying out the intention of this Lease, the CSA and the assignments thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this § 15, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor; provided,

however, that no such opinion of counsel need be furnished in respect of the filing of the CSA or the assignment thereof in Canada. This Lease and the CSA, and the assignments thereof, shall be filed with the Interstate Commerce Commission and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision shall be made for publication of notice of such deposit in The Canada Gazette prior to the delivery and acceptance hereunder of any Unit.

§ 16. (a) Indemnity for Federal and Other Income Tax Benefits. This Lease has been entered into on the assumption that this Lease will be recognized as a lease for Federal, state and local income or franchise tax purposes and that this Lease does not convey to the Lessee any right, title or interest in the Units except as Lessee. Accordingly, the Beneficiary, the Partners, the Lessor and the Lessee have assumed for purposes of United States Federal income tax and (to the extent applicable) state and local income and franchise tax that the trust under the Trust Agreement will be treated as a grantor trust, that the Beneficiary will be treated as a partnership and that the Partners (A) as the beneficial owners of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (the "Code"), and state and local taxing statutes to an owner of property, including, without limitation, (1) deductions for depreciation of the Units under section 167 of the Code (the "ADR Deductions") computed on the basis (i) that the Units will have a depreciable basis under section 167(g) of the Code at least equivalent to the Purchase Price plus 33% of the Transaction Expenses (as defined in the Participation Agreement) borne by the Beneficiary or the Partners or the Lessor and that the Federal corporate income tax rate in effect for 1978 and thereafter will be 48%, (ii) 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 Partners, (iii) of the asset depreciation range system of Treasury Regulation Section 1.167(a)-11, using the modified half-year convention and obtaining twelve months of depreciation in 1978, (iv) of an asset depreciation period of 12 years, and (v) of a salvage value of zero after the reduction in accordance with section 167(f)(1) of the Code, (2) deductions with respect to interest payable on the CSA Indebtedness (as defined in the CSA) and the guarantee fee payable to the Builder (the "Interest

Deductions") for any period during which the CSA Indebtedness is held by any person other than the Beneficiary or the Partners and (3) the investment credit pursuant to section 38 of the Code for "new section 38 property" (the "Investment Credit") equal to 10% of the depreciable basis referred to above, (B) shall be entitled to amortize 67% of the Transaction Expenses borne by the Beneficiary or the Partners or the Lessor on a straight-line basis over a period of 15 years (the "Amortization Deductions") and (C) shall be entitled to treat each item of income, deduction and credit with respect to this Lease and the Maintenance Agreement as attributable 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 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.

Each Partner will claim on its Federal, state and local income tax returns the Investment Credit, the ADR Deductions, the Amortization Deductions and the Interest Deductions to the extent that any opinion or advice of counsel satisfactory to such Partner confirms its entitlement thereto.

If for any reason whatsoever a Partner shall not be allowed all or any portion of the ADR Deductions, the Amortization Deductions, the Interest Deductions or the Investment Credit, or if the ADR Deductions or the Investment Credit with respect to any portion of the Units is recaptured in whole or in part pursuant to section 1245 or section 47 of the Code, or if a Partner, in computing its Federal tax liability, shall not have, shall lose the right to claim (including a good faith determination based upon advice of its tax counsel that such claim is not allowable), shall suffer a disallowance of or be required to recapture an amount of foreign tax credit which would have been allowable to such Partner if such Partner had not participated in the transactions contemplated by this Lease (the "Foreign Tax Credit") (any such event being a "Loss"), then the Lessee shall pay to such Partner such amount or, from time to time, such amounts as, after deduction of all taxes

required to be paid by such Partner in respect of the receipt of such amounts under the laws of any Federal, state or local government or taxing authority, shall be equal to the sum of the aggregate additional Federal, state or local income taxes, including penalties and interest, if any, payable by such Partner from time to time as a result of any such Loss; provided that indemnification payments hereunder shall be an amount sufficient so that, after considering the tax and other effects of the Loss in question and the receipt of indemnification payments hereunder, such Partner will have the same anticipated after-tax rate of return on equity and periodic recovery of net cash flow which such Partner would have realized had such Loss not occurred. If, as a result of a Loss, the aggregate Federal, state or local income taxes, including penalties and interest, if any, paid by such Partner for any taxable year shall be less than the amount of such taxes which would have been payable by such Partner had no such Loss occurred, then such Partner shall pay the Lessee the amount of such difference in taxes, plus any additional tax benefits realized by such Partner as the result of such payment; provided, however, that such Partner shall not be obligated to make any payment pursuant to this sentence to the extent that any such payment would cause such Partner not to realize the after-tax rate of return on equity and periodic recovery of net cash flow referred to in the preceding sentence or to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to such Partner pursuant to this subsection (a) in respect of a Loss, less (y) the amount of all prior payments by such Partner to the Lessee pursuant to this sentence. The amount payable to a Partner pursuant to this paragraph shall be paid within 30 days after receipt of a written demand therefor from such Partner (but not prior to five business days prior to the payment of additional tax which becomes due as the result of the Loss), accompanied by a written statement describing in reasonable detail such Loss and the computation of the amount so payable. Any payment due to the Lessee from a Partner pursuant to this paragraph shall be paid within 30 days after such Partner realizes any such savings in its income taxes or additional tax benefits, as the case may be.

Notwithstanding anything to the contrary hereinbefore set forth, no amount shall be payable to a Partner as an indemnity under this § 16 in respect of any Loss to the extent that such Loss is a direct result of the occurrence of any of the following events:

(i) a voluntary transfer or other voluntary disposition by the Lessor of any interest in the Equipment (otherwise than pursuant to the Lease Assignment), or a voluntary transfer or other voluntary disposition by the Beneficiary of part or all of its interest in the trust estate under the Trust Agreement, or a voluntary transfer or other voluntary disposition by a Partner of part or all of its interest in the Beneficiary unless, in each case, an Event of Default shall have occurred and be continuing;

(ii) the failure of the Partners to claim the Investment Credit, the ADR Deductions, the Amortization Deductions or the Interest Deductions;

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

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

(v) any other acts or omissions of the Partners or the Beneficiary or the Lessor inconsistent with the transactions contemplated hereby; and

(vi) changes in law which are not effective prior to the first Rental Payment Date after the Basic Rent Commencement Date.

(b) Indemnity for Improvements and Deposits.

If at any time a Partner is required by the Internal Revenue Service to include in its gross income an amount in respect of any improvement or addition to the Units or any accession referred to in § 9 or any action required to be taken by the Lessee pursuant to the Maintenance Agreement (hereinafter called "Capital Expenditures") or an amount in respect of any funds paid under the Guaranty Agreement (hereinafter called the "Deposits"), then the Lessee shall pay to such Partner, as an indemnity, such amount or amounts as, after deduction of all taxes required to be paid by such Partner in respect of the receipt of such amounts under the laws of any Federal, state or local taxing authority, shall be equal to the sum of the aggregate additional Federal, state or local income

taxes payable by such Partner from time to time as a result of such Capital Expenditures or Deposits plus the amount of any interest, penalties or additions to tax payable as a result of any such Capital Expenditures or Deposits; provided that indemnification payments hereunder shall be an amount sufficient so that, after considering the tax and other effects of the Capital Expenditures or the Deposits, as the case may be, and the receipt of indemnification payments hereunder, such Partner will have the same anticipated after-tax rate of return on equity and periodic recovery of net cash flow which such Partner would have realized had such Capital Expenditures or Deposits not occurred. If as a result of any such Capital Expenditures or Deposits the aggregate Federal, state or local income taxes paid by such Partner for any taxable year shall be less than the amount of such taxes which would have been payable by such Partner had no such Capital Expenditures or Deposits been made, then such Partner shall pay the Lessee the amount of such savings in taxes plus any additional tax benefits realized by such Partner as the result of such payment; provided, however, that such Partner shall not be obligated to make any payment pursuant to this sentence to the extent that any such payment would cause such Partner not to realize the after-tax rate of return on equity and periodic recovery of net cash flow referred to in the preceding sentence or to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee pursuant to this subsection (b) in respect of any Capital Expenditures or Deposits less (y) the amount of all prior payments by such Partner pursuant to this sentence. The amount payable to a Partner pursuant to this subsection (b) shall be paid within 30 days after receipt of the written demand therefor from such Partner (but not prior to five business days prior to payment of the additional Federal, state or local income tax which becomes due as a result of said inclusion) accompanied by a written statement describing in reasonable detail such inclusion and the computation of the amount so payable. Any payment due to the Lessee pursuant to § 16(c) shall be paid within 30 days after a Partner realizes any such savings in its income taxes or additional tax benefits, as the case may be.

(c) Contests. (1) If the Internal Revenue Service shall propose an adjustment in the Federal income taxes of a Partner for which the Lessee would be required to indemnify such Partner pursuant to subsection (a) or (b) of this § 16 and the amount of the indemnity which the Lessee

would be required to pay would exceed \$100,000, then, if requested by the Lessee in a timely written request, such Partner shall request an opinion from counsel selected by such Partner and approved by the Lessee as to whether the basis in law and in fact in favor of allowance of the item proposed to be adjusted outweighs the basis in law and in fact to the contrary. If the opinion is to that effect and if the Lessee promptly requests such Partner to do so, such Partner shall contest the proposed adjustment; provided, however, that such Partner shall determine in its sole discretion the nature of all action to be taken to contest such proposed adjustment including (i) whether any action to contest such proposed adjustment shall initially be by way of judicial or administrative proceedings, or both, (ii) whether any such proposed adjustment shall be contested by resisting payment thereof or by paying the same and seeking a refund thereof, and (iii) if such Partner shall undertake judicial action with respect to such proposed adjustment, the court or other judicial body before which such action shall be commenced. Such Partner shall have full control over any contest pursuant to this subsection (c) and shall not be obligated to appeal an adverse determination by any court. At any time, whether before or after commencing to take the action set forth in this subsection (c), such Partner may decline to take any such action with respect to all or any portion of a proposed adjustment by notifying the Lessee in writing that the Lessee is relieved of its obligation to indemnify such Partner with respect to the adjustment or such portion, as the case may be.

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

respect of which amounts it shall have been paid an equivalent amount by the Lessee, such Partner shall pay to the Lessee the amount of such refund together with any interest received by it on such amount. The Lessee shall be obligated to pay to such Partner the amount specified in subsection (a) or (b) of this § 16 promptly after the Beneficiary has taken all the action that it has agreed in this § 16 to take.

(d) Definition of Partner. For purposes of this § 16, the term "Partner" or "Partners" shall include either or both of the corporations constituting the Partners, as the context requires, and shall also include any member of an affiliated group, within the meaning of section 1504 of the Code, of which either Partner is a member if consolidated returns are filed for such affiliated group for Federal income tax purposes.

(e) Survival of Indemnities. The liability of the Lessee to make indemnification payments pursuant to this § 16 shall, notwithstanding any expiration or termination of this Lease, continue to exist until such indemnity payments are made by the Lessee. All indemnity payments under this § 16 shall be made directly to the party entitled to indemnification.

(f) Enforcement. This § 16 may be enforced by the Lessor as provided in Paragraph 17 of the Participation Agreement.

§ 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 9-1/2% 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. Interest hereunder shall be determined on the basis of a 360-day year of twelve 30-day months.

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

(a) if to the Lessor, at 130 John Street, 4th

Floor, New York, New York 10038, Attention of Corporate Trust and Agency Division; and

(b) if to the Lessee, at 1310 Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, Attention of Vice President & Treasurer;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at Mellon Square, Pittsburgh, Pennsylvania 15230, Attention of Corporate Trust Division, and to the Beneficiary in care of General Electric Credit Corporation at its address specified below and to J. P. Morgan Interfunding Corp. at 522 Fifth Avenue, New York, New York 10022, and to General Electric Credit Corporation at P. O. Box 8300, Stamford, Connecticut 06904, Attention of Loan Officer, Air/Rail Leasing.

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

Except for the Participation Agreement and the Maintenance 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.

The Lessor and the Lessee acknowledge that the Guaranty contains certain provisions regarding the consent of the Builder in the event of any variation or modification of this Lease or any waiver of any of its provisions or conditions which would either individually or cumulatively have a material adverse effect upon the Builder.

§ 20. Immunities; Satisfaction of Undertakings. Anything herein to the contrary notwithstanding, each and all of the representations, undertakings and agreements

herein made on the part of the Lessor are made and intended not as personal representations, undertakings and agreements by United States Trust Company of New York or for the purpose or with the intention of binding it personally but are made and intended for the purpose of binding only the Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the said trust company solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or responsibility is assumed hereunder by or shall at any time be enforceable against the said trust company or the Beneficiary or the Partners on account of any representation, undertaking or agreement hereunder of the Lessor or the Beneficiary or the Partners, either expressed or implied, all such personal liability, if any, being expressly waived by the Lessee and by all persons claiming by, through or under the Lessee; provided, however, that the Lessee or any person claiming by, through or under it, making claim hereunder, may look to said Estate for satisfaction of the same.

§ 21. Governmental Guarantees. In the event the United States of America or any political subdivision thereof or any agency or instrumentality of any of the foregoing shall use or permit to be used its credit, directly or indirectly, to pay, guarantee or otherwise support the Lessee's obligation to pay the purchase price of or rent for, or to so support any other financing arrangements for the acquisition of, any rolling stock used by the Lessee (other than any such support obtained prior to the first use by the Lessee of and in order to induce any person to provide or finance any such rolling stock) the Lessee shall cause to be provided for the benefit of the Lessor, the Vendor and their successors and assigns a guaranty of or other comparable commitment with respect to the Lessee's obligations under this Lease from the same entity whose credit supports such other financing arrangements, such guaranty or commitment to be provided at the same time as such other rolling stock financing arrangement becomes entitled to such protection, so that the Lessor shall at all times have the benefit of the most favorable form of governmental support for financing of rolling stock used by the Lessee as is available to any other person with respect to rolling stock used by the Lessee subject to the limitations set forth above.

§ 22. Waiver of Priority. If at any time the Lessee shall, directly or indirectly, obtain any waiver (or its equivalent) of any priority status ascertainable by or on behalf of the United States of America or the United States Railway Association which benefits any obligee of

the Lessee other than the Lessor, the Lessee shall cause all amounts payable by it hereunder and under the Maintenance Agreement to be entitled to the same benefits of such waiver (or its equivalent). It is understood that Federal legislation shall not be deemed to be a waiver (or its equivalent) within the meaning of the foregoing sentence.

§ 23. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. 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.

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

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

CONSOLIDATED RAIL CORPORATION,

by Richard T. Fry
Vice President & Treasurer

[Corporate Seal]

Attest:

Benjamin Harder
Assistant Secretary

UNITED STATES TRUST COMPANY OF
NEW YORK, as Trustee,

by Harold
Assistant Vice President

[Corporate Seal]

Attest:

Thomas B. Ziegler

SCHEDULE A TO LEASE

<u>Type</u>	<u>Builder</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>
2,250 h.p. Model B23-7 diesel-electric locomotive	General Electric Company	40	CR 1900-1939

SCHEDULE B TO LEASE

Casualty Value

<u>Semiannual Dates Following the Basic Rent Commencement Date</u>	<u>Percentage of Purchase Price</u>
Prior to First	108.31%
First	109.38
Second	110.10
Third	110.14
Fourth	110.33
Fifth	110.33
Sixth	110.17
Seventh	102.61
Eighth	101.58
Ninth	100.15
Tenth	98.51
Eleventh	88.17
Twelfth	85.98
Thirteenth	83.52
Fourteenth	80.94
Fifteenth	71.69
Sixteenth	68.91
Seventeenth	66.01
Eighteenth	62.99
Nineteenth	59.87
Twentieth	56.64
Twenty-first	53.31
Twenty-second	49.89
Twenty-third	46.37
Twenty-fourth	42.77
Twenty-fifth	39.08
Twenty-sixth	35.31
Twenty-seventh	31.46
Twenty-eighth	27.59
Twenty-ninth	23.73
Thirtieth	20.00

SCHEDULE C TO LEASE

Certificate of Acceptance

To: United States Trust Company of New York, acting as
Trustee (the "Trustee") under Trust Agreement
130 John Street
New York, New York 10038

I, the duly authorized representative for the Trustee and Consolidated Rail Corporation (the "Lessee") under the Conditional Sale Agreement and the Lease of Railroad Equipment, both dated as of April 3, 1978, respectively, do hereby certify that I inspected and accepted delivery thereunder of the following Units of Equipment:

TYPE OF EQUIPMENT: Diesel electric locomotive
MODEL: B23-7
DATE ACCEPTED:
NUMBER OF UNITS:
NUMBERED: CR

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

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

"Ownership Subject to a Conditional Sale Agreement filed under the Interstate Commerce Act, Section 20c."

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

Authorized Representative of Trustee and Lessee

BUILDER:

General Electric Company

Interstate Commerce Commission
Washington, D.C. 20423

5/2/78

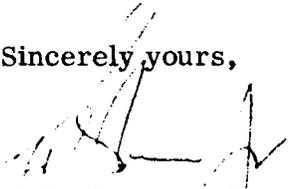
OFFICE OF THE SECRETARY

Laurance 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 **5/2/78** at **4:00pm**, and assigned recordation number(s) **9360, 9360-A, 9360-B & 9360-C**

Sincerely yours,



H.G. Homme, Jr.
Acting Secretary

Enclosure(s)

SE-30-T
(6/77)