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INTERSTATE COMMERCE COMMISSION

[CS&M Ref. 1696-030]

LEASE OF RAILROAD EQUIPMENT

Dated as of February 1, 1979

between

CONSOLIDATED RAIL CORPORATION

and

THE CONNECTICUT BANK AND TRUST COMPANY,
as Trustee Under a Trust Agreement

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

LEASE OF RAILROAD EQUIPMENT dated as of February 1, 1979, between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (the "Lessee"), and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, not individually but solely as Trustee (the "Lessor") under a Trust Agreement dated as of the date hereof (the "Trust Agreement"), with the parties named in Annex A thereto as beneficiaries (the "Beneficiaries" or individually a "Beneficiary").

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

WHEREAS the Builders, under an Agreement and Assignment dated as of the date hereof (the "CSA Assignment"), are assigning their interests in the CSA to Mercantile-Safe Deposit and Trust Company, acting as Agent (hereinafter, together with its successors and assigns and the Investors, as hereinafter defined, called the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessee, the Lessor, the Beneficiaries, the Vendor, and the investors named in Schedule A thereto (said investors, together with their successors and assigns, being hereinafter called the "Investors");

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

WHEREAS the parties contemplate that the Lessor will assign for security purposes certain of its rights in this Lease to the Vendor by an Assignment of Lease and Agreement dated as of the date hereof (the "Lease Assignment"), and the Lessee will consent thereto by a Consent and Agreement (the "Consent");

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

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

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

§ 3. *Rentals.* The Lessee agrees to pay to the Lessor, as rental for each Unit, one interim payment and 64 consecutive quarterly payments payable in advance. The interim payment for each Unit is payable on July 1, 1979 (such date being hereinafter called the "Basic Rent Commencement Date"). The 64 quarterly payments are payable (i) on the Closing Date for such Unit and (ii) thereafter on July 1, October 1, January 1 and April 1 in each year, commencing October 1, 1979, to and including April 1, 1995 (each of such 64 consecutive dates being hereinafter called a "Rental Payment Date"). The rental payable on the Basic Rent Commencement Date for each Unit shall be in an amount equal to the product of (a) the number of calendar days elapsed from and including the Closing Date for such Unit to, but not including, the Basic Rent Commencement Date, times (b) .030556% of the Purchase Price of such Unit. The 64 quarterly rental payments shall each be in an amount equal to the Quarter-Annual Lease Factor (as hereinafter defined) of the Purchase Price of each Unit then subject to this Lease. As used herein, the term "Quarterly-Annual Lease Factor" means 2.39817% or such percentage as it may be adjusted pursuant to § 16 hereof. The rental payments hereinbefore provided and the Casualty Values (as defined in § 7 hereof) are subject to adjustment pursuant to § 16 hereof, but shall in all events be in amounts sufficient to satisfy the obligations of the Lessor under the CSA, regardless of any limitation of liability set forth therein.

In addition to the foregoing rentals, the Lessee agrees to pay to the Lessor as additional rentals amounts which, after deduction of any taxes payable in respect of such amounts, will be equal to the amounts required by the Lessor to make the payments provided for in the third paragraph of Paragraph 2 and the last paragraph of Paragraph 9 of the Participation Agreement on the dates on which the Lessor is required to make such payments.

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

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, but excluding all payments not assigned to the Vendor pursuant to the Lease Assignment, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the CSA, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Federal or other funds immediately available to the Vendor by 11:00 a.m., Baltimore time, on the date such payment is due.

§ 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate three months after the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 3, 6, 7, 9, 14 and 16 hereof) shall survive the expiration or termination of the term of this Lease and the full payment of all amounts payable under this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination), all as provided therein; *provided, however,* that, so long as (i) no Event of Default exists hereunder, (ii) no Event of Default exists under any other Lease of Railroad Equipment to which the Lessee is a party dated February 1, 1979, providing for the lease of up to approximately 174 locomotives, (iii) the Lessee is complying with the provisions of the Consent and (iv) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 12 hereof.

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

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

§ 6. *Taxes.* Whether or not any of the transactions contemplated hereby are consummated, the Lessee assumes responsibility for, and agrees to pay, hold harmless and indemnify the Lessor (both in its individual and trust capacity), the Vendor, the Beneficiaries and the Investors and their successors and assigns (the "Indemnified Persons") against, all local, state, Federal or foreign taxes, fees, withholdings, levies, imposts, duties, assessments, charges, license and registration fees and other governmental charges of any nature whatsoever, including without limitation penalties, fines, additions to tax and interest thereon, however imposed, imposed on, incurred by or asserted against any Indemnified Person or the Units or any part or portion thereof on account of, or with respect to, this Lease, the CSA, the Lease Assignment, the Consent, the CSA Assignment, the Guaranties (as defined in the Participation Agreement) or the Participation Agreement or any document referred to herein or therein or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acquisition, acceptance or rejection of the Units or any part or portion thereof or the ownership, delivery, nondelivery, leasing, re-leasing, subleasing, possession, use, operation, maintenance, repair, condition, sale, return, abandonment or other application or disposition of the Units or any thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom (all such

taxes, fees, withholdings, levies, imposts, duties, license and registration fees, other governmental charges, penalties, additions to tax and interest being hereinafter called "Taxes"); *provided, however,* that there shall be no indemnification hereunder for (i) any Taxes imposed on or measured by any trustee or agency fees received by the persons who are the Lessor or the Vendor, (ii) Federal income Taxes measured solely by net income or excess profits of the Lessor (in its individual capacity), a Beneficiary or an Investor, or (iii) Taxes measured solely by net income or excess profits of, and franchise Taxes imposed on, the Lessor (in its individual capacity), a Beneficiary or an Investor or their successors and assigns by the respective entity's state of incorporation or state where its principal place of business is located; *provided, however,* that, notwithstanding the preceding proviso, the Lessee will indemnify the Beneficiaries for any Taxes arising out of or imposed in respect of indemnification payments pursuant to this Lease or to the extent that indemnification is otherwise provided for in § 16 hereof. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify each Indemnified Person to the extent required by this § 6 within ten days after receipt of a written request by such Indemnified Person for indemnification specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question; *provided, however,* that if any Taxes are being contested in accordance with § 16 hereof, any payment shall be made at the time therein provided. The Lessee will keep at all times all and every part of the Equipment free and clear of all Taxes (other than those which are covered by the obligations of the Lessor set forth in the proviso to the last paragraph of Article 12 of the CSA) which might in any way affect the title or interests of the Vendor or result in a lien upon any part of the Equipment.

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

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

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

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

The Lessee agrees to pay all amounts due under this § 6 free of any Taxes and to indemnify each Indemnified Person against any Taxes imposed by reason of any payment made by the Lessee so that the

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

All the obligations of the Lessee under this § 6 shall survive and continue, notwithstanding payment of all amounts under the CSA and the termination of this Lease, but only with respect to periods included in the term of this Lease. The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee or any subsidiary or affiliated corporation of the Lessee of the payment of any installments of principal or interest payable under the CSA, or a guarantee of any residual value of the Units following the expiration of the term hereof as such term may or may not be renewed.

§ 7. *Maintenance; Casualty Occurrences; Insurance.* The Lessee at its own expense will maintain and service each Unit and comply with a preventive maintenance schedule consistent with the appropriate Builder's preventive maintenance schedule and which will include testing, repair and overhaul of each Unit so that each Unit will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations, and (c) desirable to and suitable for immediate purchase or lease and use by a Class I line-haul railroad (not then or prospectively a debtor in any insolvency, bankruptcy or reorganization proceedings) in the event of resale or re-lease upon an Event of Default hereunder. In no event shall any Unit be maintained or scheduled for maintenance on a basis less frequent than the maintenance or maintenance scheduling basis employed as of the date hereof by the Lessee for similar equipment.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, permanently returned to the Builder pursuant to any patent indemnity provision of the CSA, or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term of this Lease (or, if such taking, requisition or condemnation shall occur during a renewal term, for a period which shall exceed the then remaining renewal term), or by any other government or governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days (such occurrences being hereinafter called "Casualty Occurrences"), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly (but in any event within 30 days after such Casualty Occurrence) and fully notify the Lessor, the Beneficiaries and the Vendor with respect thereto. On the date for the payment of rent hereunder next succeeding such notice (other than the Closing Date Rental Payment Date) after the Closing Date for such Unit the Lessee shall pay to the Lessor an amount equal to the Casualty Value (as hereinafter defined) of such Unit as of such date in accordance with Schedule B hereto referred to below, plus, in the case of any payment made on the Basic Rent Commencement Date, the rental payment due on said date. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or permanent return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis and the Lessee may be a purchaser of such Unit and shall notify the Lessor prior to any such purchase by the Lessee. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing the Lessee shall be entitled to the net proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit permanently

returned to a Builder pursuant to any patent indemnity provision of the CSA an amount equal to any net patent indemnity payment in respect of such Unit made by such Builder to the Vendor under the CSA. The Lessee will pay all costs and expenses in connection with the sale of any Unit pursuant to a Casualty Occurrence.

The Casualty Value of each Unit as of the Basic Rent Commencement Date and as of any Rental Payment Date shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date.

Whenever any Unit shall suffer a Casualty Occurrence after the final payment of rent in respect thereof is due pursuant to § 3 or § 13 hereof and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly (as provided above) and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 20% of the Purchase Price of such Unit, except that if the term of this Lease shall have been extended pursuant to § 13 hereof, then the applicable Casualty Value (i) shall be during the first and second five-year renewal terms the fair market value of such Unit, as of the rental payment date on or next preceding the date of such Casualty Occurrence, determined as provided in the following sentence, and (ii) thereafter, shall be, if there is no second five-year renewal term, the fair market value of such Unit as of the last rental payment date during such first five-year renewal term, or, if there is a second five-year renewal term, the fair market value of such Unit as of the last rental payment date during such second five-year renewal term. For the purposes of the preceding sentence, the term "fair market value" of a Unit shall, at the beginning of such first five-year renewal term, be equal to the Fair Market Purchase Price of such Unit at such time determined in accordance with the provisions of § 13 hereof, and shall decline or increase on a straight-line basis (computed on the basis of a 360-day year of twelve 30-day months) to the estimated Fair Market Purchase Price of such Unit at the end of such first five-year renewal term determined in accordance with the provisions of § 13 hereof, and the term "fair market value" of a Unit shall, at the beginning of such second five-year renewal term, be equal to the Fair Market Purchase Price of such Unit at such time determined in accordance with the provisions of § 13 hereof, and shall decline or increase on a straight-line basis (computed on the basis of a 360-day year of twelve 30-day months) to the estimated Fair Market Purchase Price of such Unit at the end of such second five-year renewal term determined in accordance with the provisions of § 13 hereof. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit or return to the appropriate Builder of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence, or any component thereof, at the best price obtainable on an "as is, where is" basis and the Lessee may be a purchaser of such Unit and shall notify the Lessor prior to any such purchase by the Lessee. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition (other than a requisition which constitutes a Casualty Occurrence) for use by the United States Government or by any other government or governmental entity (hereinafter collectively called the "Government") of any Unit during the term of this Lease or any renewal thereof, all of the Lessee's obligations (including without limitation the obligation to pay rent) under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease or any renewal thereof, but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect

to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessee, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease or any renewal thereof, shall be paid over to, or retained by, the Lessor.

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

The Lessee will, at all times prior to the return of the Units to the Lessor, at its own expense, cause to be carried and maintained casualty insurance and public liability insurance in respect of the Units at the time subject hereto, against such risks, in such amounts and on such terms and conditions as are satisfactory to the Lessor and the Vendor, and, in any event, not less comprehensive in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned or leased by it, but in no event shall such coverage be for amounts or against risks less than the prudent industry standard for major Class I line-haul railroads. If the Casualty Value of all the Units at any given time is less than what the deductible would be under the foregoing standard, then no casualty insurance need be carried. All policies with respect to such insurance shall name the Lessor (both in its individual and trust capacity), the Beneficiaries and the Vendor as additional named insureds or loss payees, as their interests may appear, shall provide for at least 30 days' prior written notice by the insurance carrier to the Lessor, the Beneficiaries and the Vendor in the event of cancelation, expiration or amendment (and the Lessee shall provide 30 days' prior written notice to the Lessor, the Beneficiaries and the Vendor in any such event), shall include waivers by the insurer of all claims for premiums against the Lessor, the Beneficiaries and the Vendor and shall provide that losses are payable notwithstanding, among other things, any act of negligence of the Lessee, the Lessor, the Beneficiaries or the Vendor, more hazardous use or occupation of the Units than that permitted by such policies, any breach or violation by the Lessee, the Lessor, the Beneficiaries or the Vendor of any warranty, declaration, condition or other provision contained in any such policy, or foreclosure, notice of sale or any other proceeding in respect of the Units, or any change in the title to or ownership of any of the Units. Each such insurance policy shall expressly provide that all of the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Lessee) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by the Lessor, the Beneficiaries or the Vendor. The Lessee shall, not later than June 15 of each year, commencing June 15, 1980, furnish to the Lessor, the Beneficiaries and the Vendor a certificate of an independent insurance broker acceptable to the Vendor and the Lessor evidencing the maintenance of the insurance required hereunder and shall furnish certificates evidencing renewal 15 days prior to the expiration date of such policy or policies. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired so as to comply with the provisions of the first paragraph of this § 7, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

§ 8. *Reports.* On or before April 30 in each year, commencing with the calendar year 1980, the Lessee will furnish to the Lessor and the Vendor a certificate signed by the Chief Executive Officer, the Chief

Operating Officer or the Chief Mechanical Officer of the Lessee or another qualified engineer satisfactory to the Lessor and the Vendor (a) setting forth as of the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the CSA, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request (including a description and the cost of all additions, modifications or improvements made to the Units in the preceding year) and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof have been preserved or replaced. No later than the last business day of October in each calendar year, commencing with the calendar year 1980, the Lessee will furnish to the Lessor and the Vendor a certificate ("Certificate A") dated no earlier than December 31 of the preceding calendar year of a Consultant (as hereinafter defined) (i) setting forth the identification numbers of all Units as to which the Lessee is complying with the preventive maintenance schedule required by the first paragraph of § 7 of this Lease and are then in the condition required by clauses (a), (b) and (c) of the first paragraph of § 7 of this Lease, and (ii) setting forth the identification numbers of all Units as to which the Lessee is not complying with the preventive maintenance schedule required by § 7 of this Lease or which are not in such condition. The term "Consultant" as used herein shall mean Stone & Webster Inc. or Wyer Dick & Company or such other consulting firm or engineer as may be appointed in writing by the Vendor (which appointment may not be made by the Vendor without the prior written consent of Investors holding more than 50% of the outstanding CSA Indebtedness). No later than 120 days after the delivery of each Certificate A, the Lessee will, if such Certificate sets forth the identifying number of any Unit as not being maintained or in the condition referred to in clause (i) of the second sentence of this paragraph, furnish the Lessor and the Vendor with a supplemental certificate ("Certificate B") of a Consultant (i) certifying that the appropriate maintenance has been done and that such Unit is now in the condition required by clauses (a), (b) and (c) of § 7 of the Lease, or (ii) stating that such maintenance has not been done or such Unit is not in such condition. If such Certificate B is required and shall not be delivered on or prior to the last date specified for such delivery in the preceding sentence (or within ten days after written notice of such failure to deliver by the Lessor to the Lessee) or shall state that Unit is not in the required condition or the required maintenance has not been done, such Unit shall be deemed to have suffered a Casualty Occurrence under § 7 hereof. The Lessor and the Vendor, at their sole expense, shall have the right by their agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as either may request during the continuance of this Lease but the Lessor and the Vendor shall have no obligation to do so.

It is understood and agreed that in preparing Certificates A and B the Consultant shall first inspect the records of the Lessee with respect to the Units, and that, if the Consultant shall deem it desirable, the Consultant shall be permitted to physically inspect the Units, which shall be made available for such purpose at the locomotive maintenance facilities of the Lessee.

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

§ 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification.* THE LESSOR NEITHER MAKES, HAS MADE NOR SHALL BE DEEMED TO MAKE, ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF THE

LESSOR), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against either Builder including, but not limited to, under Article 13 of the CSA; *provided, however,* that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, subleasing, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, at all times to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal thereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will fully conform therewith at its own expense; *provided, however,* that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, the Beneficiaries or the Vendor, adversely affect the property or rights of the Lessor, the Beneficiaries or the Vendor under this Lease or under the CSA. The Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value of the Units). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee (or such other party as may have title thereto), except to the extent such additions, modifications or improvements are described in the following sentence. Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units (including, but not limited to, parts in replacement of or in substitution for, and not in addition to, any parts originally incorporated in or installed as part of such Unit at time of acceptance hereunder or any part in replacement of, or substitution for, such replacement part) or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the United States Department of Transportation or any other regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA) shall immediately be vested in the Lessor.

The Lessee shall pay, and shall protect, indemnify and hold the Lessor (both individually and in its trust capacity), the Beneficiaries and the Vendor, and their respective successors, assigns, agents and servants (hereinafter called "Indemnified Persons"), harmless from and against any and all causes of action, suits,

penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising or alleged to arise out of this Lease or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent or other defects whether or not discoverable by any Indemnified Person or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort or imposed by statute; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Lease (except by the Lessor) or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof; (vii) any claim (other than for the payment of the principal and interest on the CSA Indebtedness (as defined in the CSA)) arising out of the Vendor's holding a security interest under the CSA or the Lease Assignment; or (viii) any claim arising out of the Lease Assignment, the CSA or the Participation Agreement, including, without limitation, any claim arising out of any of the Lessor's obligations under the Lease Assignment, the CSA or the Participation Agreement, except to the extent such claim arises from an act or omission of the Lessor not related to the transactions contemplated by this Lease and the Participation Agreement. The Lessee shall be obligated under this § 9, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this § 9 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this § 9, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Lessor each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this § 9 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this § 9 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter.

The Lessee further agrees to indemnify, protect and hold harmless the Vendor, the Beneficiaries and the Lessor (both individually and in its trust capacity) from and against any and all liabilities, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor, the Beneficiaries and the Lessor because of the use in or about the construction or operation of any of the Units of any article or material or of any design, system, process, formula or

combination which infringes or is claimed to infringe on any patent or other right to the extent the appropriate Builder does not so indemnify, protect and hold harmless the Vendor, the Beneficiaries and the Lessor.

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

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required filing date (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns, except as otherwise provided in § 6 hereof) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units, or the leasing thereof to the Lessee.

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

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

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

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

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

(D) a petition for reorganization under Section 77 of the Bankruptcy Act (as now constituted or as hereafter amended, including any successor provision thereto) or under any other provision of Title 11 of the United States Code shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier or by the trustee in such proceedings in accordance with the provisions of 11 U.S.C. §1168, or any successor provision, as the same may hereafter be amended; or

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

dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing by the trustee in such proceedings in accordance with the provisions of 11 U.S.C. §1168 or any successor provision, as the same may hereafter be amended, or pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee, or for the property of the Lessee, in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

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

(a) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including, but not limited to, net after-tax losses of Federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents, subject to compliance with all mandatory requirements of law, enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to (A) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 6% per annum discount, compounded quarter-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated plus (B) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of any Federal, state or local government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall, in the reasonable opinion of the Lessor, be equal to all or such portion of the Investment Credit (as defined in § 16 hereof) lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 16 or any other provision of this Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as shall cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the ADR Deduction and the Interest Deduction (as such deductions are defined in § 16 hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a direct or indirect result of the breach of one or more of the

representations, warranties and covenants made by the Lessee in § 16 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessee or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default plus such sum as will pay or reimburse the Lessor for any interest, penalties or additions to tax incurred in connection with such loss, failure to claim, inability to claim, disallowance or recapture; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value (after deduction of all estimated expenses of sale) of such Unit at such time; *provided, however,* that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination, over the net proceeds of such sale.

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

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

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

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

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance (which shall conform to the provisions of § 7 hereof), rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

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

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own expense, maintain and keep the Equipment in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof, maintain insurance on the Units (to the same extent as provided in § 7 hereof) and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All rent and per diem charges earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which 1/90 of the Quarterly-Annual Lease Factor, then applicable, of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor with respect to such Unit for each such day.

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

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

So long as (i) no Event of Default exists hereunder, (ii) no Event of Default exists under any other Lease of Railroad Equipment to which the Lessee is a party dated February 1, 1979, providing for the lease of up to approximately 174 locomotives, (iii) the Lessee is complying with the provisions of the Consent and (iv) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and, without the prior written consent of the Lessor and the Vendor, the Lessee may sublease (which sublease shall be subject to the rights and remedies of the Lessor and the Vendor hereunder) the Units to, or permit their use by, a user incorporated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by the Lessee or such user or by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease; *provided, however,* that the Vendor's and the Lessor's consent, not to be unreasonably withheld, must be obtained for any sublease that is for a term longer than six months or is renewable for a term more than six months; *provided, further, however,* that the Lessee shall not sublease or permit the sublease or use of any Unit to service involving operation or maintenance outside the United States of America except that occasional service in Canada shall be permitted so long as such service in Canada does not involve regular operation and maintenance outside the United States of America; and *provided, further, however,* that any such sublease or use shall be consistent with the provisions of § 16 hereof. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety.

The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor, any Beneficiary or the Vendor or resulting from claims against the Lessor, any Beneficiary or the Vendor not related to the ownership of the Units) upon or with respect to any Unit or

the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

The Lessee agrees that at all times during the term of this Lease, the Units will be used in a manner so as to constitute rolling stock of a domestic railroad corporation subject to Part I of the Interstate Commerce Act or any successor provision within the meaning of Section 48(a)(2)(B)(ii) of the Code (as hereinafter defined). The Lessee agrees that it will not sublease the Units to, or permit their use by, any person in whose hands such Units would not qualify as "section 38 property" within the meaning of the Code.

§ 13. *Renewal and Right of First Refusal.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor (which shall be irrevocable when delivered) not less than six months prior to the end of the original term or any extended term of this Lease, as the case may be, elect to extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for one or two additional five-year periods commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, provided that no such extended term shall extend beyond a date 26 years after the Basic Rent Commencement Date, at a Fair Market Rental (as defined below) payable in quarterly in advance payments, commencing three months after the next preceding Rental Payment Date, in each year of such extended term.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder and the term of this Lease is not to be extended pursuant to the preceding paragraph the Lessor may elect to sell any Units to third parties at the expiration of the original or any extended term of this Lease. The Lessee shall be given written notice of such intention prior to the expiration of such term. In the event that the Lessor shall receive, prior to removal of the Units at the end of such term of the Lease, a bona fide offer in writing from another party unrelated to the Lessee to purchase the Units and the Lessor elects to sell the Units pursuant to such offer at the expiration of such term of this Lease, the Lessor shall give written notice to the Lessee of such offer. Such notice shall include the price and the terms and conditions of payment offered by the other party in writing to the Lessor. The Lessee shall have the sole right and option to purchase the Units for cash at the price at which the Units are proposed to be sold or under the other terms and conditions of payment offered by the other party, as hereinafter provided, but in no event at a price less than the Fair Market Purchase Price. Within 10 business days of receipt of notice from the Lessor, the Lessee shall exercise such purchase right by delivery to the Lessor of a written notice specifying a date of purchase, which date shall not be later than the later of (i) 15 days after the date of delivery of such notice by the Lessee to the Lessor or (ii) 90 days after the expiration of such term of this Lease. In the event that the Lessee shall have delivered a notice of its election to purchase the Units, this Lease (including the obligation to pay rent) shall be further extended upon the same terms and conditions set forth herein from the date such notice is delivered to the Lessor until the date of such purchase.

Fair Market Rental and Fair Market Purchase Price shall be determined on the basis of, and shall be equal in amount to, the cash rental for a five-year period or the purchase price, as the case may be, which would obtain in an arm's-length transaction between an informed and willing lessee or purchaser and an informed and willing lessor or seller, as the case may be, under no compulsion to lease or sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental or purchase price and assuming that the Units have been collected in one place on the lines of the Lessee as directed by the Lessor. If, after 60 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease or to exercise its right of first refusal, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental or Fair Market Purchase Price of the Units, such rental or purchase price shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such rental or purchase price by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after

such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, either party may request the American Arbitration Association to make such appointment, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental (and, in the case of a renewal period, the Fair Market Purchase Price at the beginning and end of such renewal period) of the Units subject to the proposed extended term, or the Fair Market Purchase Price, as the case may be, within 70 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental or Fair Market Purchase Price, as the case may be, of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from that of the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental or Fair Market Purchase Price, as the case may be. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental or Fair Market Purchase Price, as the case may be, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The Lessee shall bear all appraisal procedure expenses; *provided, however,* that, if the Lessee shall exercise its right of first refusal or option to renew with respect to which the appraisal was requested, such appraisal procedure expenses shall be borne equally by the Lessee and the Lessor.

Upon payment of the purchase price of any Unit, pursuant to an election by the Lessee to purchase the Units, the Lessor shall at Lessee's expense upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

§ 14. *Return of Units upon Expiration of Term.* The Lessor intends to retain the Units for re-lease at the expiration of the term of this Lease. As soon as practicable on or after the expiration of the original or any extended term of this Lease with respect to any Unit and in any event not later than 90 days after termination, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding 90 days following notification to the Lessor by the Lessee that all the Units have been assembled and delivered for storage and transport the same, at any time within such 90-day period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee (including the insurance required by § 7 hereof); and in the event that any Unit shall suffer a Casualty Occurrence during such storage period, the Lessee shall pay the Lessor the Casualty Value thereof as provided in § 7 hereof. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable, except in the case of negligence or strict liability of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor or any prospective purchaser, lessee or user, such rights of inspection. Each Unit returned to the Lessor pursuant to this § 14 shall be in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof. During any storage period, the Lessee will, at its own expense, maintain and keep the Units in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof and will permit the Lessor or any person designated by

it, including the authorized representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. The Lessee shall pay to the Lessor for each day from the date of such termination to the date such Unit is placed in storage an amount equal to 1/90 of the Quarter-Annual Lease Factor, then applicable, of the Purchase Price of such Unit.

§ 15. *Recording.* The Lessee, at its own expense, will cause this Lease, the CSA and any assignment hereof or thereof to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C.§ 11303 and deposited with the Registrar General of Canada (and notice of such deposit to be given forthwith in *The Canada Gazette*) pursuant to Section 86 of the Railway Act of Canada. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the CSA and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective rights in the Units, or for the purpose of carrying out the intention of this Lease, the CSA and the assignments hereof and thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this § 15, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor; *provided, however,* that no such opinion of counsel need be furnished in respect of the filing of the CSA or the assignment thereof in Canada. This Lease and the CSA, and the assignments hereof and thereof, shall be filed with the Interstate Commerce Commission and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision shall be made for publication of notice of such deposit in *The Canada Gazette* prior to the delivery and acceptance hereunder of any Unit.

§ 16. *Income Taxes.* (a) This Lease is entered into based on the opinion of the Chief Mechanical Officer described in § 7(f) of the Participation Agreement and on the mutual assumptions that the Beneficiaries, as the beneficial owners of the Units, shall be entitled, for Federal, state and local income tax purposes, to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (the "Code"), to an owner of property, including without limitation, the full 10% investment credit allowed under section 38 and related sections of the Code in respect of the aggregate Purchase Price of the Units in the year that such Units are delivered to the Lessor under the CSA (the "Investment Credit"), the maximum depreciation deduction with respect to the Units authorized under section 167 of the Code commencing in the year that such Units are delivered to the Lessor under the CSA, utilizing a basis under section 167(g) of the Code at least equivalent to the aggregate Purchase Price of the Units, the asset depreciation range and class life system permitted by section 167(m) of the Code and Income Tax Regulation section 1.167(a)-11, asset guideline class 00.25, an asset depreciation period of 12 years, the double declining balance method of depreciation, switching to the sum-of-the-years-digits method without the consent of the Commissioner of Internal Revenue when most beneficial to the Beneficiaries, the modified half-year convention as provided in Reg. Sec. 1.167(a)-11(c)(2)(ii) (including 10 months of depreciation in 1979) and taking into account a salvage value of zero (the "ADR Deduction") and deductions with respect to interest payable under the CSA when paid or accrued in respect of the Units, pursuant to section 163 of the Code (the "Interest Deduction").

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by any Beneficiary over the amount specified to be payable under this Lease on the dates due hereunder, except as specifically provided herein, and that the Lessee will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by any Beneficiary such records as will enable such Beneficiary to determine the extent to which it is entitled to the benefit of the Investment Credit, the ADR Deduction and the Interest Deduction with respect to the Units.

The Lessee represents and warrants that (i) at the time the Beneficiaries become the beneficial owners of the Units, the Units will constitute "new section 38 property" within the meaning of sections 46 and 48 of the Code and at the time the Beneficiaries become the beneficial owners of the Units the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor and that in calculating the Investment Credit for each Unit, the qualified investment, within the meaning of section 46(c) of the Code, will be in an amount at least equal to its Purchase Price; (ii) at all times during the term of the Lease, each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code, and the Lessee will not at any time during the term of the Lease use or fail to use any Unit in such a way as to disqualify it as "section 38 property" within the meaning of section 48(a) of the Code; (iii) for Federal income tax purposes all amounts includible in the gross income of any Beneficiary with respect to the Units and all deductions allowable to such Beneficiary with respect to the Units will be treated as derived from, or allocable to, sources within the United States; (iv) the Beneficiaries will be entitled to deduct the interest on the CSA Indebtedness pursuant to section 163 of the Code; (v) the Lessee will maintain sufficient records to verify use of the Units in the manner above provided, which records will be made available for inspection and copying by the Lessor or the Beneficiaries within 30 days after receipt of a written demand therefor; (vi) the Lessee will not claim that it is the owner of the Units at any time prior to the exercise thereby of any right of first refusal with respect to the Units pursuant to § 13 hereof; and (vii) in determining the ADR Deduction, the Beneficiaries may depreciate at least the Purchase Price of the Units under the most accelerated method of depreciation permitted under section 167(b) of the Code utilizing the asset depreciation range and class life system permitted by section 167(m) of the Code and Income Tax Regulation Section 1.167(a)-11 and asset guideline class 00.25 and depreciating such Units over a 12 year depreciation period to a salvage value of 0% of the Purchase Price, calculated on the assumptions that each Unit will be placed in service at the time such Unit becomes subject hereto and that the basis of each Unit is at least equal to its Purchase Price.

If by reason of the inaccuracy in law or in fact of any of the representations and warranties set forth in the preceding paragraph or the breach by the Lessee of any of its agreements hereunder or any act or omission of the Lessee inconsistent with the mutual assumptions as to the tax consequences to the Beneficiaries described in the first paragraph of this § 16(a) (unless such act or omission is required by the terms hereof) or the inaccuracy of any statement in any letter or document furnished to any Beneficiary by the Lessee in connnection with the delivery of the opinion to such Beneficiary by its special tax counsel, or the sale or other disposition of any Unit or the interest of the Beneficiaries therein after the occurrence of an Event of Default hereunder, any Beneficiary 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 its proportionate share of the Investment Credit, the ADR Deduction or the Interest Deduction with respect to all or part of any Unit or if for Federal income tax purposes any item of income, loss or deduction (including the ADR Deduction and the Interest Deduction) with respect to any Unit is treated as derived from, or allocable to, sources without the United States and, as a result of such treatment, the amount of foreign taxes paid by such Beneficiary which are allowable as a credit against its Federal income tax liability shall be less than the amount of such foreign taxes which would have been allowable to such Beneficiary if such Beneficiary had not participated in the transactions contemplated by the Participation Agreement and this Lease (any such loss, disallowance, recapture or treatment being hereinafter called a "Loss"), then in any such case the Lessee shall pay to such Beneficiary on each Rental Payment Date, 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 taxes, fees and other charges required to be paid by such Beneficiary in respect of the receipt of such sums under the laws of the United States or any political subdivision thereof or any foreign taxing authority, in each case calculated on the assumption that such tax is payable at the highest then applicable marginal tax rate), when taken together with the rental installments due on such dates hereunder which are to be distributed to such Beneficiary, will, in the reasonable opinion of such Beneficiary, maintain such Beneficiary's after-tax rate of return on and rate of recovery of investment and the annual net cash flows

(computed on the same assumptions as utilized by such Beneficiary in originally evaluating this transaction, except for the assumption that has resulted in such adjustment) in respect of such Unit hereunder at the same level that would have been available if such Loss had not occurred, and the Lessee shall in addition forthwith pay to such Beneficiary an amount which (after the deduction of any additional taxes, fees and other charges required to be paid by such Beneficiary in respect of the receipt of such sums under the laws of the United States or any political subdivision thereof or any foreign taxing authority, in each case calculated on the assumption that such taxes, fees and other charges are payable at the highest then applicable marginal tax rate) shall be equal to the amount of any interest, penalty or addition to tax which may be imposed in connection with such Loss. In the event that this Lease is terminated, or that no further rents are payable, with respect to any Unit prior to the time the Lessee is obligated to make payments to such Beneficiary as set forth in the preceding sentence (either because no such payment obligation had become fixed under such sentence prior to such event or because the due date of such payment or payments shall occur following such event), then the Lessee shall pay to such Beneficiary, in lieu of such payment or payments, on or before 30 days after the liability of the Lessee in respect of such termination hereunder shall become fixed as hereinafter provided, such lump sum (calculated in the same manner as set forth in the preceding sentence) as shall be necessary in the reasonable opinion of such Beneficiary to maintain such Beneficiary's after-tax rate of return on and rate of recovery of investment and the annual net cash flows (computed on the same assumptions as utilized by such Beneficiary in originally evaluating this transaction, except for the assumption that has resulted in such adjustment) in respect of such Unit hereunder at the same level that would have been available if such Loss had not occurred.

Anything in the preceding paragraph to the contrary notwithstanding, the Lessee shall not be required to make any payment to any Beneficiary provided for therein if such Beneficiary shall have suffered any Loss with respect to all or part of any Unit solely as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Beneficiaries the amounts stipulated under § 7 hereof;

(ii) a voluntary transfer or other voluntary disposition by the Lessor or such Beneficiary of any interest in such Unit or the voluntary reduction by the Lessor or such Beneficiary of its interest in the rentals from such Unit hereunder (other than pursuant to the Lease Assignment), unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the failure of such Beneficiary to claim in a timely manner the Investment Credit, the ADR Deduction, the Interest Deduction (unless such Beneficiary shall have received an opinion of its tax counsel to the effect that there is no reasonable basis to make such claim);

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

(v) an act or omission by such Beneficiary inconsistent with the mutual assumptions as to the tax consequences to such Beneficiary described in the first paragraph of this § 16(a) (unless required by the terms hereof).

In the event a claim shall be made against any Beneficiary which, if successful, would result in payments under § § 16(a), 16(b) or 6 hereof by the Lessee hereunder and if, in the opinion of such Beneficiary's or the Lessee's independent tax counsel who is acceptable to such Beneficiary (herein referred to as "Counsel"), a bona fide defense to such claim exists, such Beneficiary shall, upon request and at the expense of the Lessee, contest such claim in such forum as such Beneficiary in its sole judgment, shall select; *provided, however,* that such Beneficiary shall not be obligated to take any such legal or other appropriate action unless the payment to be made under such § § 16(a), 16(b) or 6, as the case may be, exceeds $15,000 for the taxable year involved and such Beneficiary has received an opinion from Counsel that there is a reasonable basis for contesting such matter and the Lessee shall first have indemnified such Beneficiary in form satisfactory to such Beneficiary for

all liabilities and expenses which may be entailed therein and shall have furnished such Beneficiary with such reasonable security therefor as may be requested. Such Beneficiary may, at its option, take such action prior to making payment of any tax and interest and/or penalty attributable to such claim (a "Tax Payment") or may make such Tax Payment and then sue for a refund. If such Beneficiary takes such action prior to making such Tax Payment, such sums payable hereunder need not be paid by the Lessee while such action is pending; provided that the Lessee shall pay the liabilities and expenses relating to such action when and as the same shall become due. In such case, if the Final Determination shall be adverse to such Beneficiary, the sums payable hereunder shall be computed by such Beneficiary as of the date of such Final Determination, such Beneficiary shall notify the Lessee of such computation and furnish copies thereof to the Lessee, and the Lessee shall commence payment thereof on the Rental Payment Date next succeeding such Final Determination and, on or before such Rental Payment Date, the Lessee shall pay to such Beneficiary as an additional payment hereunder an amount which (after deduction of all taxes, fees and other charges required to be paid by such Beneficiary in respect of the receipt of such sums under the laws of the United States or any political subdivision thereof or any foreign taxing authority, in each case calculated on the assumption that such tax is payable at the highest then applicable marginal tax rate) shall be equal to all interest, penalties and additions to tax paid by such Beneficiary in respect of such Final Determination, together with interest thereon from the date such payment is made by such Beneficiary to the date the Lessee reimburses such Beneficiary therefor at the rate of 12% per annum. If any Beneficiary makes such Tax Payment prior to contesting the matter, and then sues for a refund, the sums payable hereunder shall commence to be payable by the Lessee on the first Rental Payment Date after such Beneficiary notifies the Lessee that such Tax Payment has been made and, on or before such Rental Payment Date, the Lessee shall pay to such Beneficiary as an additional payment hereunder an amount which (after deduction of all taxes, fees and other charges required to be paid by such Beneficiary in respect of the receipt of such sums under the laws of the United States or any political subdivision thereof or any foreign taxing authority, in each case calculated on the assumption that such tax is payable at the highest then applicable marginal tax rate), shall be equal to all interest, penalties and additions to tax paid by such Beneficiary included in such Tax Payment. If such Beneficiary sues for a refund after making such Tax Payment, and if the Final Determination shall be in favor of such Beneficiary, 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 such Beneficiary). In addition, the Lessee and such Beneficiary shall adjust their accounts so that (a) such Beneficiary pays to the Lessee (x) an amount equal to the amount of the tax indemnity theretofore paid by the Lessee to such Beneficiary in respect of the Tax Payment (or a proportionate part thereof if the Final Determination is partly adverse to such Beneficiary) on or before such next succeeding Rental Payment Date together with interest thereon at the interest rate then being paid on tax overpayments by the United States for the period such sums were paid to such Beneficiary to the date such Beneficiary pays to the Lessee an amount equal to such sums, and (y) the amount of any penalty or interest refunded to such Beneficiary as a result of such Final Determination and any interest paid to such Beneficiary by the government on such refund, promptly upon receipt thereof and (b) the Lessee pays to such Beneficiary an amount equal to interest at the rate of 12% per annum on the amount of the tax refund made in respect of the Tax Payment (excluding any interest or penalty included therein) for the period from the date of the original payment of the Tax Payment by such Beneficiary to the date such tax refund is received by such Beneficiary less the amount received by such Beneficiary as interest on the refund that was not otherwise paid to the Lessee under clause (a)(x) of this sentence. If any such claim referred to above shall be made by the Internal Revenue Service and the Lessee shall reasonably have requested any Beneficiary to contest such claim as above provided and shall have duly complied with all of the terms of this § 16(a), such Beneficiary may elect not to contest any such claim despite the request of the Lessee, made in accordance with the terms of this paragraph, or to discontinue any proceedings previously commenced as a consequence of such request, and thereupon the Lessee shall be relieved of all liability to indemnify such Beneficiary with respect to the Loss involved in respect of such claim. In the event the Lessee is relieved of its obligation to indemnify such Beneficiary pursuant to the preceding sentence and the Lessee has paid any sums hereunder in indemnification of such Beneficiary (including interest and penalties), such

Beneficiary will pay to the Lessee all such sums (including such sums paid as interest and penalties) plus interest thereon at 12% per annum for the period from the date or dates of the payment of any such sum to the date such Beneficiary makes such payment to the Lessee.

"Final Determination" for the purpose of the preceding paragraph, means a final decision of a court of competent jurisdiction after all allowable appeals have been exhausted by either party to the action. Neither concession by any Beneficiary of any of the aforementioned claims in the over-all settlement of a controversy with the Internal Revenue Service either at the administrative level or at the court level, nor the failure to recover a refund in whole or in part with respect to such claims which failure is the result of a setoff against a claim for refund based upon such claims, where the matters set off do not relate to such claims will constitute an adverse "Final Determination" causing the aforementioned additional payments to accrue to such Beneficiary, unless such over-all settlement or setoff of a tax controversy with the Internal Revenue Service is approved by the Lessee in a separate agreement with such Beneficiary and the Lessee. If the Lessee does not request such Beneficiary to contest a claim, then the Lessee's liability hereunder shall become fixed when the Lessee receives notice of a Loss from such Beneficiary.

In the event payments shall be due any Beneficiary under this § 16, the Casualty Values referred to in § 7 hereof shall be adjusted accordingly, computed on the same assumptions as are utilized by such Beneficiary in originally evaluating this transaction, except for the assumption that resulted in such adjustment.

§ 16(b). In the event and to the extent that the cost of any replacement, improvement and/or addition to any Unit or any expenditure by the Lessee in respect of any Unit ("Additional Expenditures") made by the Lessee, under and pursuant to the terms hereof or otherwise, is required to be included in the gross income of any Beneficiary for Federal, state or local income tax purposes at any time prior to the time such Unit is disposed of in a taxable transaction, then the Lessee hereby agrees that it will pay to such Beneficiary on each Rental Payment Date in respect of such Unit, commencing with the first such date following the date on which the liability of the Lessee hereunder shall become fixed, such sums which (after deduction of all taxes, fees and other charges required to be paid by such Beneficiary in respect of the receipt thereof under the laws of the United States or any political subdivision thereof or any foreign taxing authority, in each case calculated on the assumption that such tax is payable at the highest marginal corporate rates), when taken together with the rental installments due on such dates hereunder which are to be distributed to such Beneficiary, will, in the reasonable opinion of such Beneficiary, maintain such Beneficiary's after-tax rate of return on and rate of recovery of investment and the annual net cash flows (computed on the same assumptions as utilized by such Beneficiary in originally evaluating this transaction) in respect of such Unit under this Lease at the same level that would have been available if the cost or value of such Additional Expenditures had not been treated as income to such Beneficiary, and the Lessee shall in addition forthwith pay to such Beneficiary an amount which (after the deduction of any additional taxes, fees and other charges required to be paid by such Beneficiary in respect of the receipt of such amount, calculated on the assumption that such taxes are payable at the highest then applicable marginal tax rate) shall be equal to the amount of any interest, penalty or additions to tax which may be imposed in connection with such Additional Expenditure. In the event that this Lease is terminated, or that no further rents are payable, with respect to any Unit prior to the time the Lessee is obligated to make payments to such Beneficiary as set forth in the preceding sentence (either because no such payment obligation had become fixed under such sentence prior to such event or because the due date of such payment or payments shall occur following such event), then the Lessee shall pay to such Beneficiary, in lieu of such payment or payments, upon or before 30 days after the liability of the Lessee in respect of such termination hereunder shall become fixed, such lump sum (calculated in the same manner as set forth in the preceding sentence) as shall be necessary in the reasonable opinion of such Beneficiary to maintain such Beneficiary's after-tax rate of return on and rate of recovery of investment and the annual net cash flows (computed on the same assumptions as utilized by such Beneficiary in originally evaluating this transaction, except for the assumption that has resulted in such adjustment) in respect of such Unit hereunder at the same level that would have been available if such Loss had not occurred.

In the event that the Lessee shall pay all or any portion of any installment of rent hereunder prior to the date upon which such payment is required to be made, the Lessee shall pay to each Beneficiary an amount which, after deduction of all taxes, fees and other charges in respect of the receipt of such amount under the laws of any Federal, state or local government or taxing authority in the United States or under the laws of any foreign country or subdivision of any taxing authority thereof, shall be equal to the excess of (A) the taxes, fees and other charges payable by such Beneficiary in that year as a result of the receipt of such installment of rental over (B) the taxes, fees and other charges that would have been payable in that year by such Beneficiary had such installment of rent been paid by the Lessee on the date upon which such payment is required to be made hereunder.

§ 16(c). For purposes of this § 16, the term "Beneficiary" shall include any affiliated group of which such Beneficiary is a member if consolidated, joint, or combined returns are filed for such affiliated group for Federal, state or local income tax purposes.

§ 16(d). All payments provided to be made to any Beneficiary by the Lessee purusant to this § 16 shall be made by wire transfer of immediately available funds to such bank in the continental United States for the account of such Beneficiary as it from time to time shall have directed the Lessee in writing.

§ 17. *Interest on Overdue Rentals.* Anything contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount on the overdue rentals and other obligations for the period of time during which they are overdue at a rate per annum equal to 12%, or such lesser amount as may be legally enforceable. Interest hereunder shall be determined on the basis of a 360-day year of twelve 30 day months.

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

(a) if to the Lessor, at One Constitution Plaza, Hartford, Connecticut 06115, Attention of Corporate Trust Department, with a copy to each Beneficiary at its address set forth in Schedule B to the Participation Agreement, and

(b) if to the Lessee, at 1310 Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, Attention of Assistant Treasurer - Finance and Collections;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at P.O. Box 2258, Baltimore, Maryland 21203, Attention of Corporate Trust Department.

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

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

§ 20. *Immunities; No Recourse.* No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or the Beneficiaries, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common

law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by The Connecticut Bank and Trust Company, including its successors and assigns, or for the purpose or with the intention of binding said financial institution personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the Lessor solely in the exercise of the powers expressly conferred upon the Lessor as trustee under the Trust Agreement; and that no personal liablity or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Lessor or the Beneficiaries (except as provided in the last paragraph of Article 12 of the CSA and Section 1.04 of the Trust Agreement) on account of any representation, undertaking or agreement herein of the Lessor, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

§ 21. *Execution.* This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. It shall not be necessary that any counterpart be executed by both parties hereto as long as each party shall have executed one counterpart hereof and delivered it to the other party. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 22. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; *provided, however,* that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed or deposited.

§ 23. *Obligations of Lessor under CSA; Additional Rentals.* In the event that the Lessor shall become obligated to make any payment (other than payments in settlement for the Purchase Price (as defined in the CSA) for any Unit, payments of the principal of or interest on the CSA Indebtedness in respect thereof pursuant to the CSA and payments made pursuant to the proviso to the third paragraph of Article 12 thereof) or to perform any obligations pursuant to the CSA not covered by the provisions of this Lease, the Lessee shall pay such additional rentals hereunder and perform such obligations so that all of the Lessor's obligations (other than as aforesaid) pursuant to the CSA shall be fully complied with, without regard for any limitation of liability of the Lessor contained in the CSA.

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

CONSOLIDATED RAIL CORPORATION,

[Corporate Seal]

Attest:

by _____
Assistant Treasurer - Finance and Collections

_____
Assistant Secretary
D. R. POWELL

THE CONNECTICUT BANK AND TRUST COMPANY, not individually but solely as Trustee,

[Corporate Seal]

Attest:

by _____
Authorized Officer

_____
Authorized Officer

COMMONWEALTH OF PENNSYLVANIA }
}ss.:
COUNTY OF PHILADELPHIA, }

On this 15TH day of March 1979, before me personally appeared H. W. BROWN, to me personally known, who, being by me duly sworn, says that he is ~~President & Treasurer~~ ASSISTANT TREASURER - FINANCE & COLLECTIONS of CONSOLIDATED RAIL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and 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.

Eileen C. Baker
Notary Public

[Notarial Seal]

EILEEN C. BAKER
Notary Public Philadelphia, Philadelphia Co.
My Commission Expires October 11, 1982

STATE OF CONNECTICUT, }
}ss.:
COUNTY OF HARTFORD, }

On this day of March 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and 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]

SCHEDULE A TO LEASE

Type	Builder	Quantity	Lessee's Identification Numbers (Both Inclusive)
3,000 h.p. Model GP40-2 Diesel Electric Locomotives	General Motors Corporation (Electro-Motive Division)	40	3346-3385
2,000 h.p. Model GP38-2 Diesel-Electric Locomotives	General Motors Corporation (Electro-Motive Division)	26	8256-8281
2,250 h.p. Model B23-7 Diesel Electric Locomotives	General Electric Company	25	1967-1991

SCHEDULE B TO LEASE

Casualty Value

Rental Payment Date	Percentage of Purchase Price	Rental Payment Date	Percentage of Purchase Price
(Interim Payment)	82.0306%	July 1, 1987	72.5945%
October 1, 1979	84.9704	October 1, 1987	71.5565
January 1, 1980	86.1817	January 1, 1988	69.9389
April 1, 1980	86.9985	April 1, 1988	68.8170
July 1, 1980	87.5368	July 1, 1988	67.6680
October 1, 1980	87.8545	October 1, 1988	66.4905
January 1, 1981	87.7294	January 1, 1989	64.7148
April 1, 1981	87.8669	April 1, 1989	63.4631
July 1, 1981	88.0040	July 1, 1989	62.1852
October 1, 1981	88.1578	October 1, 1989	60.8799
January 1, 1982	87.7655	January 1, 1990	58.9717
April 1, 1982	87.7925	April 1, 1990	57.5934
July 1, 1982	87.7659	July 1, 1990	56.1902
October 1, 1982	87.4364	October 1, 1990	54.7602
January 1, 1983	86.7934	January 1, 1991	52.7375
April 1, 1983	86.5619	April 1, 1991	51.2351
July 1, 1983	86.2764	July 1, 1991	49.7103
October 1, 1983	85.9410	October 1, 1991	48.1585
January 1, 1984	84.9764	January 1, 1992	46.0398
April 1, 1984	84.5353	April 1, 1992	44.4184
July 1, 1984	84.0531	July 1, 1992	42.7726
October 1, 1984	83.2808	October 1, 1992	41.0970
January 1, 1985	82.1629	January 1, 1993	38.8974
April 1, 1985	81.5217	April 1, 1993	37.1539
July 1, 1985	80.8419	July 1, 1993	35.3939
October 1, 1985	80.1282	October 1, 1993	33.6258
January 1, 1986	78.7840	January 1, 1994	31.4096
April 1, 1986	77.9839	April 1, 1994	29.6200
July 1, 1986	77.1493	July 1, 1994	27.8586
October 1, 1986	76.0292	October 1, 1994	26.1014
January 1, 1987	74.5824	January 1, 1995	23.9645
April 1, 1987	73.6035	April 1, 1995	22.1880

The foregoing percentages have been calculated without regard to recapture of the Investment Credit (as defined in § 16 hereof). Consequently, the above Casualty Values shall each be increased by an amount equal to the sum of pre-tax equivalents of the Investment Credit lost to each Beneficiary computed in accordance with the marginal federal, state and local income tax rate of each Beneficiary at the date of payment of such Casualty Value. Promptly upon receipt of the notice of Casualty Occurrence pursuant to § 7 hereof, the Lessor, after obtaining the information required from the Beneficiaries, shall notify the Lessee and the Vendor of the applicable marginal tax rates and such other information as may be required to compute the increase in Casualty Value pursuant to the preceding sentence.

SCHEDULE C TO LEASE

Certificate of Acceptance

To: The Connecticut Bank and Trust Company, as Trustee (the "Lessor")
One Constitution Plaza
Hartford, Connecticut 06115
Attention of Corporate Trust Department

I, the duly authorized representative for the Lessor and Consolidated Rail Corporation (the "Lessee") under the Conditional Sale Agreement and the Lease of Railroad Equipment, both dated as of February 1, 1979, respectively, do hereby certify that I inspected and accepted delivery thereunder of the following Units of Equipment:

TYPE OF EQUIPMENT: Diesel electric locomotive
MODEL:
DATE ACCEPTED:
NUMBER OF UNITS:
NUMBERED:
MANUFACTURER'S SERIAL NOS:

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

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

"Ownership Subject to a Security Agreement filed with the Interstate Commerce Commission."

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

_____
Authorized Representative of Lessor and Lessee

BUILDER:

[General Motors Corporation
(Electro-Motive Division)]
or
[General Electric Company]