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New Number

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Date SEP 12 1979

Fee \$ 50.00

10803

Interstate Commerce Commission  
Washington, D.C.

SEP 12 1979 - 12 15 PM ICC Washington, D.C.

Gentlemen:

**INTERSTATE COMMERCE COMMISSION**

Enclosed for recordation under the provisions of 49 USC (formerly Section 20(c) of the Interstate Commerce Act), as amended, are the original and four counterparts of an Equipment Lease dated as of July 20, 1979.

A general description of the railroad rolling stock covered by the enclosed document is set forth in Schedule 1 attached to this letter and made a part hereof.

The names and addresses of the parties are:

Lessee: Illinois Central Gulf Railroad Company  
Two Illinois Center  
233 North Michigan Avenue  
Chicago, Illinois 60601

Lessor: First Maryland Leasecorp  
25 South Charles  
Baltimore, Maryland 21202

The undersigned is the Lessee mentioned in the enclosed document and has knowledge of the matters set forth therein.

Please return the original and three copies of the Equipment Lease to Michael McGee, Esq., Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Also enclosed is a check in the amount of \$50.00 covering the required filing fee.

Very truly yours,

ILLINOIS CENTRAL GULF RAILROAD COMPANY

By J. M. B. Goodrich  
Treasurer

SEP 12 12 07 PM '79  
I.C.G.  
OPERATION DIV.  
RECORDS

Enclosures

*Handwritten signature on the left margin, possibly "C. D. ..."*

Description of Equipment

<u>Number of Items</u>	<u>Description</u>	<u>Identifying Mark and Numbers</u>
14	Rebuilt GP-11 Diesel Electric Locomotives	ICG 8713 through ICG 8726, both inclusive

Interstate Commerce Commission  
Washington, D.C. 20423

9/12/79

OFFICE OF THE SECRETARY

Michael McGee, <sup>E</sup>sq.  
Chapman & Cutler  
111 West Monroe Street  
Chicago, Illinois 60603

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 9/12/79 at 12:15pm, and assigned re-  
recording number(s). 10808 & 10809

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

SE-30  
(7/79)

.. 10808  
RECORDATION NO. .... Filed 1425

SEP 12 1979 - 12 15 PM

INTERSTATE COMMERCE COMMISSION

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EQUIPMENT LEASE

Dated as of July 20, 1979

Between

FIRST MARYLAND LEASECORP

LESSOR

And

ILLINOIS CENTRAL GULF RAILROAD COMPANY

LESSEE

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(I.C.G. No. 79-4)  
(14 Rebuilt Locomotives)

TABLE OF CONTENTS

<u>Section</u>	<u>Heading</u>	<u>Page</u>
	Parties .....	1
1.	Lease and Delivery of Equipment .....	1
1.1.	Intent to Lease and Hire .....	1
1.2.	Inspection and Acceptance .....	2
1.3.	Certificate of Acceptance .....	2
2.	Rentals and Payment Dates .....	2
2.1.	Rent for Equipment .....	2
2.2.	Rent Payment Dates .....	3
2.3.	Adjustment of Rentals .....	3
2.4.	Place and Manner of Rent Payment .....	4
2.5.	Net Lease .....	6
3.	Term of the Lease .....	6
4.	Ownership and Marking of Equipment .....	7
4.1.	Retention of Title .....	7
4.2.	Duty to Number and Mark Equipment .....	7
4.3.	Prohibition Against Certain Designations .....	7
5.	Disclaimer of Warranties .....	7
6.	Lessee's Indemnity .....	8
6.1.	Scope of Indemnity .....	8
6.2.	Continuation of Indemnities and Assumptions .....	9
7.	Rules, Laws and Regulations .....	9
8.	Use and Maintenance of Equipment .....	10
9.	Liens on the Equipment .....	10
10.	Filing; Payment of State and Local Taxes .....	11
10.1.	Filing .....	11
10.2.	Payment of State and Local Taxes .....	11
11.	Insurance; Payment for Casualty Occurrence .....	13
11.1.	Insurance .....	13
11.2.	Duty of Lessee to Notify Lessor .....	14
11.3.	Sum Payable for Casualty Loss .....	15
11.4.	Rent Termination .....	15

<u>Section</u>	<u>Heading</u>	<u>Page</u>
11.5.	Disposition of Equipment .....	15
11.6.	Casualty Value .....	15
11.7.	Risk of Loss .....	15
11.8.	Eminent Domain .....	16
12.	Annual Reports .....	16
12.1.	Duty of Lessee to Furnish .....	16
12.2.	Lessor's Inspection Rights .....	16
13.	Return of Equipment Upon Expiration of Term .....	17
14.	Default .....	17
14.1.	Events of Default .....	17
14.2.	Remedies .....	19
14.3.	Cumulative Remedies .....	20
14.4.	Lessor's Failure to Exercise Rights .....	21
14.5.	Notice of Event of Default .....	21
15.	Return of Equipment Upon Default .....	21
15.1.	Lessee's Duty to Return .....	21
15.2.	Specific Performance .....	22
15.3.	Lessor Appointed Lessee's Agent .....	22
16.	Assignments by Lessor .....	23
17.	Assignments by Lessee; Use and Possession .....	24
17.1.	Lessee's Rights to the Equipment .....	24
17.2.	Use and Possession in Railroad Operations ...	24
17.3.	Merger, Consolidation or Acquisition of Lessee .....	24
18.	Right of First Refusal; Renewal Options .....	25
18.1.	Right of First Refusal .....	25
18.2.	Renewal Options .....	25
18.3.	Delivery of Equipment .....	27
19.	Interest on Overdue Rentals and Amount Paid by Lessor .....	27
20.	Federal Income Tax Indemnification.....	27
21.	Miscellaneous .....	35
21.1.	Notices .....	35
21.2.	Right of Lessor to Perform .....	35

<u>Section</u>	<u>Heading</u>	<u>Page</u>
21.3.	Execution in Counterparts .....	35
21.4.	Law Governing .....	36
21.5.	Headings and Table of Contents .....	36
21.6.	Severability .....	36

Attachments to Equipment Lease:

Schedule A - Description of Items of Equipment  
Schedule B - Certificate of Acceptance  
Schedule C - Schedule of Casualty Value

## EQUIPMENT LEASE

THIS EQUIPMENT LEASE dated as of July 20, 1979 is between FIRST MARYLAND LEASECORP, a Maryland corporation (the "Lessor"), and ILLINOIS CENTRAL GULF RAILROAD COMPANY, a Delaware corporation (the "Lessee").

### R E C I T A L S:

A. The Lessor and the Lessee have entered into a Hulk Purchase Agreement dated as of July 20, 1979 (the "Hulk Purchase Agreement") providing for the sale of 14 used EMD GP locomotives (the "Hulks") by the Lessee to the Lessor, and the Lessor and the Lessee have further entered into a Reconstruction Agreement dated as of July 20, 1979 (the "Reconstruction Agreement") providing for the reconstruction by the Lessee of the Hulks into certain items of railroad equipment (collectively the "Equipment" and individually an "Item" or "Item of Equipment") described in Schedule A attached hereto and made a part hereof in accordance with the specifications (the "Specifications") referred to in the Reconstruction Agreement. Upon delivery of each Item of Equipment and the acceptance of such Item of Equipment as provided in Section 1.2 hereof, the Lessor shall lease and let such Item of Equipment to the Lessee and the Lessee shall hire such Item of Equipment from the Lessor for the rental and on and subject to the terms and conditions herein set forth.

B. The Lessee and the Lessor intend to enter into a Participation Agreement dated as of July 20, 1979 (the "Participation Agreement") with First Security Bank of Utah, N.A., as security trustee (the "Security Trustee") and the institutional investors named in Schedule 2 thereto (the "Note Purchasers") providing commitments of the Note Purchasers which, together with funds provided by the Lessor will permit the Lessor to obtain the funds necessary to acquire the Hulks and reconstruct the same into the Equipment. The Lessor will commit to advance an amount equal to 27.248245% of the Total Cost (as defined in the Participation Agreement and hereinafter referred to as the "Total Cost") of each Item of Equipment and the Note Purchasers will commit to purchase the Secured Notes (the "Notes") of the Lessor in an amount equal to 72.751755% of the Total Cost of each Item of Equipment. It is contemplated that the Participation Agreement will provide that the Notes will be secured by an assignment of the Lessor's right, title and interest in and to this Lease and in and to the Equipment pursuant to a Security Agreement-Trust Deed dated as of July 20, 1979 (the "Security Agreement") from the Lessor to the Security Trustee.

### SECTION 1. LEASE AND DELIVERY OF EQUIPMENT.

1.1. Intent to Lease and Hire. Upon delivery of each Item of Equipment by the manufacturer thereof identified in

Schedule A hereto (hereinafter referred to as the "Manufacturer"), the Lessee shall lease and let and the Lessor shall hire to the Lessee such Item of Equipment for the rental and on and subject to the terms and conditions herein set forth.

1.2. Inspection and Acceptance. The Lessor will cause each Item of Equipment to be tendered to the Lessee at the place of delivery set forth in Schedule A. Upon such tender, the Lessee will cause an inspector designated and authorized by the Lessee to inspect the same, and, if such Item of Equipment is found to be in good order, to accept delivery of such Item of Equipment and to execute and deliver to the Lessor and the Manufacturer thereof a Certificate of Acceptance (the "Certificate of Acceptance") in the form attached hereto as Schedule B with respect to such Item of Equipment; provided, however, that the Lessee shall not accept and the Lessor shall have no obligation to lease any Item of Equipment delivered after the Outside Delivery Date set forth in Schedule A.

1.3. Certificate of Acceptance. The Lessee's execution and delivery of a Certificate of Acceptance with respect to each Item of Equipment pursuant to Section 1.2 hereof shall conclusively establish that, as between the Lessor and the Lessee, but without limiting or otherwise affecting the Lessee's or the Lessor's rights, if any, against the Manufacturer thereof, such Item of Equipment is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and that such Item of Equipment is in good order and condition and appears to conform to the specifications applicable thereto and to all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and to all standards recommended by the Association of American Railroads applicable to new railroad equipment of the character of the Equipment as of the date of this Lease. By execution and delivery of such Certificate of Acceptance, the Lessee represents that it has no knowledge of any such defect.

## SECTION 2. RENTALS AND PAYMENT DATES.

2.1. Rent for Equipment. The Lessee agrees to pay the Lessor the following rent for each Item of Equipment:

(a) Interim Rental. For each Item of Equipment, an amount per day (the "Interim Rental") equal to:

(1) 0.02622918% of the Purchase Price of the Hulk which was utilized to rebuild such Item for the period, if any, from the Closing Date (as defined in the Participation Agreement) with respect to such Hulk to, but not including, January 1, 1980 (the "Term Lease Commencement Date") and

(ii) 0.02622918% of the Reconstruction Cost thereof for the period, if any, from the Closing Date for such Item of Equipment to, but not including, the Term Lease Commencement Date; and

(b) Fixed Rental. For each Item of Equipment, 56 quarterly installments of fixed rental (the "Fixed Rental"), payable in arrears, each in an amount equal to 2.477540% of the Total Cost thereof.

2.2. Rent Payment Dates. The installment of Interim Rental for each Item of Equipment shall be due and payable on the Term Lease Commencement Date. The first installment of Fixed Rental for each Item of Equipment shall be due and payable three months following the Term Lease Commencement Date and the balance of said installments shall be payable at three-month intervals thereafter with the final such installment payable 14 years following the Term Lease Commencement Date. If any of the rent payment dates is not a business day, the rent payment otherwise payable on such date shall be payable on the next succeeding business day. For purposes of this Lease, the term "business day" means calendar days, excluding Saturdays, Sundays and holidays on which banks in the States of Illinois or Maryland are authorized or required to close.

2.3. Adjustment of Rentals. In the event that the Reconstruction Cost (as defined in the Participation Agreement) of the Equipment shall constitute greater or less than 16.5% of the Total Cost of the Equipment, then the Lessee and the Lessor agree that the Fixed Rentals shall be adjusted to such amount as shall, in the reasonable opinion of the Lessor, cause the Lessor's after-tax economic and accounting yields and cash flows (computed on the same assumptions as were utilized by the Lessor in originally evaluating this transaction) to equal the after-tax economic and accounting yields and cash flows that would have been realized by the Lessor if such Reconstruction Cost of the Equipment were equal to 16.5% of the Total Cost of the Equipment, and the Casualty Values shall similarly be adjusted in amounts reasonably determined by the Lessor. In the event that the Lessor shall receive any disbursements from the Security Trustee pursuant to, or shall be required to pay any losses, liabilities or expenses arising out of or resulting from the investments made pursuant to, Section 2.2 of the Participation Agreement, including, but not limited to, any deficiency in principal or interest in respect thereof (all of said disbursements if any, and said payments, if any, to be considered in the aggregate as of the final Closing Date hereunder), then the Lessee and the Lessor agree that the Fixed Rentals shall be adjusted to such amount as shall, in the reasonable opinion of the Lessor, cause the Lessor's after-tax economic and accounting yields and annual cash flows (computed on the same assumptions, including tax rates, as were utilized by the Lessor in originally evaluating this transaction) to equal the after-tax economic and accounting yields

and annual cash flows that would have been realized by the Lessor if the disbursements or payments had not occurred, and the Casualty Values shall similarly be adjusted in amounts reasonably determined by the Lessor.

Anything in this Section 2.3 to the contrary notwithstanding, the amounts payable as installments of Fixed Rental and Casualty Values hereunder with respect to any Item of Equipment (i) shall in no event be reduced below amounts necessary to discharge that portion of the principal of and/or interest on the Notes due and payable on each rent payment date under this Lease, and (ii) shall comply with the guidelines for Internal Revenue Service rulings on leveraged leases set forth in Revenue Procedures 75-21 and 75-28.

2.4. Place and Manner of Rent Payment. The payments to be made by the Lessee under this Lease shall be made as follows:

(a) The installment of Interim Rental shall be paid to the Lessor by wire transfer to the principal office of the Lessor at the address thereof provided for payments in Section 21.1 hereof; provided that in the event either the Lessor or the Security Trustee shall notify the Lessee in writing that the right to receive payment of such installment shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment by wire transfer to the place designated in such notice or as otherwise designated from time to time in writing by such assignee;

(b) The portion of any installment of Fixed Rental resulting from an increase in the amount thereof, if any, which the Lessee shall agree to pay to the Lessor pursuant to any rental adjustment arrangements shall be paid in full to the Lessor by wire transfer to the principal office of the Lessor at the address provided for payments in Section 20.1 hereof;

(c) Each installment of Fixed Rental shall be paid to the Lessor by wire transfer to the principal office of the Lessor at the address thereof provided for payments in Section 21.1 hereof; provided that in the event either the Lessor or the Security Trustee shall notify the Lessee in writing that the right to receive payment of such installment shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment by wire transfer to the place designated in such notice or as otherwise designated from time to time in writing by such assignee; and provided further that in the event such notice shall

direct the Lessee to divide such installment into not more than two portions, in addition to the portion referred to in Section 2.3(b) hereof, and to pay each portion by wire transfer separately to not more than two parties, the Lessee agrees to do so;

(d) The entire amount of any payment of Casualty Value pursuant to Section 11 hereof shall be paid to the Lessor by wire transfer to the principal office of the Lessor at the address provided for payment in Section 21.1 hereof or in such other manner or to such other address as may be designated by the Lessor in writing; provided that in the event either the Lessor or the Security Trustee shall notify the Lessee in writing that the right to receive payment of such Casualty Value shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment by such check in the manner designated in such notice or as otherwise designated from time to time in writing by such assignee;

(e) The amount of any payment owing to the Lessor pursuant to Sections 6, 10.2, 11.1 (with respect to public liability insurance) and 21.2 hereof shall be made directly to the party to receive the same without regard to the assignment of this Lease pursuant to Section 16 hereof;

(f) The amount of any interest due in respect of the late payment of any rentals or other amounts pursuant to Section 19 hereof shall be paid to the party and in the manner herein provided to receive said rental or other amount; and

(g) All payments other than those above specified shall be made by the Lessee directly to the party to receive the same unless any such payment has previously been made by the Lessor or its assignee, in which case the Lessee shall reimburse the Lessor or its assignee, as the case may be, directly for such payment.

The Lessee agrees that it will make payments due hereunder by wire transfer where specified above at the opening of business of the office of the transferring bank on the due date of such payment of Federal or otherwise immediately available funds to the party to whom such payment is to be made, and where not so specified, such payment shall be made by check of the Lessee drawn on a bank located in the continental United States and mailed to the party to receive the same at the address herein provided or at such other address as the Lessee shall have been previously advised in writing.

2.5. Net Lease. This Lease is a net lease and the Lessee's obligation to pay all Interim Rental and Fixed Rental and other amounts payable hereunder shall be absolute and unconditional under any and all circumstances and, without limiting the generality of the foregoing, the Lessee shall not be entitled to any abatement of rent or reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise or against any assignee of the Lessor pursuant to Section 16 hereof; 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 or destruction of all or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of Lessee's use of the Equipment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, 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 unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until, pursuant to Section 13 hereof, the Equipment has been returned to the possession of the Lessor (for all purposes of this Lease any Item of Equipment shall not be deemed to have been returned to the Lessor's possession until all of the Lessee's obligations with respect to the return, transportation and storage thereof have been performed). 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 Items of Equipment except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor or any assignee pursuant to Section 16 hereof for any reason whatsoever.

### SECTION 3. TERM OF THE LEASE.

The term of this Lease as to each Item of Equipment shall begin on the date of the delivery to and acceptance by the Lessee of such Item of Equipment and, subject to the provisions of Sections 11, 14 and 18 hereof, shall terminate 14 years following the Term Lease Commencement Date provided for in Section 2.1(a) hereof.

SECTION 4. OWNERSHIP AND MARKING OF EQUIPMENT.

4.1. Retention of Title. The Lessor, as between the Lessor and the Lessee, shall and hereby does retain full legal title to the Equipment notwithstanding the delivery thereof to and possession and use thereof by the Lessee.

4.2. Duty to Number and Mark Equipment. The Lessee will cause each Item of Equipment to be kept numbered with its road number as set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height as follows:

"Leased from First Maryland Leasecorp, as Owner, and Subject to a Security Interest recorded with the I.C.C."

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease and the rights of any assignee under Section 16 hereof. The Lessee will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the road number of any Item of Equipment except with the consent of the Lessor and in accordance with a statement of new road numbers to be substituted therefor, which statement previously shall have been delivered to the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

4.3. Prohibition Against Certain Designations. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee to use the Equipment under this Lease.

SECTION 5. DISCLAIMER OF WARRANTIES.

THE LESSOR LEASES THE EQUIPMENT, AS-IS, IN WHATEVER CONDITION IT MAY BE, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, BY THE LESSOR, THE LESSOR EXPRESSLY DISCLAIMING ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY

OF ANY ITEM OR ITEMS OF EQUIPMENT, (B) THE LESSOR'S TITLE THERETO, (C) THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT, OR (D) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. The Lessor hereby 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 and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against the Manufacturer, provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Item of Equipment 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 Item of Equipment 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 Item of Equipment. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that all Items of Equipment 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.

#### SECTION 6. LESSEE'S INDEMNITY.

6.1. Scope of Indemnity. The Lessee shall defend, indemnify and save harmless the Lessor and any assignee of the Lessor pursuant to Section 16 hereof (including, without limitation, the Security Trustee and the Note Purchasers) and their respective successors and assigns from and against:

(a) any and all loss or damage to the Equipment, usual wear and tear excepted; and

(b) any claim, cause of action, damages, liability, cost or expense (including, without limitation, counsel fees and costs in connection therewith) which may be incurred in any manner by or for the account of any of them (i) relating to any Item of Equipment or any part thereof, including, without limitation, the construction, purchase, delivery, acceptance, rejection, ownership, sale, leasing, return or storage of any Item of Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or

discoverable by the Lessee or any indemnified party), (ii) by reason or as the result of any act or omission (whether negligent or otherwise) of the Lessee for itself or as agent or attorney-in-fact for the Lessor hereunder, (iii) as a result of claims for patent, trademark or copyright infringements, or (iv) as a result of claims for negligence or strict liability in tort.

The indemnities and assumptions of liabilities set forth in this Section 6.1 do not guarantee to any party at any time a residual value in the Equipment nor do they guarantee the payment of the Notes or any interest accrued thereon.

#### 6.2. Continuation of Indemnities and Assumptions.

The indemnities and assumptions of liability in this Section 6 contained shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more Items of Equipment, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumptions of liability shall not apply in respect of any matters referred to in subsection (a) or clause (i), (ii), (iii) as to modifications made after the expiration of the lease or modifications by parties other than the Lessee without the consent of the Lessee or to clause (iv) of subsection (b) of Section 6.1 hereof, occurring after the termination of this Lease, except for any such matters attributable to, arising, or accruing during the term of this Lease, and except for any such matters occurring after the expiration or earlier termination arising in connection with the Lessee's assembling, delivering, storing or transporting of the Equipment as provided in Section 13 or 15, as the case may be. The Lessee shall be entitled to control, and shall assume full responsibility for, the defense of such claim or liability. The Lessee shall promptly notify the Lessor of any matter which may give rise to a claim or liability against the Lessor or any assignee thereof pursuant to Section 16 hereof. The Lessor shall have the right, but not the obligation, to defend any such matter, subject to the Lessee's approval of the manner in which such defense is made, which approval shall not be unreasonably withheld.

#### SECTION 7. RULES, LAWS AND REGULATIONS.

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including, without limitation, the rules of the United States Department of Transportation, the Interstate Commerce Commission and, to the extent applicable, the current Interchange Rules or supplements thereto of the Mechanical Division, Association of American Railroads as the same may be in effect from time to time) (the "Interchange Rules") with respect to the use and maintenance of each Item of Equipment subject to

this Lease. In case any equipment or appliance is required to be altered, added, replaced or modified on any Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, additions, replacements and/or modifications at its own expense and title thereto shall be immediately vested in the Lessor.

#### SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.

The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, and to the extent applicable, suitable for use in interchange in accordance with the Interchange Rules. Except as required by the provisions of Section 7 hereof, the Lessee shall not modify any Item of Equipment without the prior written authority and approval of the Lessor and any assignee pursuant to Section 16 hereof which shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon any Item of Equipment pursuant to Section 7 hereof or pursuant to its obligation to maintain and keep the Equipment in good order, condition and repair under this Section 8 shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor without cost or expense to the Lessor. The Lessee shall make no other additions or improvements to any Item of Equipment unless the same are readily removable without causing material damage to such Item of Equipment. Title to any such readily removable additions or improvements shall remain with the Lessee. If the Lessee shall at its cost cause such readily removable additions or improvements to be made to any Item of Equipment, the Lessee agrees that it will, prior to the return of such Item of Equipment to the Lessor hereunder, remove the same at its own expense without causing material damage to such Item of Equipment.

#### SECTION 9. LIENS ON THE EQUIPMENT.

The Lessee shall pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien or a charge upon any Item of Equipment, and any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease and any other liens or charges which arise by virtue of claims against, through or under any other party other than the Lessor, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor

or the security interest or other rights of any assignee under Section 16 hereof in and to the Equipment. The Lessee's obligations under this Section 9 shall survive the expiration or earlier termination of this Lease.

SECTION 10. FILING; PAYMENT OF STATE AND LOCAL TAXES.

10.1. Filing. Prior to the delivery and acceptance of the first Item of Equipment hereunder, the Lessee will cause this Lease and the Security Agreement to be duly filed, registered or recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303 and in such other places within or without the United States as the Lessor or the Security Trustee may reasonably request and will furnish the Lessor and the Security Trustee proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Security Trustee, for the purpose of protecting the Lessor's title to, or the Security Trustee's security interest in, any Item of Equipment to the satisfaction of the Lessor's or the Security Trustee's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor and the Security Trustee proof of such filings and an opinion of the Lessee's counsel reasonably satisfactory to the Lessor and the Security Trustee that such action has been properly taken. The Lessee will pay all costs, charges and expenses incident to any such filing, refiling, recording and rerecording or depositing and redepositing of any such instruments or incident to the taking of such action.

10.2. Payment of State and Local Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor and any assignee of the Lessor pursuant to Section 16 hereof (including, without limitation, the Security Trustee and the Note Purchasers) and their respective successors and assigns (the "Indemnitees") for collection or other charges and will be free of expense to the Indemnitees with respect to any Impositions as hereinafter defined. As used in this Section 10.2 "Impositions" shall mean the amount of any local, state, Federal or foreign taxes, assessments or license fees and any charges, fines or penalties in connection therewith which are imposed on or measured by this Lease or the receipt of sums pursuant hereto or any sale, rental, use, payment, shipment, delivery or transfer of title in respect of the Equipment under the terms hereof or the Security Agreement; provided that Impositions shall not include as to each respective Indemnitee: (i) United States Federal income tax liability and, to the extent that any respective Indemnitee receives credit therefor against its United States

Federal income tax liability, any foreign income tax of such Indemnitee, payable by any respective Indemnitee in consequence of the receipt of payments provided herein; and (ii) the aggregate of all franchise taxes measured by net income based on such receipts, up to the amount in the aggregate of any such income and franchise taxes which would be payable to the state and city in which such Indemnitee has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided. The Lessee agrees to pay, on demand, any and all Impositions. The Lessee will also pay promptly all Impositions which may be imposed upon any Item of Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon any Indemnitee solely by reason of its interest with respect thereto and will keep at all times all and every part of such Item of Equipment free and clear of all Impositions which might in any way affect the interest of any Indemnitee therein or result in a lien upon any such Item of Equipment; provided, however, 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 opinion of the Indemnitee, adversely affect the interest of any Indemnitee hereunder or under the Security Agreement. If any Impositions shall have been charged or levied against any Indemnitee directly and paid by such Indemnitee after such Indemnitee shall have given written notice thereof to the Lessee and the same shall have remained unpaid for a period of ten business days thereafter, the Lessee shall reimburse such Indemnitee on presentation of invoice therefor. Prior to making such payment, such Indemnitee shall promptly notify the Lessee of the Impositions charged or levied, and the Lessee shall have the opportunity to contest in good faith and by appropriate legal proceedings such Impositions, at its sole expense.

In the event any reports with respect to Impositions are required to be made on the basis of individual Items of Equipment, the Lessee will either prepare and file such reports in such manner as to show as required the interests of each Indemnitee in such Items of Equipment or, if it shall not be permitted to file the same, the Lessee will use its best efforts to notify each Indemnitee of such reporting requirements, provide all information necessary for the preparation and filing of such reports in such manner as shall be satisfactory to each Indemnitee and deliver the same to each Indemnitee within a reasonable period prior to the date the same is to be filed.

In the event that, during the continuance of this Lease, any Imposition accrues or becomes payable or is levied or assessed (or is attributable to the period of time during which this Lease is in existence) which the Lessee is or will be obligated to pay or reimburse, pursuant to this Section 10.2,

such liability shall continue, notwithstanding the expiration of this Lease, until all such Impositions are paid or reimbursed by the Lessee.

SECTION 11. INSURANCE; PAYMENT FOR CASUALTY OCCURRENCE.

11.1. Insurance. The Lessee agrees that it will at all times during the term of this Lease and during any return and storage period hereunder and at its own cost and expense keep each Item of Equipment insured against loss by fire, collision, derailment, and explosion and with extended coverage and against such other risks as are customarily insured against by railroad companies at not less than the Casualty Value of such Item of Equipment as of the next following date of payment thereof and will maintain general public liability insurance with respect to the Equipment against damage because of bodily injury, including death, or damage to property of others, such insurance to afford protection to the limit maintained by the Lessee with respect to similar equipment which it owns or leases. Any such property insurance may have deductible provisions to no greater extent than are customary with railroad companies in the aggregate in any single occurrence, and any public liability insurance may have deductible provisions to no greater extent than are customary with railroad companies in the aggregate in any single occurrence. All such insurance shall cover the interest of the Lessor and any assignee thereof (including, without limitation the Security Trustee and the Note Purchasers) and the Lessee, as their interests may appear, in the Equipment or, as the case may be, shall protect the Lessor and any assignee thereof (including, without limitation, the Security Trustee and the Note Purchasers) and the Lessee, in respect of risks arising out of the condition, maintenance, use, ownership and operation of the Equipment and shall provide that proceeds, if any, in respect to the Equipment shall be payable to the Lessee, the Lessor and the Assignee as their respective interests may appear. All policies of insurance maintained pursuant to this Section shall provide therein or by endorsement that not less than 30 days' prior written notice of cancellation or modification (if such advance notice period is consistent with railroad industry practices) shall be given to the Assignee and the Lessor. As to the interest of the Lessor or the Assignee therein, no such insurance shall be invalidated by any foreclosure or other remedial proceedings or notices thereof relating to the Equipment or any interest therein nor by any change in the title or ownership of the Equipment or any interest therein or with respect thereto or by the use or operation of the Equipment for purposes more hazardous than is permitted by such policy. The Lessee warrants and affirms that it will satisfy all obligations under such policy necessary to keep such insurance in full force and effect. No such policy shall require co-insurance. Upon receipt by the Lessee of notice of the assignment of this Lease and the rents and other sums payable hereunder pursuant to Section 16 hereof, the Lessee shall cause

the property insurance on the Equipment referred to in clause (ii) in the immediately preceding sentence to provide that the proceeds, if any, shall be payable to the Assignee under a standard mortgage loss payable clause satisfactory to the Lessor, the Lessee, the Security Trustee and the Note Purchasers. To the extent permitted by the terms of applicable insurance coverage, the loss under the policy referred to in clause (ii) above, if any, shall be adjusted with the Lessee. The Lessee shall further furnish the Lessor, and the Security Trustee with certificates or other satisfactory evidence of maintenance of the insurance required hereunder and with respect to any renewal policy or policies shall furnish certificates or binders evidencing such renewal as soon as practicable but in no event later than 90 days after the expiration date of this original policy or policies. All insurance provided for in this Section shall be effective with insurance companies or insurers having all necessary power and authority to furnish the required coverage.

The proceeds of any property insurance received by the Lessor, or the Security Trustee shall be held by such party until the repairs referred to in clause (i) below are made as specified therein or payment of the Casualty Value is made, but in no case longer than one year and will be paid to the Lessee either (i) upon a written application signed by the Lessee for payment of, or to reimburse the Lessee for payment of, the costs of repairing or restoring the Item of Equipment which has been lost or damaged (which application shall be accompanied by satisfactory evidence of such cost and the completion of such repair or restoration), or (ii) if this Lease is terminated with respect to such Item of Equipment because of a Casualty Occurrence promptly upon payment by the Lessee of the Casualty Value; provided that, if the Lessee is at the time of the application in default in the payment of any other liability of the Lessee to the Lessor hereunder, such proceeds may be applied against such liability.

11.2. Duty of Lessee to Notify Lessor. In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or, in the reasonable opinion of the Lessee, irreparable damaged or permanently rendered unfit for use from any cause whatsoever during the term of this Lease or thereafter while such Item of Equipment is in the possession of the Lessee pursuant to Section 13 or 15 hereof, or title or use thereof or shall be requisitioned or taken by any governmental authority under the power of eminent domain or otherwise during the term of this Lease for a stated period which exceeds the then remaining term of this Lease (any such occurrence being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence) inform the Lessor and any assignee thereof pursuant to Section 16 hereof in regard thereto (including, without limitation, the Assignee) and shall pay the Casualty Value (as defined in Section 11.6 hereof) of such Item in accordance with the terms of Section 11.3 hereof.

11.3. Sum Payable for Casualty Loss. The Lessee, on the Term Lease Commencement Date or next succeeding Fixed Rental payment date or the last day of the term of this Lease, as the case may be, following its determination that a Casualty Occurrence has taken place with respect to any Item of Equipment, shall pay to the Lessor (i) any rentals or other sums due prior to such date then remaining unpaid, plus (ii) a sum equal to the Casualty Value of such Item of Equipment as of the date of such payment, plus (iii) if such payment is made on the Term Lease Commencement Date, the Interim Rental installment due on such date in respect of such Item.

11.4. Rent Termination. Upon (and not until) payment of all sums required to be paid pursuant to Section 11.3 hereof in respect of any Item or Items of Equipment, the obligation to pay rent for such Item or Items of Equipment accruing subsequent to the Casualty Value payment date shall terminate, but the Lessee shall continue to pay rent for all other Items of Equipment.

11.5. Disposition of Equipment. The Lessee shall, as agent for the Lessor, dispose of such Item or Items of Equipment having suffered a Casualty Occurrence as soon as it is able to do so for the fair market value thereof. Any such disposition shall be on an "as-is", "where-is" basis without representation or warranty, express or implied (including, without limitation, those representations and warranties expressly disclaimed in Section 5 hereof). As to each separate Item of Equipment so disposed of, the Lessee may, so long as no Event of Default shall have occurred and be continuing hereunder, retain all amounts arising from such disposition plus any insurance proceeds and damages received by the Lessee by reason of such Casualty Occurrence plus any requisition or condemnation payments or awards. The Lessee shall provide to the Lessor evidence satisfactory to the Lessor that each separate Item of Equipment so disposed of has been permanently retired from service and is no longer under the control or being used by the Lessee. In disposing of such Item of Equipment, the Lessee shall take such action as the Lessor shall reasonably request to terminate any contingent liability which the Lessor might have arising after such disposition from or connected with such Item of Equipment. Upon the Lessee's request, the Lessor shall provide the Lessee with a bill of sale or any other documents reasonably necessary for the Lessee's disposition of the Items suffering a Casualty Occurrence.

11.6. Casualty Value. The Casualty Value of each Item of Equipment shall be an amount determined as of the date the Casualty Value is paid as provided in this Section 11 (and not the date of the Casualty Occurrence) equal to that percentage of the Total Cost (as defined in the Participation Agreement) of such Item of Equipment set forth in the Schedule of Casualty Value attached hereto as Schedule C opposite such date of payment.

11.7. Risk of Loss. The Lessee shall bear the risk of loss and, except as hereinabove in this Section 11 provided,

shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Item of Equipment from and after the date hereof and continuing until payment of the Casualty Value and all rental installments and other sums due on and prior to the date of payment of such Casualty Value in respect of such Item of Equipment has been made, such Item or the salvage thereof has been disposed of by the Lessee and the title to such Item or the salvage thereof and all risk of loss and liabilities incident to ownership have been transferred to the purchaser of such Item or the salvage thereof.

11.8. Eminent Domain. In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period which does not exceed the term of this Lease, the Lessee's obligation to pay all installments of rental and other sums shall continue for the duration of such requisitioning or taking. So long as no Event of Default, or event which with the lapse of time or giving of notice, or both, shall have occurred and be continuing, the Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

## SECTION 12. ANNUAL REPORTS.

12.1. Duty of Lessee to Furnish. On or before the first May 1 which occurs more than four months following the date of this Lease, the Lessee will furnish to the Lessor and any assignee of the Lessor pursuant to Section 16 hereof (including, without limitation, the Security Trustee and the Note Purchasers) an accurate statement, as of the preceding December 31 (a) showing the amount, description and numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the 12 months ending on such December 31 (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Lessor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced.

12.2. Lessor's Inspection Rights. The Lessor and any assignee of the Lessor pursuant to Section 16 hereof (including, without limitation, the Security Trustee and the Note Purchasers) each shall have the right, at their respective sole cost and expense, by their respective authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such time as shall be reasonably necessary to confirm thereto the existence and proper maintenance of the Equipment during the continuance of this Lease.

SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.

Upon the expiration of the term of this Lease with respect to any Item of Equipment, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Item of Equipment to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Item of Equipment on such tracks for a period not exceeding 90 days and transport the same at any time within such 90-day period to any reasonable place on any railroad lines operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor upon not less than 30 days' written notice to the Lessee. All movement and storage of each such Item is to be at the risk and expense of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Item, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Equipment 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 to so assemble, deliver, store and transport the Equipment. All amounts earned in respect of the Equipment after the date of expiration of this Lease, but not exceeding the rental, per diem, or other similar charge for equipment received therefor, shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Item of Equipment is not assembled, delivered and stored as hereinabove provided within 30 days after the expiration of this Lease, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the higher of (i) an amount equal to 0.02622918% of the Total Cost of such Item of Equipment, or (ii) the Fair Rental Value (determined in the manner provided in Section 18 hereof) for such Item for each such day exceeds the amount, if any, received by the Lessor (either directly or from the Lessee) for such day for such Item pursuant to the preceding sentence.

SECTION 14. DEFAULT.

14.1. Events of Default. Any of the following events shall constitute an Event of Default hereunder:

- (a) Default shall be made in the payment of any part of the rental or Casualty Value provided in

Section 2 or 11 hereof and such default shall continue for five days;

(b) The Lessee shall make or permit any assignment or transfer of this Lease, or of possession of the Equipment, or any portion thereof not permitted by this Lease;

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

(d) Any representation or warranty made by the Lessee herein or in the Participation Agreement, the Hulk Purchase Agreement or the Reconstruction Agreement or in any statement or certificate furnished to the Lessor, the Security Trustee or the Note Purchasers pursuant to or in connection with this Lease, the Participation Agreement, the Hulk Purchase Agreement or the Reconstruction Agreement is untrue in any material respect as of the date of issuance or making thereof;

(e) Any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustments or indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceeding in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(f) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 is at any time amended, whether pursuant to the Bankruptcy Reform Act of 1978 or subsequent amendments thereof, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by such trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier.

14.2. Remedies. If any Event of Default has occurred and is continuing, the Lessor or, in the event this Lease shall be assigned to an assignee pursuant to Section 16 hereof, such assignee, 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 reasonable attorneys' fees; and/or

(b) By notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment 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 Equipment may be located and take possession of all or any of the Items of Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use such Items for any purpose whatever, but the Lessor shall nevertheless have a right to recover from the Lessee any and all amounts 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 (1) as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify:  
(x) a sum with respect to each Item of Equipment which

represents the excess of the present worth, at the time of such termination, of all rentals for such Item which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over the then present worth of the then Fair Rental Value of such Item for such period computed by discounting from the end of such term to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the use of such Item during such period, such present worth to be computed in each case on a basis of a 6% per annum discount, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, or (y) an amount equal to the excess if any of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the amount the Lessor reasonably estimates to be the Fair Market Value thereof at such time; provided, however, that in the event the Lessor shall have sold any Item of Equipment, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (i) with respect thereto may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the net proceeds of such sale, and (ii) any damages and expenses, other than for a failure to pay rental, in addition thereto, including reasonable attorneys' fees, which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental.

For purposes of Section 14.2 above, the Fair Rental Value and Fair Market Value for any Item of Equipment shall be determined in the manner provided for appraisal arrangements specified in Section 18.2(b) hereof; provided that any sale in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Market Value of such Item and any rental in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Rental Value of such Item.

14.3. Cumulative Remedies. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims of any right to assert any offset against the rent payments due

hereunder, and agrees to make the rent payments regardless of any offset or claim which may be asserted by the Lessee on its behalf in connection with the lease of the Equipment.

14.4. Lessor's Failure to Exercise Rights. The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

14.5. Notice of Event of Default. The Lessee also agrees to furnish to the Lessor, the Security Trustee and the Note Purchasers, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section 14.5 a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

#### SECTION 15. RETURN OF EQUIPMENT UPON DEFAULT.

15.1. Lessee's Duty to Return. If the Lessor or any assignee of the Lessor pursuant to Section 16 hereof shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

(a) Forthwith place such Equipment in such reasonable storage place on the Lessee's lines of railroad as the Lessor may designate or, in the absence of such designation, as the Lessee may select; provided that, in the event the Lessor shall designate storage tracks which are then unavailable either because such tracks are then being used to store equipment owned by a third party pursuant to a contractual obligation of the Lessee to provide storage therefor or because the storage of the Items of Equipment on such tracks would materially impair the ability of the Lessee to meet its obligations to perform services as a common carrier to the public, then the Lessee agrees to so store the Items of Equipment upon such other storage tracks as shall then be so available and nearest to such storage tracks designated by the Lessor;

(b) Permit the Lessor to store such Equipment in such reasonable storage place on the Lessee's lines of railroad without charge for insurance, rent or storage until such Equipment has been sold, leased or otherwise disposed of by the Lessor and during such period of storage the Lessee shall continue to maintain all insurance required by Section 11.1 hereof; and

(c) Transport the Equipment to any place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as the Lessor may direct in writing.

All amounts earned in respect of the Equipment after the date of termination of this Lease, but not exceeding the rental, per diem, or other similar charge for equipment received therefor, shall belong to the Lessor or in the event this Lease has been assigned pursuant to Section 16 hereof, to such assignee, and, if received by the Lessee, shall be promptly turned over to the Lessor, or in the case of such assignment, to such assignee. In the event any Item of Equipment is not assembled, delivered and stored as hereinabove provided within 30 days after the termination of this Lease, the Lessee shall, in addition, pay to the Lessor or, in the case of such assignment, to such assignee for each day thereafter an amount equal to the amount, if any, by which the higher of (i) an amount equal to 0.02622918% of the Total Cost of such Item of Equipment, or (ii) the Fair Rental Value (determined in the manner provided in Section 18 hereof) for such Item of Equipment for each such day exceeds the amount, if any, received by the Lessor or such assignee (either directly or from the Lessee) for such day for such Item pursuant to the preceding sentence.

15.2. Specific Performance. The assembling, delivery, storage and transporting of the Equipment 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 Equipment.

15.3. Lessor Appointed Lessee's Agent. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 15, 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 Items of Equipment to the Lessor, to demand and take possession of such Item in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Item.

SECTION 16. ASSIGNMENTS BY LESSOR.

This Lease and all rent and all other sums due or to become due hereunder may be assigned in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. Upon notice to the Lessee of any such assignment, the rent and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to or upon the written order of the assignee. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of any such assignee in and to the sums payable by the Lessee under any provision of this Lease shall not be subject to any abatement whatsoever and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever whether by reason of failure of or defect in the Lessor's title or the failure of the Lessor to afford the right of quiet enjoyment to the Lessee, or any interruption from whatsoever cause in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of such assignee, the Lessee shall be unconditionally and absolutely obligated to pay such assignee all of the rents and other sums which are the subject matter of the assignment, (ii) said assignee shall, if an Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of said assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor (except those rights, privileges and remedies relating to amounts payable to the Lessor pursuant to Sections 6, 10.2, 11.1 [with respect to public liability insurance] and 21.2 hereof which shall remain enforceable by the Lessor), but if no Event of Default or event which with the lapse of time or giving of notice, or both, would constitute an Event of Default, shall have occurred and be continuing, said assignee and the Lessor may each exercise their respective rights, privileges and remedies stated in this Lease to be provided for their respective benefits, and (iii) all obligations of the Lessor to the Lessee under this Lease shall be and remain enforceable by the Lessee against, and only against, the Lessor.

It is understood and agreed that the right, title and interest of any such assignee in, to and under this Lease and the rents and other sums due and to become due hereunder shall by the express terms granting and conveying the same be subject to the interest of the Lessee in and to the Equipment.

SECTION 17. ASSIGNMENTS BY LESSEE; USE AND POSSESSION.

17.1. Lessee's Rights to the Equipment. So long as no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment. 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 Equipment, except to the extent permitted by the provisions of Section 17.2 hereof.

17.2. Use and Possession in Railroad Operations. So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Equipment and to the use thereof upon the lines of railroad owned or operated by it (either alone or jointly) or by any corporation, a majority of whose voting stock (i.e., having ordinary voting power for the election of a majority of its Board of Directors) is owned directly or indirectly by the Lessee, or upon lines of railroad over which the Lessee or such corporation has trackage or other operating rights or over which equipment of the Lessee is regularly operated pursuant to contract or run-through agreements, but only upon and subject to all the terms and conditions of this Lease. Notwithstanding the foregoing, the Lessee shall at no time throughout the term of this Lease assign or permit the assignment of any Item of Equipment to service (including, without limitation, the regular operation or maintenance thereof) outside the continental United States, and the Lessee agrees that the use of the Equipment outside the continental United States shall be de minimus. No assignment or sublease entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligation hereunder which shall be and remain those of a principal and not a surety.

17.3. Merger, Consolidation or Acquisition of Lessee. Nothing in this Section 17 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all of the lines of railroad of the Lessee, provided that such assignees, successors or transferees shall have duly assumed the obligations of the Lessee hereunder and that they will not, upon the effectiveness of such merger or consolidation or acquisition of properties and the assumption of such obligations, be in default under any provision of this Lease and that such merger or consolidation or acquisition of Properties shall not alter in any way the Lessee's obligations to the Lessor hereunder which shall be and remain those of a principal and not a guarantor.

SECTION 18. RIGHT OF FIRST REFUSAL; RENEWAL OPTIONS.

18.1. Right of First Refusal. Unless an Event of Default, or any event which with the lapse of time or giving of notice, or both, would constitute an Event of Default, shall have occurred and be continuing, the Lessor shall not, at any time after the end of the original term of this Lease (or, if the Lessee has renewed this Lease for a renewal term pursuant to Section 18.2 hereof, at the end of such renewal term) sell, transfer or otherwise dispose of an Item of Equipment unless:

(a) the Lessor shall have received from a responsible purchaser or purchasers a bona fide offer or offers in writing to purchase such Item of Equipment;

(b) the Lessor shall have given the Lessee notice (i) setting forth in detail the identity of such purchaser or purchasers, the Item or Items of Equipment to be purchased, the proposed purchase price or prices, the proposed date of purchase and all other material terms and conditions of such purchase, including, without limitation, any arrangements for the financing of such purchase known to the Lessor, and (ii) offering to sell such Item of Equipment to the Lessee upon the same terms and conditions as those set forth in such notice; provided that in the event such proposal is in respect of more than one Item of Equipment, the Lessee must purchase all such Items of Equipment as a group; and

(c) the Lessee shall not have notified the Lessor, within 15 days following receipt of such notice, of its election to purchase such Item or Items of Equipment upon such terms and conditions.

If the Lessee shall not have so elected to purchase such Item or Items of Equipment, the Lessor may sell such Item or Items of Equipment at a price and upon other terms and conditions no less favorable to the Lessor than those specified in such notice. Notwithstanding the foregoing provisions of this Section 18.1, the Lessor may, if the Lessee has not renewed this Lease pursuant to Section 18.2 hereof, lease any or all Items of Equipment at any time after the end of the original term of this Lease (or, if the Lessee has renewed this Lease for a renewal term pursuant to Section 18.2 hereof, at the end of such renewal term) without first offering to lease the Equipment to the Lessee.

18.2. Renewal Options. Provided that no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall have the following renewal options:

(a) The Lessee shall have the option to renew and extend this Lease as to all, but not less than all, of the Items of Equipment then leased hereunder for two additional renewal terms of two years each upon and subject to the terms and conditions herein contained for the original term of this Lease; provided that the Fixed Rental payable for and during any such renewal term shall be an amount equal to the Fair Rental Value (as hereinafter defined) of such Items of Equipment and that the Casualty Value payable for and during any such renewal term in respect of any Item of Equipment suffering a Casualty Occurrence during such term shall be an amount equal to the higher of (i) the Fair Market Value of such Item of Equipment as of the beginning of such renewal term, or (ii) an amount equal to 20% of the Purchase Price of such Item of Equipment. Each renewal term shall commence immediately upon the expiration of the preceding term. The Lessee shall give the Lessor written notice of any such election 180 days prior to the commencement of any renewal term provided for in this Section 18.2; and

(b) The Fair Rental Value or Fair Market Value, as the case may be, of the Items of Equipment 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 lessee or buyer, as the case may be (other than a lessee or buyer, as the case may be, currently in possession) and an informed and willing lessor or seller, as the case may be, under no compulsion to lease or sell, as the case may be. If on or before 90 days prior to the date of commencement of the renewal term elected by the Lessee, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value or the Fair Market Value of such Items of Equipment, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term "Appraiser" shall mean any independent appraiser mutually agreed upon by the Lessor and the Lessee or if no such mutual agreement is reached within 15 days after the beginning of such 90-day period, two independent appraisers, one chosen by the Lessor and one chosen by the Lessee, or, if such appraisers cannot agree on the amount of such value within 60 days prior to the date of commencement of the renewal term elected by the Lessee, an independent appraiser to be chosen by the American Arbitration Association promptly thereafter. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

18.3. Delivery of Equipment. Unless the Lessee has elected to purchase the Items of Equipment then leased hereunder or to renew this Lease in respect of such Items of Equipment as provided in this Section 18, all of such Items of Equipment shall be returned to the Lessor at the end of the original term, or the then current renewal term, as the case may be, in accordance with Section 13 hereof.

SECTION 19. INTEREST ON OVERDUE RENTALS AND AMOUNT PAID BY LESSOR.

Anything to the contrary herein contained notwithstanding any nonpayment of rent due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the additional obligation on the part of the Lessee to pay also an amount equal to 11-3/8% per annum (or the lawful rate, whichever is less) on the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid.

SECTION 20. FEDERAL INCOME TAX INDEMNIFICATION.

(a) Intended Federal Tax Benefits. In entering into this Lease, the Participation Agreement and the transaction contemplated thereby, it is the intention of the Lessor and the Lessee that such transaction will result in making available to the Lessor the following tax benefits (the "Tax Benefits") for the purpose of determining its liability for Federal income tax:

- (1) This Lease constitutes a lease;
- (2) The Lessor is the lessor and the Lessee is the lessee under this Lease;
- (3) The Lessor will be entitled to deduct the interest (the "Interest Deduction") payable on the Notes in computing its taxable income;
- (4) The entire Reconstruction Cost of the Equipment qualifies for the full 10% investment tax credit allowed under Section 38 and related Sections of the Code (the "Investment Credit");
- (5) In computing its taxable net income, the Lessor will be entitled to depreciate that portion of the Total Cost of the Equipment equal to the Reconstruction Cost thereof in accordance with any of the methods set forth in Section 167(b)(1), (2) or (3) of the Code and will be entitled to depreciate the Equipment in accordance with the provisions of Section 167(m) of the Code over an "asset depreciation range" of 12 years, using, with

respect to that portion of the Total Cost of the Equipment equal to the Reconstruction Cost thereof, the double-declining balance method switching to the sum-of-the-years digits' method provided in Section 167(b)(3) of the Code, and using, with respect to that portion of the Total Cost of the Equipment equal to the Hulk Purchase Price, the 150% declining-balance method switching to the straight-line method;

(6) The Equipment may be so depreciated to an estimated gross salvage value of 10% of the Total Cost of the Equipment which will be reduced by 10% of the Total Cost of the Equipment as provided in Section 167(f) of the Code [subsections (f) and (g) collectively are the ("Depreciation Deduction")];

(7) All amounts includible in gross income by the Lessor with respect to this Lease will be treated as income derived from or allocable to sources within the United States; and

(8) For all purposes of determining such Tax Benefits, the Code and the regulations thereunder, including tax rates, shall be read as in effect on March 15, 1979.

(b) Actions of Lessee. The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time during the term of this Lease or any extended term thereof take any action or fail to take any action or file any returns, certificates or other documents inconsistent with the foregoing contemplated Tax Benefits except that 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 of such corporations will file such returns, take such action and execute such documents, and keep and make available for inspection and copying by the Lessor such records (other than the Lessee's corporate income tax returns), as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

(c) Representations and Warranties by Lessee. The Lessee represents and warrants that (i) the portion of the Items equal to the portion of the basis of the Items attributable to Reconstruction Cost does not constitute property, the construction, reconstruction or erection of which was begun before April 1, 1971; (ii) at the time the Lessor becomes the owner of the Items, the entire rebuilt portion of the Equipment to the extent of the entire Reconstruction Cost of the Items will qualify as "new Section 38 property" within the meaning of Section 48(b) of the Code; (iii) at the time the Lessor becomes the owner of the Items, the reconstructed portion of the Items will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections

48(b) and 167(c) of the Code from commencing with the Lessor; (iv) at the time the Lessor becomes the owner of the Items, no investment credit, depreciation or other tax benefits will have been claimed by any person with respect thereto; (v) at all times during the term of the Lease, the entire rebuilt portion of the Items to the extent of the entire Reconstruction Cost thereof will constitute "Section 38 property" within the meaning of Section 48(a) of the Code in effect on the date the Equipment is placed in service; (vi) the use of the Equipment outside the continental United States shall be de minimis and the Lessee will maintain sufficient records to verify such use, which records will be furnished to the Lessor only for Federal income tax audit purposes within 30 days after receipt of written demand therefor; and (vii) it is currently reasonable to expect that the Equipment will have a useful life of at least 19.5 years and a fair market value as of 15 years following the Term Lease Commencement Date of at least 20% of the Purchase Price thereof without including in such value any increase or decrease for inflation or deflation during the term of this Lease and after subtracting from such value any cost to the Lessor for removal and delivery of possession of the Equipment to the Lessor at the end of the lease term, and that at the expiration of the term of this Lease the Items will have a commercially feasible use to the Lessor and other potential users within the meaning of Rev. Proc. 76-30.

(d) Federal Income Tax Indemnification. If the Lessor shall lose, or 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 Item of Equipment due to (a) the sale or other disposition of any Item of Equipment or the interest of the Lessor therein after the occurrence of an Event of Default under this Lease, or (b) any amendment to, or change in, the Code or the Regulations thereunder which is enacted on or prior to January 1, 1980, or (c) any action or failure to act of the Lessee in breach of the Operative Agreements, or (d) any change in the Code as in effect on March 15, 1979 which change is adopted or effective prior to the Term Lease Commencement Date, or (e) the incorrectness of any representation or warranty made by the Lessee in Section 20(c) above or in any Operative Agreement or in any certificate delivered in connection therewith, then in any such case the Lessee shall pay to the Lessor (i) on the first date provided in the Lease for the payment of installments of rental thereunder after the date on which the liability of the Lessee hereunder shall become fixed as provided in Section 20(e) hereof, an amount equal to the sum of all federal, state, and local income taxes and interest and penalties and additions to tax paid by the Lessor and attributable to the loss of Tax benefits by the Lessor with respect to an Item of Equipment (the "Tax Payment") plus an additional amount sufficient to pay all federal, state and local income taxes of the Lessor resulting from the receipt of the Tax Payment (the Tax Payment plus such additional amount being the "Lump Sum Payment") and (ii) on each of the dates provided in this Lease for payment of the installments of rental thereunder commencing with the first such

date following the date on which the liability of the Lessee hereunder shall become fixed as hereinafter provided, such sums which (after deduction of all income taxes required to be paid by the Lessor on the receipt of such sums under the laws of the United States or any political subdivision thereof), when taken together with the portion of the rental installments due on such dates under the Lease which are to be distributed to the Lessor, will, in the reasonable opinion of the Lessor, maintain the Lessor's after-tax economic and accounting yields and cash flows (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) in respect of such Item of Equipment hereunder and under this Lease at the same level that would have been available if the Lessor had been entitled to utilization of all such Tax Benefits. In the event that this Lease is terminated with respect to any Item of Equipment prior to the time the Lessee is obligated to make payments to the Lessor as set forth in the preceding sentence (either because no such payment obligation had become fixed under such sentence prior to such termination or because the due date of such payment or payments shall occur following such termination), then the Lessee shall pay to the Lessor, in lieu of such payment or payments, on or before 30 days after the liability of the Lessee in respect of such termination and hereunder shall become fixed as in this Lease and hereinafter provided, such lump sum (calculated in the same manner as set forth in the preceding sentence, and, in the case of a termination in connection with a Casualty Occurrence, making necessary adjustments for any previous revision of the Casualty Values pursuant to this Section 20(d)) as shall be necessary in the reasonable opinion of the Lessor to maintain the Lessor's after-tax economic and accounting yields and cash flows (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) in respect of such Item of Equipment hereunder and under this Lease at the same level that would have been available if the Lessor had been entitled to utilization of all such Tax Benefits.

If any income or deduction with respect to the Items of Equipment shall not be treated as derived from, or allocated to, sources within the United States in the Lessor's Federal income tax return for a given year, then the Lessee shall pay to the Lessor on the first day thereafter provided for in the Lease for the payment of installments of rental thereunder, an amount equal to the excess of (x) the foreign tax credits which the Lessor would have been entitled to for such year if all the income and deductions attributable to the Items of Equipment had been treated as allocable to United States sources over (y) the foreign tax credits to which the Lessor was limited as a result of less than all the income and deductions attributable to the Items of Equipment being deemed allocable to United States sources, together with all interest and penalties and additions to tax payable in connection with such loss, plus all federal, state and local income taxes paid by the Lessor resulting from the receipt of such excess, interest and penalties and additions to tax. The Lessee will maintain sufficient

records to verify its use of the Items of Equipment outside of the United States, which use shall be de minimis, and the Lessee shall furnish such records to the Lessor for Federal income tax audit purposes, upon receipt of 30 days written notice.

The Lessee acknowledges that the Schedule of Casualty Value attached as Appendix C to the Lease has been computed on the assumption that the Lessor shall be entitled to the Tax Benefits. Accordingly, in the event the Lessee becomes obligated under the provisions of this Agreement to pay additional sums to the Lessor pursuant to this Section 7(d), the said Schedule of Casualty Value shall be revised as may be necessary in the reasonable opinion of the Lessor so that the amount payable by the Lessee in connection with any Casualty Occurrence shall be sufficient to maintain the Lessor's after-tax economic and accounting yields and cash flows (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) at the same level that would have been available to the Lessor upon payment of Casualty Value had the Tax Benefits been allowed in full; provided that the Casualty Values under the Lease shall in no event be reduced below amounts required (when taken together with rentals then payable) to discharge the Notes 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 Value shall be applied to any payment of Casualty Value 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 the Lease by the Lessee after a Loss but prior to the aforementioned revision of the Casualty Value with respect to such Item of Equipment, the Lessee shall pay to the Lessor, in a lump sum, the additional amount, in excess of the Casualty Value actually paid, that 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 Value had, accordingly, been revised as above provided.

Anything in the first paragraph of this Section 20(d) to the contrary notwithstanding, the Lessee shall not be required to make any payment to the Lessor provided for herein if the Lessor shall have lost, or 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 any Item of Equipment to which it would otherwise have been entitled if such Tax Benefits would otherwise have been lost because one or more of the following events has occurred (hereinafter called Excluded Events):

(1) a Casualty Occurrence with respect to such Item of Equipment, if the Lessee shall have paid to the Trust the amounts stipulated under Section 11 of this Lease, as the same may be revised pursuant to the preceding paragraph;

(ii) a voluntary transfer or other voluntary disposition by Lessor of any interest in such Item of Equipment or the voluntary reduction by the Lessor of its interest in the rentals from such Item of Equipment under the Lease (except pursuant to any assignment thereof to the Security Trustee or any Note Purchaser as security) or any transfer or disposition by the Lessor resulting from bankruptcy or other proceedings for the relief of debtors in which the Lessor is the debtor (whether voluntary or involuntary) of any interest in such Item of Equipment or in the rentals therefor under this Lease unless, in each case, an Event of Default under this Lease shall then have occurred and be continuing;

(iii) the failure of the Lessor to timely claim the Investment Credit, the Depreciation Deduction or the Interest Deduction, as applicable, in its Federal income tax return for the appropriate year or the failure of the Lessor to follow proper procedure in claiming the Tax Benefits;

(iv) the failure of the Lessor 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) the failure of the Lessor to take timely action to contest a loss of tax benefits in accordance with Section 20(e) hereof.

(e) Contesting Loss of Tax Benefits. In the event a claim shall be made by the Internal Revenue Service which, if successful, would result in a loss of Tax Benefit, under circumstances which would require the Lessee to indemnify the Lessor for such loss, the Lessor hereby agrees to notify the Lessee promptly of such claim, to not make payment of the tax claimed for at least 30 days after giving such notice and to give to the Lessee any relevant information requested by it relating to such claim which may be particularly within the knowledge of the Lessor. The Lessor 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 the Lessor, independent counsel who is acceptable to the Lessor selected by the Lessee (herein referred to as "Counsel") a bona fide claim to all or a portion of the Tax Benefits with respect to any Item of Equipment exists in respect of which the Lessee would otherwise be required to make payments to the Lessor pursuant hereto, the Lessor shall, upon request and at the expense of the Lessee, contest such matter in such forum as the Lessor, in its sole judgment, shall select; provided, however, that the Lessor 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 the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such

reasonable security therefor as may be requested. The Lessor may, at its option, take such action prior to making any Tax Payment or may make such Tax Payment and then sue for a refund. If the Lessor 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 cases, if the Final Determination (as such term is defined in the next succeeding paragraph hereof) shall be adverse to the Lessor the sums payable hereunder shall be computed by the Lessor as of the date of such Final Determination and the Lessee shall on the rental payment date under the Lease next succeeding such Final Determination (i) pay to the Lessor the amount of the Lump Sum Payment (as previously defined) plus interest thereon from the date such payments are made by the Lessor to the date the Lessee reimburses the Lessor therefor at 125 percent of the rate of interest charged by Citibank, N.A. to its prime commercial customers on short-term unsecured borrowings (the "Prime Rate") in effect on the date of such Final Determination; and (ii) commence payment of the balance of the sums payable pursuant to the first paragraph of Section 20(d). If the Lessor makes such Tax Payment prior to contesting the matter and then either sues for a refund or does not contest such Tax Payment because the Lessee has not requested or is not entitled to request the Lessor to do so in accordance with the terms of this paragraph, the Lessee shall on the first rental payment date under the Lease after such Tax Payment (i) pay to the Lessor the amount of the Lump Sum Payment (as previously defined) plus interest thereon from the date such payments are made by the Lessor to the date the Lessee reimburses the Lessor thereof at 125 percent of the Prime Rate in effect on the date such payments are made by the Lessor; and (ii) commence payment of the balance of the sums payable pursuant to the first paragraph of Section 20(d). If the Lessor sues for a refund after making such Tax Payment, and if the Final Determination shall be in favor of the Lessor, no future payments shall be due hereunder in respect of such matter (or an appropriate reduction shall be made if the Final Determination is partly in favor of and partly adverse to the Lessor). In addition, the Lessee and the Lessor shall adjust their accounts so that the Lessor pays to the Lessee an amount equal to the sums theretofore paid by the Lessee to the Lessor (or a proportionate part thereof if the Final Determination is partly adverse to the Lessor) on or before the next succeeding rental payment date, provided however, that the Lessor shall be entitled to retain any interest received from or payable by the United States as interest on a tax overpayment.

"Final Determination" means a final decision of the Internal Revenue Service or 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 the Lessor elects to file such appeal or petition) have been exhausted by either party to the action.

Neither concession by the Lessor of any of the aforementioned Tax Benefits in the overall settlement of a controversy with the Internal Revenue Service either at the administrative level or at the court level without the prior written consent of the Lessee 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 the Lessor.

(f) Payment Adjustment for Lessee's Capital Expenditures. In the event that the Lessee makes any non-readily removable improvement and/or addition (the "Alterations") to an Item of Equipment, under and pursuant to the terms of Section 7 hereof or otherwise, and the cost thereof is in the reasonable opinion of the Lessor deemed to be included in the gross income of the Lessor for Federal income tax purposes, the Lessee shall pay to the Lessor on each of the dates provided in the Lease for payment of the installments of rental thereunder in respect of such Item of Equipment commencing with the first such date following the date on which the Lessee is required to furnish written notice of such inclusion to the Lessor pursuant to Section 7 hereof, such sums which (after deduction of all taxes required to be paid by the Lessor with respect to the receipt thereof under the laws of the United States or any political subdivision thereof), when taken together with the rental installments due on such dates under this Lease in respect of such Item of Equipment, will, in the reasonable opinion of the Lessor, maintain the Lessor's after-tax economic and accounting yields and cash flows (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) in respect of such Item of Equipment hereunder and under this Lease at the same level that would have been available if the cost of such Alterations had not been included in the Lessor's gross income.

The Lessee agrees that, within 30 days after the close of any calendar year (or in the event the Lessor gives the Lessee written notice that the Lessor's taxable year closes on a date specified therein other than December 31, within 30 days after said date) in which the Lessee has made Alterations, the Lessee will give written notice thereof to the Lessor describing, in reasonable detail, such Alterations, and specifying the cost thereof with respect to each Item of Equipment.

(g) Consolidated Tax Returns. For purposes of this Section 20, the term "Lessor" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Lessor is a member if consolidated returns are filed for such affiliated group for Federal income tax purposes.

SECTION 21. MISCELLANEOUS.

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

If to the Lessor: First Maryland Leasecorp  
25 South Charles  
Baltimore, Maryland 21202  
Attention:

If to the Security Trustee: First Security Bank of Utah, N.A.  
79 South Main Street  
Salt Lake City, Utah 84111  
Attention: Trust Department  
Corporate Trust Division

If to the Lessee: Illinois Central Gulf Railroad Company  
Two Illinois Center  
233 North Michigan Avenue  
Chicago, Illinois 60601  
Attention:

If to any Note Purchaser: At the addresses provided therefor in  
Schedule 2 to the Participation  
Agreement

or addressed to any such party at such other address as such party shall hereafter furnish to such other parties in writing.

21.2. Right of Lessor to Perform. If the Lessee shall fail to comply with any of its covenants herein contained, either the Lessor or, in the case of an assignment by the Lessor pursuant to Section 16 hereof, the assignee thereunder (including, without limitation, the Security Trustee and the Note Purchasers) may, but shall not be obligated to, make advances to perform the same and to take all such action as may be necessary to obtain such performance. Any payment so made by any such party and all cost and expense (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by the Lessee to the party making the same upon demand as additional rent hereunder, with interest at the rate of 11-3/8% per annum.

21.3. Execution in Counterparts. This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

21.4. Law Governing. This Lease shall be construed in accordance with the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by any applicable Federal statute, rule or regulation.

21.5. Headings and Table of Contents. All Section headings and the Table of Contents are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

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

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized as of the day and year first above written.

FIRST MARYLAND LEASECORP

By

Its

ILLINOIS CENTRAL GULF RAILROAD COMPANY

By

Its

[CORPORATE SEAL]

ATTEST:

\_\_\_\_\_  
Secretary

STATE OF MARYLAND )  
 ) SS  
CITY OF BALTIMORE )

On this 7th day of SEPTEMBER, 1979,  
before me personally appeared MICHAEL T. PYLES,  
to me personally known, who being by me duly sworn, says that  
he is the VICE PRESIDENT of First Maryland  
Leasecorp, a Maryland corporation, that said instrument was  
signed and sealed on behalf of said association 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.

Alma Ann Thomas  
Notary Public

[NOTARIAL SEAL]

My commission expires: 7/1/82

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1979,  
before me personally appeared \_\_\_\_\_,  
to me personally known, who being by me duly sworn, says that he  
is the \_\_\_\_\_ of Illinois Central  
Gulf 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.

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

[NOTARIAL SEAL]

My commission expires:

DESCRIPTION OF ITEMS OF EQUIPMENT

Description and Mark and  
Number of Reconstructed Items  
of Equipment:

14 Rebuilt General Motors Corporation  
(Electro-Motive Division) GP-11  
Diesel Electric Locomotives, Marked  
and Numbered ICG 8713 to ICG 8726,  
both inclusive

Base Purchase Price to Lessor  
of Original Equipment:

\$68,600 per Item (\$960,400 for  
14 Items)

Estimated Reconstruction Cost  
to Lessor of Equipment:

\$347,100 per Item (\$4,859,400 for  
14 Items)

Estimated Total Cost to Lessor  
of Equipment:

\$415,700 per Item (\$5,819,800 for  
14 Items)

Term Lease Commencement Date:

January 1, 1980

Outside Delivery Date:

December 31, 1979

Place of Delivery:

Rebuilding Plant of the Lessee at  
Paducah, Kentucky

(I.C.G. No. 79-4)

CERTIFICATE OF ACCEPTANCE  
UNDER EQUIPMENT LEASE

TO: First Maryland Leasecorp  
(the "Lessor")

Chicago and Illinois Western Railroad  
(the "Manufacturer")

I, a duly appointed and authorized representative of ILLINOIS CENTRAL GULF RAILROAD COMPANY (the "Lessee") under the Equipment Lease dated as of July 20, 1979 between the Lessor and the Lessee, do hereby certify that I have inspected, received, approved and accepted delivery under the Lease of the following Items of Equipment:

TYPE OF EQUIPMENT:            EMD GP Rebuilt Locomotives

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF UNITS:

MARKED AND NUMBERED:

I do further certify that the foregoing Items of Equipment are in good order and condition, and appear to conform to the specifications applicable thereto, that the Lessee has no knowledge of any defect in any of the foregoing Items of Equipment with respect to design, manufacture, condition or in any other respect, and that each Item has been labeled by means of a plate or a stencil printed in contrasting colors upon each side of the Item in letters not less than one inch in height as follows:

"Leased from First Maryland Leasecorp, as  
Owner, and Subject to a Security Interest  
Recorded with the I.C.C."

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

Dated: \_\_\_\_\_, 19\_\_

\_\_\_\_\_  
Inspector and Authorized  
Representative of the Lessee

(I.C.G. No. 79-4)

SCHEDULE B  
(to Equipment Lease)

SCHEDULE OF CASUALTY VALUE

The Casualty Value for an Item of Equipment payable on the Term Lease Commencement Date or any Fixed Rental payment date thereafter shall mean an amount equal to the percent of the Total Cost of such Item set forth opposite such date in the following schedule (as the same may be increased pursuant to Annex 1 to this Schedule C):

<u>Term Lease Commencement Date or Number of Fixed Rental Payment Date on which Casualty Value is Paid</u>	<u>Percentage of Total Cost Payable as Casualty Value</u>
1980	
0	94.4646
1	91.7599
2	91.9633
3	91.8839
1981	
4	91.6784
5	91.4218
6	91.1839
7	90.9487
1982	
8	90.6782
9	90.4923
10	90.2201
11	89.8797
1983	
12	89.4693
13	89.0074
14	88.4663
15	87.8608
1984	
16	87.1889
17	86.4657
18	85.6703
19	84.8139
1985	
20	83.9022
21	82.9553
22	81.9735
23	80.9588
1986	
24	79.9104
25	78.8302
26	77.7160
27	76.5686

(I.C.G. No. 79-4)

SCHEDULE C  
(to Equipment Lease)

Term Lease Commencement Date  
or Number of Fixed Rental  
Payment Date on which  
Casualty Value is Paid

Percentage of Total  
Cost Payable as  
Casualty Value

1987	
28	75.3873
29	74.1730
30	72.9253
31	71.6441
1988	
32	70.3288
33	68.9790
34	67.5964
35	66.1799
1989	
36	64.7286
37	63.2413
38	61.7217
39	60.1676
1990	
40	58.5780
41	56.9507
42	55.2913
43	53.5966
1991	
44	51.8656
45	50.0972
46	48.3685
47	46.6074
1992	
48	44.8126
49	42.9793
50	41.1557
51	39.3303
1993	
52	37.5026
53	35.6573
54	33.8307
55	32.0063
1994	
56	30.1838
57	28.3463
58	26.5019
59	24.6628
1995	
60	22.4775

Thereafter 20.0000

ANNEX 1 TO SCHEDULE C  
(to Equipment Lease)

The percentages set forth in Table 1 to this Schedule C have been computed without regard to recapture of the Investment Credit provided for in Section 38 and related sections of the Internal Revenue Code of 1954, as amended. Consequently, the Casualty Value of any Item of Equipment suffering a Casualty Occurrence on or before the third, fifth or seventh anniversary of the date of delivery and acceptance of such Item shall be increased by the applicable percentage of the Total Cost set forth below:

<u>Anniversary of Delivery and Acceptance</u>	<u>Percentage of Total Cost</u>
Third	16.3000
Fifth	10.8667
Seventh	5.4333