RECORDATION NO. 10126 Filed 1425

FEB 21 1979 -10 30 AM

INTERSTATE COMMERCE COMMISSION

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INTERSTATE COMMERCE COMMISSION

LOUISVILLE & NASHVILLE RAILROAD COMPANY

908 W. BROADWAY • LOUISVILLE, KENTUCKY 40203 TELEPHONE (502) 587-5235

LAW DEPARTMENT

DAVID M. YEARWOOD
GENERAL ATTORNEY

February 20, 1979

No. 9-053A022

Date FEB 22 1979

Fee $50

ICC Washington, D. C.

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

RECORDATION NO. 10126-C Filed 1425

FEB 21 1979 -10 30 AM

INTERSTATE COMMERCE COMMISSION

Dear Mr. Secretary:

Counterparts — David M. Yearwood

There is transmitted to you herewith for filing and recordation, pursuant to 49 U.S.C. Section 11303, duly executed counterparts of an Agreement and Assignment dated as of January 1, 1979 between General Motors Corporation (Electro-Motive Division), an assignor, whose address is LaGrange, Illinos 60525, General Electric Company, an assignor, whose address is 2901 East Lake Road, Erie, Pennsylvania 16531, and Mercantile-Safe Deposit and Trust Company, as Agent, assignee, whose address is P. O. Box 2258, Two Hopkins Plaza, Baltimore, Maryland 21203.

By this Agreement and Assignment, General Motors Corporation (Electro-Motive Division) and General Electric Company assigned their respective rights, titles and interests in and to the equipment covered by that Conditional Sale Agreement dated as of January 1, 1979, which is being filed concurrently herewith, to Mercantile-Safe Deposit and Trust Company, as Agent.

The prescribed recordation fee for said Agreement and Assignment is enclosed.

This letter of transmittal is signed by an officer of Louisville and Nashville Railroad Company designated for the purpose hereof who has knowledge of the matters set forth herein.

After recordation, please return the recorded counterparts of said Agreement and Assignment to:

Mr. David M. Yearwood
General Attorney
Louisville and Nashville Railroad Company
908 West Broadway
Louisville, Kentucky 40203

I.C.C. RECORDATION BR.
FEB 21 10 54 AM '79
RECEIVED

Respectfully yours,

Louisville and Nashville Railroad Company

By David M. Yearwood
David M. Yearwood
General Attorney

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Mr. David M. Yearwood
General Attorney
Louisville and Nashville Railroad Company
908 West Broadway
Louisville, Kentucky 40203

Dear Mr. Yearwood:

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 February 21, 1979 at 10:30 AM, and assigned recordation number(s) 10126, 10126-A, 10126-B, And 10126-C

Sincerely Yours,

H.G. Homme, Jr.,
Secretary

Enclosure(s)

SE-30-T
(2/78)

LOUISVILLE & NASHVILLE RAILROAD COMPANY

908 W. BROADWAY • LOUISVILLE, KENTUCKY 40203 TELEPHONE (502) 587-5235

LAW DEPARTMENT

DAVID M. YEARWOOD
GENERAL ATTORNEY

May 3, 1979

Ms. Mildred Lee
Room 2227
Recordation Section
Interstate Commerce Commission
12th and Constitution Ave., N. W.
Washington, D. C. 20423

Dear Ms. Lee:

Attached for your file are the letters of transmittal you requested and copies of the fee receipts.

This recordation occurred during the "big snow".

Receipt is acknowledged of recorded counterparts of the documents referred to.

Please advise if you need anything further.

Very truly yours,

David Yearwood

David M. Yearwood

Attachments

Nos. same as w10126

10126 -B
RECORDATION NO. ..... Filed 1425

FEB 21 1979 - 10 30 AM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of January 1, 1979

between

LOUISVILLE AND NASHVILLE RAILROAD COMPANY,

and

FIRST NATIONAL BANK AND TRUST COMPANY OF EVANSTON,
as Trustee,

LEASE OF RAILROAD EQUIPMENT dated as of January 1, 1979, between LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a Kentucky corporation (the "Lessee"), and FIRST NATIONAL BANK AND TRUST COMPANY OF EVANSTON, not in its individual capacity but solely as Trustee (the "Lessor") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with CROCKER NATIONAL BANK and CITY NATIONAL BANK (hereinafter called collectively the Beneficiaries and severally a Beneficiary).

WHEREAS the Lessor is entering into a CSA dated as of the date hereof (the "CSA") with General Motors Corporation (Electro-Motive Division) and General Electric Company (hereinafter called severally the "Builder" and collectively the "Builders"), wherein each Builder has agreed to manufacture, sell and deliver to the Lessor the units of its railroad equipment described in Schedule A hereto (the "Units");

WHEREAS each Builder is assigning its interests in the CSA pursuant to an Agreement and Assignment (the "Assignment") to Mercantile-Safe Deposit and Trust Company, acting as Agent (hereinafter together with its successors and assigns called the "Vendor"), under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessee, the Lessor, the Beneficiaries and the parties named in Schedule A thereto;

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

WHEREAS the Lessor will assign this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement (the "Lease Assignment") and the Lessee will consent to the Lease Assignment pursuant to a Lessee's 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, 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 CSA, or against any 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 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 in accordance with the Specifications (as defined in the CSA), to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance (the "Certificate of Acceptance") in

accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as provided in the last 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 excluded from the CSA shall be null and void and ineffective to subject such Unit to this Lease.

§ 3. Rentals. The Lessee agrees to pay the Lessor, as rental for each Unit subject to this Lease, (i) 2 interim payments and (ii) 30 consecutive semiannual payments on February 20 and August 20 in each year, commencing February 20, 1980. The two interim payments shall consist of a "Fixed Interim Payment" payable in advance on the later of the final closing date or August 30, 1979, and a "Contingent Interim Payment" payable on the Cut-Off Date (as defined in Paragraph 9 of the Participation Agreement). The Contingent Interim Payment due on the Cut-Off Date shall be an amount equal to the amount required to be paid by the Lessor pursuant to clause (a) of the last paragraph of Paragraph 9 of the Participation Agreement. The Fixed Interim Payment shall be an amount equal to ~~3.504260~~ 3.60907% of the Purchase Price (as defined in the CSA) of each Unit then subject to this Lease. The next 30 semiannual rental payments shall each be an amount equal to 4.181277% of the Purchase Price of each Unit then subject to this Lease. It is agreed that the aggregate of the semiannual rental payments payable pursuant to this Section 3 on each rental payment date shall in no event be less than the principal and interest payment due on each such date pursuant to the third and fourth paragraphs of Article 4 of the CSA. The Lessee will pay to the Lessor as additional rental an amount equal to any deficiency amount required to be paid by the Lessor pursuant to the first paragraph of Paragraph 9 of the Participation Agreement.

The foregoing semiannual rental payment rates have been calculated on the assumption that the Units will have been delivered and accepted on or prior to June 30, 1979, and on the further assumption that the Units will have been settled for on the dates and in the amounts as

follows:

Assumed Settlement Date	Assumed Settlement Amount
March 1, 1979	$ 5,600,000
March 15, 1979	2,750,000
March 22, 1979	5,600,000
April 12, 1979	12,330,000
May 10, 1979	8,840,000
Total	$35,120,000

If for any reason Units are delivered and accepted after June 30, 1979, or any Units are settled for on any dates and in amounts other than the Assumed Settlement Dates and Assumed Settlement Amounts set forth above, 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 in order that the Owners' net return (computed on the same assumptions, including, without limitation, tax rates, as were utilized by the Owners in originally evaluating this transaction) will not be increased or decreased by reason thereof; provided, however, that no such adjustments of the rentals or the cash values shall reduce the amounts thereof below those which are necessary to satisfy the obligations of the Lessor under the third and fourth paragraphs of Article 4 and Article 7 of the CSA and that a schedule of such rentals will be provided to the Lessee and the Lessor promptly after the computation thereof.

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 the State of California, Baltimore, Maryland, or New York, New York, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, except as

otherwise specifically provided in Paragraph 1 of the Lease Assignment, at the principal office of the Vendor until the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment (as defined in the CSA), together with interest and all other payments required by the CSA, for the account of the Lessor in care of the Vendor, with instructions to the Vendor (subject to the provisions of the Consent) 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. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Baltimore or New York Clearing House funds or as otherwise provided in the Lease Assignment and the Consent, by 11:00 a.m., local time, on the date when and in the city where such payment is due.

§ 4. Term of Lease. The term of this Lease as to each Unit shall consist of an interim lease term commencing on the date of delivery and acceptance of such Unit hereunder and terminating on December 31, 1979, and a base lease term commencing on January 1, 1980, and terminating on December 31, 1994. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 3, 6, 7, 9 and 14 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the 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.

§ 5. Identification Marks. The Lessee will cause at its expense 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 WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by the Vendor, with appropriate

changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's ownership and Vendor's security title to and interest in such Unit and the rights of the Lessor under this Lease and of the rights of the Vendor under the 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, obliterated or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to such effect. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

Except as provided in the 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. (a) Intended Tax Benefits. In entering into the Trust Agreement and the transaction contemplated thereby (the "Transaction"), it is the intention of the Lessor and the Beneficiaries that the Transaction will result in making available to the Beneficiaries the following tax benefits (the "Tax Benefits") for the purpose of determining their liability for Federal, state and local income taxes:

(i) this Lease constitutes a true lease for tax purposes;

(ii) the trust created by the Trust Agreement (the "Trust") is the lessor and the Lessee is the lessee under this Lease;

(iii) the Trust will be taxable as a partnership subject to Subchapter K of Chapter 1 of the Internal Revenue Code of 1954, as amended to the date hereof (the "Code"), and shall be treated as the owner of the Units and the Beneficiaries shall be treated as the partners of the Trust and shall each be entitled to take into account on its Federal, state and local income tax returns its pro rata share (in accordance with its percentage interest in the Trust) of all

items of income, gain, loss, deduction or credit of the Trust;

(iv) the Trust as a partnership is entitled pursuant to Section 163 of the Code and applicable provisions of state and local law to deduct when paid or accrued the interest payable by the Lessor under the CSA in computing their taxable income (the "Interest Deduction");

(v) the Beneficiaries are entitled to their pro rata shares of the investment tax credit pursuant to Section 38 and related Sections of the Code, equal to 10% of the entire Purchase Price of the Units, such Investment Credit to be available to the Beneficiaries for their taxable year ending December 31, 1979 (the "Investment Credit");

(vi) in computing their taxable income, the Trust as a partnership is entitled to the maximum depreciation deduction pursuant to Section 167 of the Code with respect to the entire Purchase Price of the Units (i) over an asset depreciation range of twelve years for Federal tax purposes (and over a period of fifteen years for state and local tax purposes), as property described in Asset Guideline Class No. 00.25 as set forth in Rev. Proc. 77-10; (ii) using the 200% declining balance method with a change, not requiring the consent of the Commissioner, to the sum of the years-digits method when most beneficial to the Trust; (iii) employing the modified half-year convention described in Regulation § 1.167(a)-11(c)(2) (iii) for the taxable year in which the units are delivered; (iv) taking into account a salvage value of zero; and (v) based on the assumption that each Unit is placed in service on the date on which it is accepted by the Lessee on behalf of the Lessor pursuant to the Lease but not later than December 31, 1979 (the "Depreciation Deduction");

(vii) the Beneficiaries shall be entitled to treat each item of income, gain, loss, deduction and credit with respect to the Transaction as derived from or allocable to sources within the United States; and

(viii) the Beneficiaries are entitled to claim their pro rata share of the interest and depreciation deduction to which the Trust, as a partnership, is entitled.

(b) Specific Tax Indemnification. The Lessee agrees that the Beneficiaries are the only persons entitled to the Tax Benefits and that neither the Lessee nor any

corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time during the term of this Lease or any extended term hereof take any action or fail to take any action or file any returns, certificates or other documents inconsistent with the Beneficiaries' right to obtain the benefit of the foregoing contemplated Tax Benefits except that, subject to the provisions of this § 6, the Lessee may take such action as may be deemed by the Lessee to be necessary in consequence of, and file returns in connection with, the de minimis use of the Units outside the United States, and that each such corporation will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee further agrees that it will make available for inspection and copying by the Lessor and each of the Beneficiaries appropriate financial data which any one of them may reasonably request.

The Lessee further agrees that by not later than the First Delivery Date (as defined in the Participation Agreement), it will deliver, or cause to be delivered, to the Beneficiaries and the Lessor an opinion addressed to the Beneficiaries of an appropriate officer or engineer of the Lessee satisfactory in form and substance to the Beneficiaries that the Units will have a useful life of at least 22-1/2 years, that the Units will have a fair market value at the end of the 17-year fixed rental term of this Lease (including the 2-year fixed rate renewal term provided for in § 13 of this Lease) of at least 20 percent of the total acquisition cost (including the Purchase Price) thereof, without including in such value any increase or decrease for inflation or deflation during such term of this Lease and after subtracting from such value any cost to the Lessor or the Beneficiaries for removal and delivery of possession of the Units to the Lessor or the Beneficiaries at the end of such term of this Lease, and that it is reasonable to expect that at the expiration of such term of this Lease the Units will be useful to or usable by the Beneficiaries for purposes other than continued leasing or transfer to a member of the lessee group within the meaning of Rev. Proc. 76-30.

The Lessee represents and warrants that (i) at the time the Lessor becomes the owner of the Units, the Units will qualify as "new section 38 property" within the meaning of Sections 48(b) and 167(c)(2) of the Code; (ii) at the time the Lessor becomes the owner of the Units, the Units will not have been used by the Lessee or any related person so as to preclude "the original use of such property" within the

meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (iii) at the time the Lessor becomes the owner of the Units, no investment credit, depreciation or other tax benefits will have been claimed by the Lessee or any related person with respect to the Units; (iv) at all times during the term of this Lease, the Units will constitute "section 38 property" within the meaning of Section 48(a) of the Code; (v) the Lessee will not claim that it is the owner of the Units at any time prior to the exercise by the Lessee of any right of first refusal to purchase the Units granted to the Lessee under this Lease; (vi) the Lessee will maintain records to verify the use of the Units which records or copies thereof will be furnished to the Lessor as is reasonable or necessary within 30 days after receipt of a written demand therefor; (vii) the basis of each Unit under Section 167(g) of the Code is at least equal to the Purchase Price thereof and the full basis of the Units qualifies for the 10% Investment Credit under Section 50 and related sections of the Code; and (viii) each Unit will be placed in service on the date such Unit becomes subject to this Lease.

If, for any taxable year, either of the Beneficiaries shall not have, or shall lose the right to claim or shall suffer a disallowance of or shall be required to recapture, all or any portion of the Tax Benefits with respect to all or part of any Unit as the result of (a) the sale or other disposition of any Unit or the interest of either of the Beneficiaries therein after the occurrence of an Event of Default under this Lease, (b) an amendment, modification, repeal or other change of the tax law or regulations enacted or promulgated, and effective, prior to the date of delivery of such Unit, (c) the incorrectness in law or in fact of any representation or warranty made by the Lessee (including, without limitation, those made in the preceding paragraph of this subsection (b)), or the breach by the Lessee of any of its agreements hereunder, or the actual inaccuracy or incorrectness of the opinion (or of any statement therein) delivered pursuant to the second paragraph of this subsection (b), (d) the delivery in 1980 of any Unit, or any other act or failure to act by the Lessee or any sublessee or other user of such Unit or by any manufacturer of a Unit (regardless of whether any such act or failure to act is permitted or required pursuant to any document connected with the Transaction), then in any such case the rental applicable to the Units as provided in this

Lease shall, commencing on the first rental payment date following the date on which the Lessor or any Beneficiary gives the Lessee written notice of its liability under this subsection (b), and subject to the provisions for legal or other appropriate action under the 10th and 11th paragraphs of this subsection (b), be increased by such amount, after taking into account interest and penalties paid by the Beneficiaries, as shall be required, in the reasonable opinion of the Beneficiaries, to cause the Beneficiaries' after-tax economic and accounting return on and rate of recovery of investment and the annual net cash flow (computed on the same assumptions as utilized by the Beneficiaries in originally entering into this transaction) (the "Net Return") in respect of such Unit to be no less than such Net Return would have been had the Tax Benefits been wholly available. In the event that this Lease is terminated with respect to any Unit prior to the time the Lessee is obligated to make payments to the Beneficiaries as set forth in the preceding sentence, then the Lessee shall pay to the Beneficiaries as additional rental, in lieu of such payment or payments, on or before 30 days after the date on which the Lessor or any Beneficiary gives the Lessee written notice of its liability under this subsection (b), and subject to the provisions for legal or other appropriate action under the 10th and 11th paragraphs of this subsection (b), such lump sum as shall be required, in the reasonable opinion of the Beneficiaries, to cause the Net Return in respect of such Unit hereunder to be no less than such Net Return would have been had the Tax Benefits been wholly available.

If either Beneficiary shall not be entitled to treat any item of income, gain, loss, deduction or credit with respect to any Unit as derived from, or allocable to, sources within the United States, then the Lessee shall pay to such Beneficiary, as additional rental, an amount which, after deduction of any additional tax liability or liabilities in respect of the receipt of such amount determined, shall be equal to the foreign tax credits which such Beneficiary would have been allowed as a credit against tax with respect to such taxable year if such Beneficiary had not participated in the Transaction and which were not so allowed in such taxable year by reason of the Lessee's use of such Units outside of the United States. The Lessee will maintain records to verify its use of the Units outside of the United States, which use shall be de minimis, and the Lessee shall make available for inspection and furnish such records or

copies thereof to the Lessor or to either of the Beneficiaries as is reasonable or necessary for tax audit purposes, upon receipt of 30 days' written notice.

For purposes of this § 6, in determining the extent to which a Beneficiary is allowed a credit for any foreign tax against its income tax liability, any recomputation of the rental payable by the Lessee pursuant to this subsection (b) will be based on the assumption that credit is allowed for all other foreign taxes claimed as credits for the taxable year in question before credit is allowed for any foreign taxes indemnified hereunder which are claimed as credits for such year.

If, with respect to any Unit, there is (i) a modification, amendment, repeal or other change of or to the tax law which is enacted and effective prior to the delivery of such Unit and which alters the Federal or state income tax rates applicable to the Beneficiaries; or (ii) an amendment, modification, repeal or other change of the tax law or regulations enacted in the calendar year such Unit is delivered and whose effective date is on or prior to the date that such Unit is delivered which change increases the Tax Benefits to which the Beneficiaries are entitled, then in any such case the rental payments under this Lease commencing with the first date provided in this Lease for payment of installments of rental thereunder following the date on which such altered tax rate or other change in law is applicable to the Beneficiaries shall be increased or reduced to the amount which, in the reasonable opinion of the Beneficiaries, shall cause the Net Return of the Beneficiaries to be substantially the same as such Net Return would have been had there not been such an altered tax rate or other change in law (and in the case of a change described in clause (ii), the definition of Tax Benefits shall be changed accordingly); provided that the installments of rental pursuant to this Lease shall in no event be reduced below the amounts required to discharge the Indebtedness (as defined in the CSA) in accordance with the terms of the CSA and any such reduction shall be subject to the reconfirmation of the tax opinion referred to in Paragraph 8(a)(ii) of the Participation Agreement.

The Lessee acknowledges that the Schedule of Casualty Values attached as Schedule B to this Lease has been computed on the assumption that the Beneficiaries shall be entitled to the Tax Benefits. In the event the Lessee becomes obligated to pay additional rental to the Beneficiaries pursuant to this subsection (b), such Schedule of

Casualty Values shall be revised as may be necessary in the reasonable opinion of the Beneficiaries so that the amount payable by the Lessee in connection with any Casualty Occurrence shall be sufficient to cause the Net Return to be the same as such Net Return would have been upon payment of Casualty Value had the Tax Benefits been allowed in full; provided that the Casualty Values under this Lease shall in no event be reduced below amounts required (when taken together with rentals then payable) to discharge the full unpaid portion of the Indebtedness and interest accrued thereon to the date on which any Casualty Value shall be due and payable under this Lease. The revised Schedule of Casualty Values shall be applied to any payment of Casualty Values paid after the liability of the Lessee hereunder shall become fixed as hereinafter provided regardless of the date of the Casualty Occurrence. Furthermore, with respect to any previous payment of Casualty Value under this Lease by the Lessee after a Loss but prior to the revision under this paragraph of the Casualty Value with respect to such Unit, the Lessee shall pay to the Beneficiaries, in a lump sum, the additional amount, in excess of the Casualty Value actually paid, that the Lessee would have been required to pay had the liability of the Lessee hereunder become fixed prior to the date of the original payment, and the Schedule of Casualty Values had, accordingly, been revised as above provided.

Anything in the fourth paragraph of this § 6(b) to the contrary notwithstanding, the Lessee shall not be required to make any payment to a Beneficiary provided for herein with respect to any Unit if the Beneficiary shall not have, or shall have lost the right to claim, or shall have suffered a disallowance of, or shall have been required to recapture all or any portion of any Tax Benefit with respect to all or part of such Unit solely as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Beneficiaries the amounts stipulated under § 7 of this Lease, as the same may be revised pursuant to the preceding paragraph;

(ii) a voluntary transfer or other voluntary disposition by either the Lessor or a Beneficiary of any interest in such Unit or the voluntary reduction by any Beneficiary of its interest in the rentals from such Unit under this Lease (except pursuant to any assignment thereof to the Agent as security or pursuant to any

other document related to the Transaction) or any transfer or disposition by the Lessor or a Beneficiary resulting from bankruptcy or other proceedings for the relief of debtors in which the Trust or such Beneficiary is the debtor (whether voluntary or involuntary) of any interest in such Unit or in the rentals therefor under this Lease unless, in each case, an Event of Default under this Lease shall have occurred and be continuing;

(iii) the failure of a Beneficiary timely to claim its portion of the Investment Credit, the Depreciation Deduction or the Interest Deduction, as applicable, in its income tax return for the appropriate year (unless it shall have received an opinion of its independent tax counsel to the effect that it is not entitled to make such claim) or the failure of a Beneficiary to follow proper procedure in claiming the Tax Benefits;

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

(v) an amendment, change, repeal or other modification in the tax law or regulations not provided for in the fourth paragraph of this § 6(b).

Each Beneficiary agrees to advise the Lessee promptly of any proposed loss, disallowance or recapture of all or any portion of the Tax Benefits, and the Lessee agrees that within 60 days of such advice the Lessee shall inform such Beneficiary whether the Lessee intends to cause such Beneficiary to contest such proposed loss, disallowance or recapture. Each Beneficiary agrees that if, in the opinion of the Lessee's in-house tax counsel, or, in the event the opinion of such counsel is not acceptable to such Beneficiary, in the opinion of independent counsel selected by the Lessee who is acceptable to such Beneficiary (herein referred to as "Counsel") a bona fide claim to all or a portion of the Tax Benefits with respect to any Unit exists in respect of which the Lessee would otherwise be required to make payments to the Beneficiary pursuant hereto, such Beneficiary shall, upon request and at the expense of the Lessee, contest such matter in such forum as such Beneficiary, in its sole judgment, shall select; provided that such Beneficiary shall not be obligated to take any such legal or other appropriate action

unless it has received an opinion from such Counsel that there is a reasonable basis for contesting such matter and the Lessee shall first have indemnified such Beneficiary for all liabilities and expenses of such action and shall have furnished such Beneficiary with such reasonable security therefor as may be requested; provided, however, that the Lessee shall prove the actual accuracy or correctness of the opinion delivered pursuant to the second paragraph of this subsection (b) if there is an assertion that such opinion is inaccurate or incorrect; provided, further, that such Beneficiary, at its sole option, may pursue or forego any and all administrative appeals, proceedings, hearings and conferences in respect of such claims in such forum or forums as such Beneficiary in its sole judgment shall select. Notwithstanding the definition of "Final Determination" contained in the next succeeding paragraph of this § 6, such Beneficiary may, at its option, take such action prior to making payment of any tax, interest or penalty attributable to the disallowance or recapture with respect to such Beneficiary of all or any portion of the Tax Benefits with respect to any Unit (a "Tax Payment") or may make such Tax Payment and then sue for a refund. If such Beneficiary takes such action prior to making such Tax Payment, such sums payable hereunder need not be paid by the Lessee while such action is pending; provided that the Lessee shall pay the liabilities and expenses relating to such action when and as the same shall become due. In such case, if the Final Determination (as such term is defined in the next succeeding paragraph hereof) shall be adverse to such Beneficiary, an increased rental shall be computed by such Beneficiary as of the date of such Final Determination and the Lessee shall commence payment thereof on the rental payment date next succeeding such Final Determination and, on or before such rental payment date, the Lessee shall pay to such Beneficiary as additional rental an amount which, when reduced by any increase in such Beneficiary's Federal, state or local income tax liability or liabilities resulting from the receipt of such additional rental, will equal the amount of all interest and penalty paid by the Lessor or such Beneficiary in respect of such Final Determination, together with interest thereon from the date such payment is made by the Lessor or a Beneficiary to the date the Lessee reimburses such Beneficiary thereof at the rate of interest charged by Crocker National Bank from time to time to its prime commercial customers on short-term unsecured borrowings (the "Prime Rate"). If the Lessor or a Beneficiary makes such Tax Payment and then sues for a refund, such increased rental shall commence to be payable by the Lessee on the first rental payment date after such Tax Payment is made and, on or before such rental payment date, the Lessee shall pay to each Beneficiary as additional rental an amount

which, when reduced by the increase in such Beneficiary's income tax liability or liabilities resulting from such Beneficiary's receipt of such additional rental, will equal the amount of all interest and penalty paid by the Lessor or such Beneficiary included in such Tax Payment. In such case, if the Final Determination shall be in favor of such Beneficiary, (A) the rental payable by the Lessee shall be adjusted by such amount as shall be required, in the reasonable opinion of such Beneficiary, to cause such Beneficiary's Net Return to be no less than such Net Return would have been if such Tax Payment had not been made (or such adjustment shall be made proportionately if the Final Determination is partly in favor of and partly adverse to such Beneficiary) and such adjusted rental shall be payable by the Lessee on the rental payment date next succeeding such Final Determination and thereafter, (B) such Beneficiary shall pay to the Lessee an amount which, when reduced by the tax benefit to such Beneficiary resulting from the payment of such amount, will equal the amount of any penalty or interest refunded to the Lessor or such Beneficiary as a result of such Final Determination and any interest paid to the Lessor or such Beneficiary by the government, promptly upon receipt thereof, and (C) the Lessee shall pay to such Beneficiary an amount equal to interest at the Prime Rate from time to time on the amount of tax refund made in respect of the Tax Payment for the period from the date of original payment of the Tax Payment by such Beneficiary to the date such tax refund is received by such Beneficiary. At any time, whether before or after commencing to take the action set forth in this paragraph, either Beneficiary 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 Beneficiary with respect to such adjustment or such portion, as the case may be, and, in such event, if such Beneficiary shall have previously made a Tax Payment with respect to the proposed adjustment and if in the opinion of Lessee's independent tax counsel a bona fide defense to such adjustment existed at the time of abandonment of such claim by such Beneficiary, the payments required pursuant to the immediately preceding sentence shall be made as if the Final Determination had been favorable to such Beneficiary with respect to that portion of the proposed adjustment that such Beneficiary declined to pursue.

"Final Determination" for purposes of this Lease means a final decision of a court of competent jurisdiction after all allowable appeals requested by the Lessee pursuant to the preceding paragraph (other than an appeal or petition for certiorari to the Supreme Court of the United States unless a Beneficiary elects to file such appeal or petition) have been exhausted by either party to the action. Neither concession by a Beneficiary of any of the aforementioned Tax Benefits in the overall settlement of a controversy with the Internal Revenue Service, whether at the administrative level or at the court level, nor the failure to recover a refund in whole or in part with respect to the disallowance of such Tax Benefit which is the result of a setoff against a claim for refund based upon the loss of such Tax Benefits where the matters set off do not relate to such Tax Benefits, will constitute an adverse "Final Determination" causing the aforementioned additional payments to accrue to such Beneficiary, unless such overall settlement of a tax controversy with the Internal Revenue Service or such setoff is approved by the Lessee in a separate agreement between such Beneficiary and the Lessee. If a Beneficiary agrees to the disallowance of a claim for refund based upon the loss of Tax Benefits because of the assertion against it of equivalent offsets involving other issues, the Beneficiary shall advise the Lessee of this decision within 30 days of the making thereof and such decision will be treated as a Final Determination in favor of the Beneficiary for the purposes of the above provisions.

In the event that the Lessee shall pay all or any portion of any installment of rental prior to the date upon which such payment is herein required to be made, or, if any Beneficiary shall be required to take into its income for Federal, state or local purposes any installment of rental prior to the date on which such installment would be paid in accordance with the payment provisions herein provided, the Lessee shall pay to such Beneficiary an amount which, when reduced by any increase in such Beneficiary's Federal, state or local income tax liability or liabilities (determined based upon the highest marginal statutory rate then applicable to such Beneficiary), will be equal to the excess of (A) the taxes and other charges payable by such Beneficiary in that year as a result of the receipt of such installment of rental, or being required to take an installment of rental into income prior to the receipt thereof, as the case may be, over (B) the taxes and other charges that would have been payable in that year by such Beneficiary had such installment

of rent been paid by the Lessee on the date upon which such payment is therein required to be made or if such future installment had not been required to be taken into income prior to the accrual date, as the case may be.

(c) Additional Expenditures. In the event that (i) any amount in respect of any replacement, improvement or addition to any Unit, which replacement, improvement or addition is not readily removable without causing material damage to such Unit, or is required for the operation or use of such Unit by the Interstate Commerce Commission and all lawful rules of the Department of Transportation or any other applicable regulatory body, is made by or on behalf of the Lessee or any sublessee or other user of any Unit, under the terms of this Lease or otherwise, the Lessee and Lessor agree that the fair market value thereof shall be treated as additional rental income of the Trust or of a Beneficiary at the time such replacement, improvement or addition is made for Federal, state or local income tax purposes, or (ii) any other expenditure made by or on behalf of the Lessee (regardless of whether any such replacement, improvement, addition or expenditure is required by any document connected with the Transaction), is required to be included in the income of the Trust or of a Beneficiary for Federal, state or local income tax purposes at any time prior to the time such Unit is disposed of in a taxable transaction (any such inclusion being hereinafter referred to as an "Inclusion"), then the Lessee will pay to the Lessor or to such Beneficiary, as the case may be, on each of the dates provided in this Lease for payment of the installments of rental thereunder in respect of such Unit commencing with the first such date following written notice by the Lessor or such Beneficiary of such replacement, improvement or addition pursuant to clause (i) above or such Inclusion (the "First Adjustment Date"), such increased rental as will be required, in the reasonable opinion of the Beneficiaries, to cause each Beneficiary's Net Return in respect of such Unit to be the same as such Net Return would have been if such replacement, improvement or addition pursuant to clause (i) above had not been made or Inclusion had not been required.

(d) General Tax Indemnification. The Lessee hereby covenants and agrees for the benefit of the Lessor and the Beneficiaries that all payments to be made by the Lessee under this Lease will be free of expense to the Lessor and to the Beneficiaries of collection or other charges and will be free of expense to the Lessor and to the Beneficiaries with respect to the amount of any Federal, state, local or foreign taxes (other than (except as otherwise provided in this Lease) (i) any United States Federal income tax payable by the Beneficiaries in consequence of the receipt of payments

provided for hereunder; (ii) to the extent that a Beneficiary receives credit therefor against its United States Federal income tax liability, any foreign income taxes; (iii) the aggregate of all state and city income taxes, excess profits taxes and franchise taxes measured by net income based on the receipt of rentals provided for in this Lease, or gross receipts taxes other than gross receipts taxes in the nature of sales or use taxes, payable by the Beneficiaries, up to the amount of any such taxes which would be payable to the state and city in which a Beneficiary has its principal place of business without apportionment to any other state or city, 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; and (iv) any taxes imposed as a direct result of a voluntary disposition by a Beneficiary or any transfer or disposition by a Beneficiary resulting from bankruptcy or other proceedings for the relief of creditors in which such Beneficiary is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease prior to the occurrence of an event of default hereunder), assessments, documentary stamp taxes, or license fees and any charges, fines or penalties in connection therewith ("Impositions") now or hereafter levied or imposed upon or in connection with or measured by this Lease or any manufacture, acceptance, rejection, sale, rental, use, payment, operation, maintenance, shipment, delivery, storage or transfer of title under the terms of this Lease, the Participation Agreement, the CSA, or any other document in connection with the Transaction, or any manufacturer's warranty or indemnity, 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 in this Lease. 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 or upon the Lessor or upon a Beneficiary 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 a Beneficiary or result in a lien upon any such Unit; provided that the Lessee shall be under no obligation to pay any Impositions so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the reasonable opinon of the Beneficiaries, adversely affect the title or interest of either of them, or the property or rights of the Lessor. If any Impositions

shall have been charged or levied against the Lessor or against a Beneficiary, the Lessee shall reimburse said party on presentation of an invoice therefor, except that the Lessee will not reimburse the Lessor or any Beneficiary for ad valorem taxes which the Lessee has already paid based upon the inclusion of the Lease property in its tax base if the Lessor has not notified the Lessee of any such Imposition prior to payment of the same by the Lessor; provided, however, that in all cases where the Lessor has notified the Lessee of any such Imposition and the Lessee has not paid or commenced appropriate legal action to contest the same as hereinbefore provided within 30 days of such notification, the Lessee shall reimburse the Lessor for payment of the same.

In the event that the Lessor shall become obligated to make any payment to a Builder or the Vendor pursuant to Article 6 of the CSA not covered by the foregoing paragraph of this subsection (d), the Lessee shall pay to the Lessor such additional amounts (which shall also be deemed impositions hereunder) as will enable the Lessor to fulfill its obligations pursuant to said Article 6.

The amount which the Lessee shall be required to pay with respect to any imposition which is subject to indemnification under this subsection (d) shall be an amount sufficient to restore the Lessor to the same net after-tax position, after considering the effect of such payment on its United States Federal income taxes and state and local income taxes or franchise taxes based on net income, that the Lessor would have been in had such imposition not been imposed.

In the event any reports with regard to impositions are required to be made on the basis of individual Units or otherwise, the Lessee will, where permitted to do so under applicable rules or regulations, make and timely file such reports in such manner as to show the interest of the Lessor, the Beneficiaries, the Builders or the Vendor in the Units as shall be satisfactory to the Lessor, the Beneficiaries and the Vendor or, where not so permitted, will notify the Lessor, the Beneficiaries and the Vendor of such requirement and will prepare and deliver such reports to the Lessor, the Beneficiaries and the Vendor within a reasonable time prior to the time such reports are to be filed in such manner as shall be satisfactory to the Lessor, the Beneficiaries and the Vendor.

(e) General Indemnification. The Lessee agrees to indemnify and save harmless the Lessor and the Beneficiaries on an after-tax basis from and against any charge or claim made against it and against any expense, loss or liability (including, but not limited to, claims for strict liability in tort, counsel fees and expenses, patent liabili-

ties, penalties and interest) which the Lessor or the Beneficiaries may incur in any manner by reason of entering into or performing the Trust Agreement or any of the instruments or agreements referred to therein or contemplated thereby, or which may arise in any manner out of or as the result of the ownership, ordering, acquisition, purchase, reconstruction, use, operation, condition, delivery, rejection, storage or return of any of the Units resulting in damage to property or injury or death to any person; provided that nothing in this subsection (e) shall constitute a guarantee by the Lessee of payment of any of the principal or interest on the CSA Indebtedness or the residual value of the Units.

(f) Consolidated Tax Returns. For purposes of this § 6, the terms, "Beneficiary" and "Beneficiaries" shall include any affiliated, combined or consolidated group of which a Beneficiary is, or may become, a member if consolidated returns are filed for such group for Federal, state or local income tax purposes.

§ 7. Maintenance; Casualty Occurrences; Insurance. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good operating order, repair and condition, reasonable wear and tear excepted.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, returned to a Builder pursuant to the patent indemnity provisions of the CSA or taken or requisitioned by condemnation or requisitioned for use or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government for a stated period not in excess of the then remaining term of this Lease (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 no later than 30 days after such Casualty Occurrence fully inform the Lessor and the Vendor with respect thereto. On the rental payment date (other than the Cut-Off Date) occurring 30 days after it has knowledge of such Casualty Occurrence, 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 determined as of the date of such rental payment date in accordance with the schedule referred to below. As of the rental payment date on which the Casualty Value is due and paid, 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 a Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit and the Lessee shall pay all costs of removal of such Unit to the place designated pursuant to § 14 hereof. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit returned to a Builder pursuant to the patent indemnity provisions of the CSA an amount equal to any payment made by a Builder to the Vendor in respect thereof under the CSA. Any Casualty Value not paid when due shall accrue interest as provided in § 16 hereof. 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 with all faults" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the net proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, 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 Schedule B hereto opposite the rental payment date next succeeding the actual date of such Casualty Occurrence, or if there is no such rental payment date, the last rental payment date.

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. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit, and the Lessee shall be entitled to the net proceeds of any sale to the extent they do not exceed the Casualty Value 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 not constituting a Casualty Occurrence all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisi-

tion 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 while this Lease is in effect, at its own expense, cause to be carried and maintained types and amounts of insurance that are satisfactory to the Lessor and the Beneficiaries in respect of the Units at the time subject hereto and the use and operation thereof, including, without limitation, property insurance and public liability insurance, in such amounts and for such risks and with such insurance companies as are consistent with present industry practice, but in any event at least comparable to insurance coverage carried by the Lessee in respect of similar equipment owned or leased by it. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice to the Lessor of cancelation or of any material change in the provisions thereof and (ii) name the Lessor and the Beneficiaries as additional named insureds as their respective interests may appear with respect to property insurance and loss payees with respect to public liability insurance, and (iii) shall provide that in respect of the interests of the Lessor and the Beneficiaries in such policies, the insurance shall not

be invalidated by any action or inaction of the Lessee or any other person (other than the Lessor or the Beneficiaries) and shall insure the Lessor and the Beneficiaries 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 Beneficiaries). Lessee will be liable for payment of all insurance premiums. All insurance proceeds received by the Lessor from the Lessee's insurance coverage in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired, but only to the extent of the Lessee's cost (including overhead and profit if applicable in effecting such repairs). Except as aforesaid, all such insurance proceeds shall be retained by the Lessor. On March 31 in each year, the Lessee shall deliver to the Lessor, the Beneficiaries and the Vendor a Certificate of Insurance by or on behalf of each insurer stating the coverage, named insurers and limits on each such policy.

§ 8. Reports. On or before March 31 in each year, commencing with the calendar year 1980, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the 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 12 months or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and setting forth the general condition of all of the Units 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 CSA have been preserved or replaced. The Lessor, at its sole cost and expense, shall have the right by its agents, to inspect the Units and discuss the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

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

MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR 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 a Builder under the provisions of Item 3 of Annex A and the patent infringement and indemnification provisions of Article 13 of the CSA and Annex A thereto; 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 (including without limitation, strict liability in tort or otherwise), loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commis-

sion 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 the 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 and the Lessor will have title thereto. Notwithstanding the preceding sentence, the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the CSA.

Except as set forth in the first paragraph of § 7 and the second paragraph of § 9 hereof, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value of the Units). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee and shall be removed by it upon the return of the Units pursuant to §§ 11 and 14 hereof, except to the extent such additions, modifications or improvements are made in order to comply with the next paragraph hereof.

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 its agreements contained in the preceding paragraph, (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 Interstate Commerce Commission, and all lawful rules of the Department of Transportation or any other applicable regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA) shall immediately be vested in the Lessor and the Vendor as their respective interests may appear in the Unit itself. The Lessee shall notify the Lessor in writing within 30 days

after the installation, addition or replacement of parts referred to in subsections (i) and (iv) of this paragraph and shall furnish the Lessor with a report accurately recording the (i) date of installation, (ii) cost and (iii) description of all replacements, improvements and additions to the Units during such calendar year.

The Lessee shall pay, and shall protect, indemnify and hold the Lessor, the Beneficiaries, the Investors, and the Vendor and their respective successors, assigns, agents and servants (hereinafter called "Indemnified Persons") as third party beneficiaries hereof, harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including, without limitation, attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising or alleged to arise out of this Lease or the Units, including, without limitation, those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent or other defects whether or not discoverable by any Indemnified Person or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort or by statute imposed; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Lease (except by the Lessor) or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof; (vii) any claim arising out of any of the Lessor's obligations under the Lease Assignment, the CSA or the Participation Agreement, except to the extent such claim arises from an act or omission of the Lessor; or (viii) any claim arising out of the Vendor's holding a security interest under the CSA or the Lease Assignment; <u>except</u>, <u>however</u>, in the case of either Builder, (i) any losses, damages, injuries, liabilities, claims and damages whatsoever arising out of any tort by such Builder, or out of any breach of warranty or failure to

perform any covenant under the CSA by such Builder and (ii) any matter covered by such Builder's warranty of material and workmanship and patent indemnification set forth in Item 3 of Annex A to the CSA. All payments hereunder shall be made directly to the Indemnified Person. The Lessee shall be obligated under this § 9, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this § 9 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including, without limitation, attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this § 9, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Lessor each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this § 9 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this § 9 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter.

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

The indemnities contained in this § 9 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by any Indemnified Person. None of the indemnities in this § 9 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee or the Lessor therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise. The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee of the payment of any installments of principal or interest payable under the CSA or a guarantee of the residual value of the Equipment.

The Lessee shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of any or all of the Units.

The Lessee will prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units, the security interest of the Vendor in 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, 6, 7, 9 or 13 hereof, and such default shall continue for 10 days;

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

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee, contained herein, in the Consent or in the Participation Agreement, and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee, specifying the default and demanding that the same be remedied;

(D) a petition for reorganization under Title 11 of the United States Code, as now constituted or as may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee, under this Lease or under the Consent 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 60 days after such petition shall have been filed or proceeding commenced; or

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

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

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 so terminated shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units so terminated 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 as damages for loss of the bargain and not as a penalty whichever of the following amounts which the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, which represents (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 rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, plus (B) 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, including any amount payable to the Lessor by the Lessee pursuant to § 6 hereof; 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 net proceeds of the sale of the Equipment if sold, or, if not sold at such time, the amount the Lessor reasonably estimates to be the sales value of such Unit at such time.

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 will make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

Except as otherwise provided in this Lease and the CSA, the Lessee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Units, or any one or more thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Lessor's rights under this Lease and the CSA and any and all rights of the redemption.

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 reoccurrence of any such contingencies or similar contingencies.

The Lessee shall promptly notify the Lessor of any event of which it has knowledge which constitutes, or with the giving of notice and/or lapse of time would constitute, an Event of Default under this Lease.

§ 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 (including, but not by way of limitation, giving prompt telegraphic

and written notice to all railroads which may have possession of any Unit or Units 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 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, insure, maintain and keep the Units in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Unit, to inspect the same. All gross amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which .023238% of the Purchase Price of such Unit for each such day exceeds all gross amounts earned with respect to such Unit and received by the Lessor for each such day.

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

§ 12. Assignment; Possession and Use. This Lease shall not be assigned in whole or in part by the Lessor or the Lessee by operation of law or otherwise without the consent of the other; provided, however, that the Lessor may, without the consent of the Lessee, assign all or any part of its interest in this Lease and the Units to any banking or financial institution having a combined capital and surplus of at least $50,000,000, if such assignment would not violate Section 10 of the Clayton Act. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's assigns (including the Vendor). The Lessee hereby consents to the assignment by the Lessor of its rights hereunder to the Vendor pursuant to the Lease Assignment.

So long as the Lessee shall not be in default under this Lease and no event of default shall exist under the CSA, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the CSA, 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, and any such assignment or transfer shall be void. 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 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 next paragraph.

So long as the Lessee shall not be in default under this Lease and no event of default shall exist under the CSA, 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 railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and 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, or a written sublease for a term not exceeding one year, but only upon and subject to all the terms and conditions of this Lease and the CSA; provided, however, that the Lessee shall not assign 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. The Lessee represents and warrants to the Lessor that the Units will be used, and are intended for use, in connection with interstate commerce.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its 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 Participation Agreement and the Consent) into or with which it shall have become merged or consolidated or which shall have acquired its property 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. Renewals and Right of First Refusal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term 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 December 31, 1996. The rental for such extended term of this Lease shall be in an amount equal to 75% of the base lease term rent for such Units and shall be payable in semiannual payments on February 20 and August 20 in each year of such extended term.

The Lessor agrees that no sooner than 180 days prior to the end of the original term or any extended term of this Lease (provided no default hereunder shall have occurred and be continuing) it will not sell the Units, or any of them, unless the Lessor shall have given the Lessee prior

written notice of its intent to sell, specifying the sale price (in any event not less than the "Fair Market Value" [as defined below] of such Unit or Units) and terms of such sale, and the Lessee shall have had the opportunity to purchase all of the Units relating to such sale at the same price and on the same terms as specified in such notice. Such opportunity of the Lessee shall continue to a period of 60 business days prior to the end of the original term or extended term of this Lease. 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 recourse, representation or warranties of any kind) 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.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or prior to the valuation date the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by an Appraiser. The Appraiser shall be instructed to make such determination within a period of 20 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. 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.

§ 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 or any of its affiliates 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 three months after the actual return of any Unit to the Lessor's possession and transport the same, at any time within such three month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, lessee or user the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and (ii) meet the standards 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. All gross amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 30 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 .023238% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the Lease Assignment, the CSA and the Assignment to be filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Lessee will (at its own expense) 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 interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA, the Assignment and the Lease Assignment; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the CSA shall be filed with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder, including without limitation §§ 3, 6, 7, 9, 10 and 13 hereof, shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 10-1/2% 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.

§ 17. 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 800 Davis Street, Evanston, Illinois 60204, with a copy to the Beneficiaries at the addresses set forth in the Trust Agreement;

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

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

§ 18. 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, 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.

§ 19. No Recourse. It is expressly understood and agreed by and between the parties hereto, anything herein to the contary 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 of First National Bank and Trust Company of Evanston, or for the purpose or with the intention of binding said trust company 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 the said trust company solely in the exercise of the powers expressly conferred upon the said trust company as trustee under said Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said trust company or the Beneficiaries or on account of any representation, undertaking or agreement hereunder of said trust company, or the Beneficiaries, 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.

§ 20. Agreements for Benefit of Beneficiaries. All rights of the Lessor hereunder (including, but not limited to, its rights under §§ 6, 7, 9 and 10 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Beneficiaries and the Beneficiaries' assigns under the Trust Agreement, and where appropriate to effectuate this result, the term Lessor shall be deemed to include the Beneficiaries.

§ 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 Lease Assignment shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 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 49 U.S.C. § 11303.

§ 23. Lessor's Right To Perform for the Lessee. Subject to the provisions of Article 15 of the CSA, if the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at the rate of 10-1/2% per annum, payable by the Lessee upon demand.

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

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 _____
Assistant Vice President

[Corporate Seal]

Attest:

_____
~~Attesting Officer~~
ASSISTANT SECRETARY

FIRST NATIONAL BANK AND TRUST COMPANY OF EVANSTON, as Trustee,

by _____
Vice President and Trust Officer

[Corporate Seal]

Attest:

_____
Assistant Vice President
and Trust Officer

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

On this 20th day of February 1979, before me personally appeared D. G. Watkins, to me personally known, who, being by me duly sworn, says that he is Assistant Vice President of LOUISVILLE AND NASHVILLE RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon W. Bowles
Notary Public
Sharon W. Bowles
NOTARY PUBLIC, STATE AT LARGE
My Commission expires July 26, 1982

[Notarial Seal]

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

On this 15 day of February 1979, before me personally appeared Warren E. Powers, to me personally known, who, being by me duly sworn, says that he is a Vice President and Trust Officer of FIRST NATIONAL BANK AND TRUST COMPANY OF EVANSTON, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Patricia K. Van Metre
Notary Public

[Notarial Seal]
12/3/80

SCHEDULE A TO LEASE

Type	Quantity	Lessee's Road Numbers (Inclusive)
3,000 h.p. 4 Axle, Turbo charged, diesel-electric locomotives, General Electric model--C30-7	16	LN 7000-7015
3,000 h.p. diesel electric locomotives, General Motors model--SD40-2	19	LN 8000-8018
2,000 h.p. diesel electric locomotives, General Motors model--GP38-2	20	LN 6011-6030

SCHEDULE B TO LEASE

Table 1

Casualty Values

Date	Rental Payment Number	Percentage of Purchase Price*
February 20, 1980	1	87.261508
August 20, 1980	2	87.490630
February 20, 1981	3	86.554696
August 20, 1981	4	86.001922
February 20, 1982	5	85.425344
August 20, 1982	6	84.692947
February 20, 1983	7	83.735424
August 20, 1983	8	82.614239
February 20, 1984	9	81.275133
August 20, 1984	10	79.783456
February 20, 1985	11	78.089714
August 20, 1985	12	76.255922
February 20, 1986	13	74.237461
August 20, 1986	14	72.093047
February 20, 1987	15	69.831228
August 20, 1987	16	67.449988
February 20, 1988	17	64.942755
August 20, 1988	18	62.327486
February 20, 1989	19	59.604626
August 20, 1989	20	56.773866
February 20, 1990	21	53.852690
August 20, 1990	22	50.827734
February 20, 1991	23	47.724377
August 20, 1991	24	44.518659
February 20, 1992	25	41.248047
August 20, 1992	26	37.875250
February 20, 1993	27	34.453125
August 20, 1993	28	31.011881
February 20, 1994	29	27.605698
August 20, 1994 and thereafter	30	24.181254

Table 2

The percentages set forth in Table 1 of this Schedule B have been computed without regard to recapture of the Investment Credit (as defined in § 6 of the Lease). Consequently, the Casualty Value of the Units suffering a Casualty Occurrence on or before the third, fifth or seventh anniversary of the date of delivery and acceptance of the Units shall be increased by the applicable percentage of the Purchase Price set forth below:

Anniversary of Delivery and Acceptance	Percentage of Purchase Price
Third	21.043771%
Fifth	14.029181%
Seventh	7.014590%

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* As defined in the CSA.