

RECORDATION NO. 7771-A
FILED & RECORDED
FEB 19 1975 - 9 35 AM
INTERSTATE COMMERCE COMMISSION

AMENDMENT AGREEMENT, dated as of February 1, 1975, between EXCHANGE NATIONAL BANK AND TRUST COMPANY (hereinafter called the Lessor), as Trustee under a Trust Agreement dated as of December 1, 1974, with AMERICAN ROAD EQUITY CORPORATION and LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a Kentucky corporation (hereinafter called the Lessee).

WHEREAS the Lessor and the Lessee have entered into a Lease of Equipment dated as of December 1, 1974 (hereinafter called the Lease);

WHEREAS the Lease was filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act on January 13, 1975, at 2:20 p.m., and was assigned recordation number 7771; and

WHEREAS the parties hereto now desire to amend the Lease.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto hereby agree as follows:

1. The Lease is hereby amended and restated in its entirety as set forth in Annex A hereto.
2. The Lessee will promptly cause this Amendment

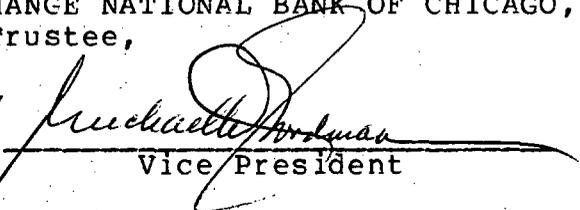
Agreement to be filed and recorded in accordance with the provisions of § 16 of the Lease.

3. This Amendment Agreement may be executed in several counterparts, such counterparts together constituting but one and the same instrument.

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

EXCHANGE NATIONAL BANK OF CHICAGO,
as Trustee,

by


Vice President

[Corporate Seal]

Attest:


Assistant Secretary
Assistant Trust Officer

LOUISVILLE AND NASHVILLE
RAILROAD COMPANY,

by



[Corporate Seal]

Attest:


Assistant Secretary

Asst. Vice President

COMMONWEALTH OF KENTUCKY,)
) ss.:
COUNTY OF JEFFERSON,)

On this *18th* day of *February*, 1975, before me personally appeared *W. H. Stier*, to me personally known, **Asst. Vice President** who being by me duly sworn, says that he is **[REDACTED]**, **[REDACTED]** of LOUISVILLE AND NASHVILLE RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said railroad company, that said instrument was signed and sealed on behalf of said railroad company by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said railroad company.

Normal J. Jones

Notary Public

[Notarial Seal]

My Commission expires *March 4, 1977*

LEASE OF RAILROAD EQUIPMENT

Dated as of December 1, 1974

between

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

and

EXCHANGE NATIONAL BANK OF CHICAGO
as Trustee under a
TRUST AGREEMENT
dated as of the date hereof with
AMERICAN ROAD EQUITY CORPORATION

LEASE OF RAILROAD EQUIPMENT dated as of December 1, 1974, between LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a Kentucky corporation (hereinafter called the Lessee), and EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association, acting as Trustee under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with American Road Equity Corporation, a Delaware corporation (said bank, so acting, being hereinafter called the Lessor, and said corporation being hereinafter called the Beneficiary).

WHEREAS the Lessor and the Lessee are entering into conditional sale agreements dated as of the date hereof with General Motors Corporation (Electro-Motive Division), a Delaware corporation, and General Electric Company, a New York corporation (each such corporation being hereinafter called a Builder), respectively (such agreements being hereinafter individually or collectively called the Security Documentation), wherein the Builders have agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (hereinafter called the Equipment);

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

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

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

terms and conditions:

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

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Documentation. The Lessor will cause 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 Security Documentation. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and

if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of Article 3 of the Security Documentation, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon 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.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 31 consecutive semiannual payments payable on May 30 and November 30 in each year, commencing May 30, 1975. The rental payment payable on May 30, 1975, shall be in an amount equal to .0298611% of the Purchase Price (as defined in the Security Documentation) of each Unit subject to this Lease for each day elapsed from the Closing Date (as defined in the Security Documentation) for such Unit to the date of such payment (each month being deemed to have 30 days) plus amounts equal to the amounts required by the Lessor to make the payments provided for in the last paragraph of Paragraph 4 of the Finance Agreement. The next 30 rental payments shall each be in an amount equal to 5.2013% of the Purchase Price of each Unit then subject to this Lease.

The rental payments hereinbefore set forth are subject to adjustment pursuant to § 9 hereof and the Participation Agreement dated as of the date hereof between the Lessee and the Beneficiary (hereinafter called the Participation Agreement). If any of the semiannual rental payment dates referred to above is not a business day the semiannual rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, or Chicago, Illinois, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the Security Documentation, subject to the limitations

contained in the last paragraph of Article 4 of the Security Documentation and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default under the Security Documentation shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Chicago clearing house funds.

§ 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 and 14 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units, or under the Security Documentation in its capacity as guarantor or otherwise, are subject to the rights of the Vendor under the Security Documentation. If an event of default should occur under the Security Documentation, the Vendor may terminate this Lease (or rescind its termination), all as provided therein.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the road number set forth in Schedule A hereto, or in the case of any Unit not there listed such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c", "Owned by a Bank or Trust Company under a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the rights of the Vendor under the Security Docu-

mentation. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect set forth in subparagraph B of § 15 hereof in respect of such statement. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of net expense (after giving effect to Federal, state and local income tax benefits accruing to the Lessor and the Beneficiary) to the Lessor and the Beneficiary for collection or other charges and will be free of net expense (after giving effect to Federal, state and local income tax benefits accruing to the Lessor and the Beneficiary) to the Lessor and the Beneficiary with respect to the amount of any local, state, federal, or foreign taxes (other than any United States federal income tax payable by the Beneficiary in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes based on such receipts which would be payable to the state and city in which the Beneficiary has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of

title under the terms hereof or the Security Documentation, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the interest of the Beneficiary or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor and the Beneficiary, adversely affect the title, property or rights of the Lessor and the Beneficiary hereunder or the Vendor under the Security Documentation. The Lessee agrees to give the Lessor notice of such contest within 30 days after institution thereof. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative provision of the Security Documentation, or the Beneficiary shall become obligated to make payment to the Lessor pursuant to any correlative provision of the Trust Agreement, not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor or the Beneficiary to fulfill completely its obligations pursuant to said provision.

In the event any returns, statements or reports with respect to impositions are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Vendor in such Units; provided, however, that the Lessor shall, with respect to any state or political subdivision thereof of the United States of America, file required returns, statements, and reports relating to sales or use taxes, and taxes, fees, and charges on or measured by Lessor's earnings or gross receipts arising from the Units, or the value added by the Lessor thereto, and remit the amount thereof and the Lessee shall reimburse the Lessor

promptly upon demand for the amount of such taxes, fees and charges.

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

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

§ 7. Payment for Casualty Occurrences; Insurance.
In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessor, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government, or returned to the Builder thereof against refund of the Purchase Price thereof in event of a claim pursuant to said Builder's warranty (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of

the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. 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. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such date:

<u>Date</u>	<u>Percentage</u>
May 30, 1975	106.72
November 30, 1975	106.72
May 30, 1976	104.06
November 30, 1976	103.96
May 30, 1977	103.54
November 30, 1977	102.85
May 30, 1978	101.87
November 30, 1978	95.57
May 30, 1979	94.04
November 30, 1979	92.25
May 30, 1980	90.26
November 30, 1980	83.07
May 30, 1981	80.77
November 30, 1981	78.31
May 30, 1982	75.69
November 30, 1982	67.87
May 30, 1983	64.95
November 30, 1983	61.87
May 30, 1984	58.65
November 30, 1984	55.27
May 30, 1985	51.77
November 30, 1985	48.11
May 30, 1986	44.28
November 30, 1986	40.45
May 30, 1987	36.52

<u>Date</u>	<u>Percentage</u>
November 30, 1987	32.50
May 30, 1988	28.38
November 30, 1988	24.15
May 30, 1989	19.80
November 30, 1989	15.34
May 30, 1990	15.00

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 15% of the Purchase Price of such Unit. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessee shall be entitled to recover possession of such Unit.

In the event of the requisition for use by the United States Government (hereinafter called the Government) of any Unit during the term of this Lease or any renewal thereof all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease 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 Equipment to the Lessor at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it and the benefits thereof shall be payable to the Vendor, the Lessor and the Lessee, as their interests may appear, so long as the indebtedness, if any, evidenced by the Security Documentation shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice of cancelation or material change in coverage to the Lessor and the Vendor and (ii) name the Lessor and the Vendor as additional named insureds as their respective interests may appear and shall provide that in respect of the interests of the Lessor and the Vendor in such policies, the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Lessor and the Vendor) and shall insure the Lessor and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Lessor or the Vendor). Any insurance proceeds (less expenses of collection) as the result of insurance carried by the Lessee, condemnation payments received by the Lessor in respect of Units suffering a Casualty Occurrence or refund of Purchase Price by a Builder shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this § 7. If the Lessor shall receive any such insurance proceeds, condemnation payments or refund after the Lessee shall have made payments pursuant to this § 7 without deduction for such insurance proceeds, condemnation payments or refund, the Lessor shall pay such proceeds, condemnation payments or refund 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, condemnation payments or refund 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.

§ 8. Reports. On or before March 31 in each year, commencing with the calendar year 1976, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documentation, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the Security Documentation have been preserved or replaced. The Lessor and the Beneficiary 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 Beneficiary may request during the continuance of this Lease.

The Lessee will furnish the Lessor and the Vendor (i) within 45 days after the end of each of the first three quarterly fiscal periods of the Lessee, balance sheets of the Lessee as of the close of such periods, together with the related statements of income and surplus all in reasonable detail and certified by the Treasurer of the Lessee and (ii) within 90 days after the close of each fiscal year of the Lessee, balance sheet of the Lessee and its consolidated subsidiaries as of the close of such fiscal year, together with the related consolidated statements of income, surplus and source and application of funds for such fiscal year, all in reasonable detail and certified by Haskins & Sells or other recognized national firm of independent public accountants acceptable to the Lessor and the Vendor, including their certificates and accompanying comments, (iii) within 90 days after the close of each fiscal year of the Lessee, a certificate of the Lessee, signed by a principal financial officer or a vice president familiar with this Lease, to the effect that the signer has reviewed the relevant terms of this Lease and the Security Documentation and has made, or caused to be made under his supervision, a review of the transactions and condition of the Lessee during the preceding fiscal year, and that such review has not disclosed the existence during such period, nor does the signer have knowledge of the existence as at the date of such certificate, of any condition or event which consti-

tutes an Event of Default or which, after notice or lapses of time or both, would constitute an Event of Default or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action the Lessee has taken or is taking or proposes to take with respect thereto, (iv) promptly upon the filing of the same, the Railroad Annual Report Form R-1 (or any form substituted therefor) of the Lessee and the annual report under the Securities Exchange Act of 1934 of the Lessee for each fiscal year of the Lessee, and (v) from time to time such other information as the Lessor may reasonably request. The Lessee will furnish the Lessor from time to time on request such information as the Lessee or the Lessor may be required to furnish to any person pursuant to the Security Documentation.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A of the Security Documentation; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages;

or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documentation.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition.

Any and all additions to any Unit (except any communications, signal and automatic control equipment or devices having a similar use which have been added to such Unit by the Lessee, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body), and any and all parts installed on and additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien,

charge, security interest or encumbrance (except for those created by the Security Documentation) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself. The Lessee shall not permit any special device or assembly to be attached or affixed to any Unit which may not be readily removed from such Unit without materially impairing such Unit or the value thereof unless such special device or assembly is to be considered an accession to such Unit.

The Lessee agrees to indemnify, protect and hold harmless the Lessor, the Beneficiary and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default or an Event of Default under the Security Documentation, the Finance Agreement or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease. 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.

In the event that there are any losses, liabilities or expenses arising out of or resulting from the Investments made pursuant to Paragraph 1 of the Finance Agreement, including, but not limited to, any deficiency in respect thereof, the Lessee agrees that each rental payment due thereafter in respect of Units acquired after such deficiency arose shall be increased by the same amount, which amount shall, in the reasonable opinion of the Beneficiary, cause the Beneficiary's net return (after giving effect to the payment of such losses, liabilities or expenses) to equal the net return (computed on the same assumptions used by the Beneficiary in originally evaluating this transaction) that would have been available to the Beneficiary if the Lessor had not been required to pay such losses, liabilities or expenses.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date

of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 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 seven 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 Security Documentation, and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

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

E. any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Security Documentation 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 or under the Security Documentation), 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 and under the Security Documentation shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

F. an event of default set forth in Article 16 of the Security Documentation shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder;

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 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 and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) 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 (y) 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 6.3% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental, and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor and the Beneficiary 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 and the Beneficiary, be equal to all or such portion of the Investment Credit (as defined in § 17 hereof) lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor and/or the Beneficiary as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 17 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 or Beneficiary's net return under this Lease to be equal to the net return that would have been available to the Lessor or the Beneficiary if it had been entitled to utilization of all or such portion of the ADR Deduction and the Interest Deduction (as such deductions are defined in § 17 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 § 17 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 and the Beneficiary for any interest, penalties or additions to tax incurred in connection with such loss, failure to claim, inability to claim, disallowance or recapture; or

(c) notwithstanding any termination pursuant to paragraph (b) above, sell the Units or any part thereof at public or private sale, as the Lessor may determine, free and clear of any rights of the Lessee or its successors or assigns and without any duty to account to the Lessee with respect to such sale or for the proceeds thereof (except to the extent required by paragraph (d) below if the Lessor elects to exercise its rights under said paragraph), in which event the Lessee's obligation to pay rental hereunder accruing after the date of such sale shall terminate (except to the extent that rental is to be included in computations under paragraph (d) or (e) below if the Lessor elects to exercise its rights under either of said paragraphs); or

(d) if the Lessor shall have sold the Units pursuant to paragraph (c) above, the Lessor, in lieu of exercising its rights under paragraph (b) above with respect to such Units, may, if it shall so elect, demand that the Lessee pay to the Lessor and the Lessee shall pay to the Lessor, as liquidated damages for loss of a bargain and not as a penalty, any unpaid rental for

such Units for periods up to and including the end of the semiannual lease period next preceding the lease period in which such sale occurs, plus an amount equal to the excess of (x) the sum of (A) the Casualty Value of such Units as of the last rental payment date for which rental was actually paid, plus (B) interest on such Casualty Value computed at the rate of 15% per annum for the period from such rental payment date to the date of payment of liquidated damages under this paragraph over (y) the proceeds from such sale; or

(e) if, within 60 days following the date of termination of this Lease pursuant to paragraph (b) above and notwithstanding such termination, and after the exercise by the Lessor during such period of its best efforts to sell the Units, the Lessor is unable to sell the Units, then the Lessor, in lieu of exercising its rights under paragraph (b) above with respect to such Units, may, if it shall so elect, demand that the Lessee pay to the Lessor and the Lessee shall pay to the Lessor, as liquidated damages for loss of a bargain and not as a penalty, any unpaid rental for such Units for periods up to and including the end of the semiannual lease period next preceding the lease period in which the close of such 60 day period occurs, plus an amount equal to the excess of (x) the sum of (A) the Casualty Value of such Units as of the last rental payment date for which rental was actually paid, plus (B) interest on such Casualty Value computed at the rate of 15% per annum for the period from such rental payment date to the date of payment of liquidated damages under this paragraph over (y) the fair market value of the Units.

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

The failure of the Lessor to exercise the rights

granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner and at the usual speed place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

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

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

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and author-

ity, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 9, 10 and 17 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively).

So long as the Lessee shall not be in default under this Lease or under the Security Documentation in its capacity as guarantor or otherwise, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Security Documentation, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease or under the Security Documentation in its capacity as guarantor or otherwise, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of rail-

road over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease and the Security Documentation; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Security Documentation) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

§ 13. Renewal Option; Right of First Refusal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term or any extended term of this Lease, as the case may be, 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 two additional one-year periods commencing on the scheduled expiration of the original term or any extended term of this lease, as the case may be, provided that no such extended term extends beyond May 30, 1992, at a "Fair Market Rental" payable in semiannual payments on May 30 and November 30 in each year of such extended term.

Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to

lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor may select with the approval of the Lessee, or failing such approved selection, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

Subject to the leasehold interest of the Lessee hereunder, the Lessor agrees that (provided no default hereunder shall have occurred and be continuing) it will not sell such Units, or any of them, unless the Lessor shall have given the Lessee at least 30 business days' prior written notice of such sale, specifying the sale price and terms of such sale, and the Lessee shall have had the opportunity to purchase such Unit or Units at the same price and on the same terms as specified in such notice. The foregoing right of the Lessee shall expire 90 days after the termination of this Lease or any renewal thereof.

Upon payment of the purchase price of any Unit, 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.
As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit not purchased by the Lessee, 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 six months and transport the same, at any time within such six-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; provided, however, that the foregoing clause shall not in any way effect the survival of the indemnities of the Lessee under this Lease which continue after the termination of the Lease or relieve the Lessee of its obligations pursuant to

§ 7 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence while this Lease is in effect.

§ 15. Representations and Warranties; Opinion of Counsel. The Lessee represents and warrants that:

(i) the Lessee is a corporation duly organized and validly existing in good standing under the laws of the Commonwealth of Kentucky and is duly qualified and authorized to do business wherever necessary to carry on its present business and operations and to own its properties and to perform its obligations under this Lease, the Security Documentation, the Participation Agreement and the Guaranty Agreement dated as of the date hereof between the Lessee and the Lessor (hereinafter called the Guaranty Agreement);

(ii) the Lessee has the full power, authority and legal right to enter into and perform its obligations under this Lease, the Security Documentation, the Participation Agreement and the Guaranty Agreement and the execution, delivery and performance of this Lease, the Security Documentation, the Participation Agreement and the Guaranty Agreement have been duly authorized by all necessary corporate action on the part of the Lessee, do not require any stockholder approval or approval or consent of any trustee or holders of any indebtedness or obligations of the Lessee, or such required approvals and consents have heretofore been duly obtained, certified copies thereof having been delivered to the Lessor, and do not contravene any law binding on the Lessee or contravene the certificate of incorporation or by-laws of the Lessee or any indenture, mortgage, contract or other agreement to which the Lessee is a party or by which the Lessee is bound as guarantor or otherwise, or any law, governmental rule, regulation or order;

(iii) the Lessee is not a party to any agreement or instrument or subject to any charter or other corporate restriction which will materially adversely affect its financial condition, business or operations or the ability of the Lessee to perform its obligations under this Lease, the Security Documentation, the Participation Agreement or the Guaranty Agreement;

(iv) neither the execution and delivery by the Lessee of this Lease, the Security Documentation, the

Participation Agreement and the Guaranty Agreement nor the consummation of any of the transactions by the Lessee contemplated hereby or thereby, require the consent or approval of, the giving of notice to, or the registration with, or the taking of any other action in respect of, the Interstate Commerce Commission or any other federal, state or foreign governmental authority or agency, except the filing and recording of such documents with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act;

(v) this Lease, the Security Documentation, the Participation Agreement and the Guaranty Agreement constitute valid and legally binding obligations of the Lessee enforceable against the Lessee in accordance with their respective terms;

(vi) there are no pending or threatened actions or proceedings before any court or administrative agency which will materially adversely affect the condition, business or operations of the Lessee and its subsidiaries, taken as a whole, or the ability of the Lessee to perform its obligations under this Lease, the Security Documentation, the Participation Agreement or the Guaranty Agreement;

(vii) the financial statements contained in the Railroad Annual Report Form R-1 (or Form A, as the case may be) of the Lessee for the five fiscal years ended December 31, 1973 (copies of which Forms and statements have been furnished the Lessor), correctly set forth the financial condition of the Lessee as of the dates, and the results of the operations thereof for the periods, covered thereby, and since December 31, 1973, there has been no material adverse change (or any development involving a prospective material adverse change) in such condition or operations and nothing has occurred which will materially adversely affect the ability of the Lessee to carry on its business and operations or to perform its obligations under this Lease, the Security Documentation, the Participation Agreement or the Guaranty Agreement.

On each Closing Date the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect set forth

in clauses (i), (ii), (iv) and (vi) of the preceding paragraph, and further to the effect that:

A. the Security Documentation, this Lease, the Participation Agreement and the Guaranty Agreement have been duly authorized, executed and delivered by the Lessee and constitute legal, valid and binding agreements of the Lessee, enforceable in accordance with their respective terms;

B. the Security Documentation (and any assignment thereof) and this Lease (and any assignment hereof) have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Vendor's and the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government or agency thereof is necessary in order to protect the interests of the Vendor or the Lessor in and to the Units in the United States of America; and

C. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Vendor's or Lessor's right, title and interest therein; provided, however, that such liens may attach to the leasehold interest of the Lessee hereunder in and to the Units.

§ 16. Recording. The Lessee, at its own expense, will cause this Lease, the Security Documentation and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Documentation and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation and the assignment thereof to the

Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 17. Federal Income Taxes. The Beneficiary, as the owner of the Units for Federal income tax purposes, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including, without limitation, the maximum depreciation deduction with respect to the Units authorized under section 167 of the Code based on the aggregate Purchase Price of the Units utilizing the 12-year depreciable life prescribed for the Units in the Asset Guideline Class No. 00.25 in accordance with section 167(m) of the Code employing the double declining method of depreciation, switching to the sum-of-the-years-digits method when most beneficial to the Beneficiary (such deduction being herein called the ADR Deduction), deductions with respect to interest payable under the Security Documentation pursuant to section 163 of the Code (such deduction being herein called the Interest Deduction), and the 7% investment credit in 1975 (herein called the Investment Credit) with respect to the aggregate Purchase Price of the Units pursuant to section 38 and related sections of the Code.

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 or which would increase the amount of rentals required to be taken into income by the Beneficiary over the amount specified to be payable under this Lease on the dates due hereunder, except as specifically provided in this Lease, and that each of such corporations will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Beneficiary such records as will enable the Beneficiary to determine the extent to which it is entitled to the benefit of the Investment Credit and the ADR Deduction with respect to the Units.

The Lessee represents and warrants that (i) all the Units constitute property the full Purchase Price of which qualifies for the Investment Credit under section 50 of the Code; (ii) at the time the Beneficiary becomes the owner of the Units for Federal income tax purposes, the Units will constitute "new section 38 property" within the meaning of sections 46 and 48 of the Code and at the time the Beneficiary becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code from commencing with the Beneficiary; (iii) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code, and the Lessee will not at any time during the term of this Lease use or fail to use any Unit in such a way as to disqualify it as "section 38 property" within the meaning of section 48(a) of the Code; (iv) for Federal income tax purposes, all amounts includible in the gross income of the Beneficiary with respect to the Units and all deductions allowable to the Beneficiary with respect to the Units will be treated as derived from, or allocable to, sources within the United States; and (v) the Lessee will maintain sufficient records to verify such use, which records will be furnished to the Beneficiary within 30 days after receipt of a written demand therefor.

§ 18. Interest on Overdue Rentals. Anything to the contrary herein 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 15% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 19. 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 South LaSalle Street, Chicago, Illinois 60690, with a copy to the Beneficiary at The American Road, Dearborn, Michigan 48121, Attention of Vice President, CIR Financing, and

(b) if to the Lessee, at 908 West Broadway, Louisville, Kentucky 40201, Attention of the Treasurer;

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

§ 20. 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 Guaranty 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.

§ 21. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Assignment hereof to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

§ 23. Immunities; No Recourse. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by Exchange National Bank of Chicago or for the purpose or with the intention of binding said bank personally, but are made and intended for the

purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by said bank solely in the exercise of the powers expressly conferred upon said bank as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank, or the Beneficiary or on account of any representation, undertaking or agreement of the Lessor or the Beneficiary, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

§ 24. Agreements for Benefit of Beneficiary.

All rights of the Lessor hereunder (including, but not limited to, its rights under §§ 6, 7, 9, 10 and 17 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Beneficiary and any of the Beneficiary's assigns under the Trust Agreement.

§ 25. Miscellaneous. The Lessee will cause to be furnished to the Vendor promptly after each Closing Date (as defined in the Security Documentation) a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on the Conditional Sale Indebtedness (as defined in the Security Documentation) on each Payment Date (as defined in the Security Documentation) and promptly after any Casualty Occurrence any such revised schedule required by Article 7 of the Security Documentation.

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

LOUISVILLE AND NASHVILLE RAILROAD
COMPANY,

by

Vice President, Secretary
and Treasurer

[Corporate Seal]

Attest:

Assistant Secretary

EXCHANGE NATIONAL BANK OF CHICAGO,
as Trustee,

by

Senior Vice President

[Corporate Seal]

Attest:

Assistant Trust Officer

SCHEDULE A TO LEASE

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>
2,000 hp. diesel-electric locomotive, General Motors model SD-38-2	5	4500-4504
1,500 hp diesel-electric locomotive, General Motors model MP-15	10	5030-5039
2,250 hp. diesel-electric locomotive, General Electric model U-23-B	20	2805-2824