

LEASE OF RAILROAD EQUIPMENT

8155-^B
RECORDATION NO. Filed & Recorded

DEC 23 1975 • 2 55 PM

INTERSTATE COMMERCE COMMISSION

Dated as of December 23, 1975

between

**Chicago, Milwaukee, St. Paul &
Pacific Railroad Company**

and

Connell Leasing, Inc.

Covering 32 Diesel-Electric Locomotives

Filed and recorded with the Interstate Commerce Commission pursuant to
Section 20c of the Interstate Commerce Act on _____ at _____
, recordation number _____

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LEASE OF RAILROAD EQUIPMENT dated as of December , 1975, between Chicago, Milwaukee, St. Paul & Pacific Railroad Company (hereinafter called the "Lessee"), and Connell Leasing, Inc. (the "Lessor").

WHEREAS, the Lessor has entered into a conditional sale agreement dated as of the date hereof (hereinafter called the "Conditional Sale Agreement") with General Motors Corporation (hereinafter called the "Builder"), wherein the Builder has agreed to construct, sell and deliver to the Lessor the railroad equipment described in Schedule A hereto, a copy of which agreement has been delivered to the Lessee;

WHEREAS, the Builder has assigned or will assign its interest in the Conditional Sale Agreement to Girard Trust Bank as agent (hereinafter, together with its successors and assigns, referred to as the "Agent") pursuant to an agreement and assignment (hereinafter called the "Assignment") dated as of the date hereof, between the Builder and the Agent, a copy of which has been delivered to the Lessor and the Lessee;

WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number as are delivered and accepted by it on or before December 31, 1975 (hereinafter being called individually a "Unit" and collectively the "Units" or the "Equipment"), at the rentals and for the terms and upon the conditions hereinafter provided;

WHEREAS, to induce the Lessor to purchase the Equipment and lease it to the Lessee and to induce the Agent to acquire an interest in the Conditional Sale Agreement, the Builder has guaranteed certain of the Lessee's obligations under this Lease pursuant to a guaranty agreement dated as of the date hereof between the Builder, the Agent and the Lessee (the "Guaranty Agreement"); and

WHEREAS, to induce the Builder to make the guarantees contained in the Guaranty Agreement, the Lessee has agreed to pay quarterly premium payments (the "Premium Payments") to the Builder pursuant to the Guaranty Agreement;

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 and the Lessee hereby hires the Units from the Lessor, upon the following terms and conditions, but, upon default of the Lessee hereunder, subject to all the rights and remedies of the Vendor under the Conditional Sale Agreement:

§ 1. *Financing.* This Lease provides for the lease by the Lessee from the Lessor of the Units delivered to the Lessor prior to December 31, 1975, such Units to be financed pursuant to a finance agreement among the Agent and New England Mutual Life Insurance Company, Security Mutual Life Insurance Company of New York, Sun Life Assurance Company of Canada, Dollar Savings Bank, Great American Insurance Company, Royal Neighbors of America and Modern Woodmen of America (hereinafter called the "Investors") dated as of the date hereof.

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§ 2. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be delivered to the Lessee at the Builder's EMD Plant, McCook, Illinois. Upon such delivery, the Lessee will cause an inspector of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance and delivery (hereinafter called a "Certificate of Delivery"), stating that such Unit has been inspected and accepted on behalf of the Lessee on the date of such Certificate of Delivery and is marked in accordance with §5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 3. *Rentals.* The Lessee agrees to pay or cause to be paid to the Lessor as rental for each Unit subject to this Lease (i) a payment on January 15, 1976 in an amount equal to 3.0709% of the Purchase Price (as defined in the Conditional Sale Agreement and hereinafter called the "Purchase Price") of each Unit settled for under the Conditional Sale Agreement plus an amount equal to 0.03333% of the Purchase Price of each Unit settled for under the Conditional Sale Agreement for each day elapsed from and including the Closing Date (as said term is defined in the Conditional Sale Agreement) with respect to such Unit to and including January 14, 1976, and (ii) 59 consecutive quarterly payments payable January 15, April 15, July 15, October 15 in each year commencing April 15, 1976, in an amount equal to 2.8166% of the Purchase Price of each Unit subject to the Lease on each such date.

All payments provided for in this Lease shall be made for the account of the Lessor, in care of the Agent, at Broad and Chestnut Sts. Philadelphia, Pennsylvania in immediately available funds in Philadelphia; provided that after the Agent shall have notified the Lessee that the Conditional Sale Indebtedness payable hereunder shall have been paid in full, such payments shall be made directly to the Lessor.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent or any other sums due or owing hereunder or payable by Lessee to any person hereunder, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or against the Builder or any other person, provided that nothing herein shall be deemed to impair the Lessee's right to assert and sue upon such claims in separate actions; nor, except as otherwise expressly provided herein, shall this Lease terminate or the respective obligations of the Lessor or the Lessee be otherwise affected by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, 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

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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.

§ 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on January 14, 1991.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, are subject to the rights of the Vendor under the Conditional Sale Agreement. If any event of default should occur under the Conditional Sale Agreement, the Agent may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not in default under this Lease.

§ 5. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on both sides of each Unit, in letters not less than one inch in height, the following: Connell Leasing, Inc.—Owner/Lessor: Girard Trust Bank, as Agent—Security Owner”, or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor’s title to and property interest in such Units, the Agent’s Security Title (as defined in the Conditional Sale Agreement) to such Unit and the rights of the Lessor under this Lease and of the Agent under the Conditional Sale Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Agent and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Conditional Sale Agreement shall have been filed, recorded and deposited.

The Lessee, at its own expense, will make any changes in the identification marks pursuant to the instructions of the Lessor to permit the

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Lessor to comply with the fifth paragraph of Article 14 of the Conditional Sale Agreement.

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 Lessee may allow the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 6. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal, or foreign taxes (other than any United States federal income tax payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines and penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "Impositions") hereinafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Conditional Sale Agreement, all of which Impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all Impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all Impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any Imposition of any kind so long as it is contesting in good faith and by appropriate legal proceedings such Imposition and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Conditional Sale Agreement. If any Imposition shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor if the Lessor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Lessor) or the Lessee shall have approved the payment thereof.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Agent or otherwise pursuant to Article 6 of the Conditional Sale Agreement not covered by the foregoing paragraph

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of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed Impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 6.

In the event any reports with respect to Impositions involving any Units are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Agent in such Units or notify the Lessor and the Agent of such requirements and make such reports in such manner as shall be satisfactory to the Lessor and the Agent.

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

The amount which the Lessee shall be required to pay with respect to any Imposition which is subject to indemnification under this §6 shall be an amount sufficient to restore the Lessor to the same position, after considering the effect of the receipt of such indemnification by the Lessor on its United States federal income taxes and state and city income taxes or franchise taxes based on net income, that the Lessor would have been in had such Imposition not been imposed.

§ 7. *Payment for Casualty Occurrences.* In the event that any Unit shall be or become lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "Casualty Occurrences") during the term of this Lease, the Lessee shall promptly and fully notify the Lessor and the Agent with respect thereto. On the rental payment date next succeeding the Casualty Occurrence, the Lessee shall pay to the Lessor with respect to such Unit the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with Schedule I hereto. 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 the Lessee shall be vested with title to such Unit, without further transfer or action on the part of the Lessor, except that the Lessor, if requested by the Lessee, shall furnish a bill of sale or similar instrument evidencing passage of title in recordable form. The Lessee, at its own expense, will promptly furnish the Lessor a revised schedule of payments of principal and interest thereafter to be made under the Conditional Sale Agreement, in such number of counterparts as the Lessor may request, calculated as provided in Article 7 of the Conditional Sale Agreement.

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

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 after delivery to and acceptance thereof by the Lessee hereunder.

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The Lessee hereby assigns any and all rights to receive payment in settlement for destruction of any Unit by another carrier (hereinafter called the "Settlement") to the Lessor. The Lessor hereby directs the Lessee to collect and receive such Settlement in trust for the benefit of the Lessor, and, to the extent such Settlement does not exceed the payments due to the Lessor in respect of a Casualty Occurrence of such Unit or Units for which the Settlement is made, to pay promptly such Settlement over to the Lessor. The Lessor agrees to apply such Settlement, to the extent received, towards the satisfaction of Lessee's obligation to make payment to the Lessor in respect of a Casualty Occurrence of the Unit or Units for which Settlement is made, and the Lessee shall be entitled to any excess of such Settlement over such obligation. In the event that the Lessor receives any insurance proceeds by reason of a Casualty Occurrence, it will credit such proceeds to the Lessee as a payment on account of the Casualty Value of the Units which are the subject of such Casualty Occurrence and, to the extent that the proceeds exceed said Casualty Value to be paid by the Lessee, will remit same to the Lessee. In the event the Lessor receives any condemnation award by reason of a Casualty Occurrence, it will credit such award to the Lessee as payment on account of the Casualty Value of the Units which are subject of such Casualty Occurrence, and the Lessor shall be entitled to retain any excess in the event the award exceeds said Casualty Value.

§ 8. *Annual Reports.* On or before March 31 in each year, but in case of financial statements as promptly thereafter as possible but not later than April 30 in each such year, commencing March 31, 1977, the Lessee will furnish to the Lessor and the Agent (a) an accurate statement setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Conditional Sale Agreement, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor or Agent may reasonably request, (b) an accurate statement stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by § 5 hereof and Article 9 of the Conditional Sale Agreement have been preserved or replaced, (c) a consolidated annual financial report of the Lessee prepared in accordance with generally accepted accounting principles and audited by a recognized public accounting firm, which shall include, without limitation, a statement of income and retained earnings and a balance sheet, all in reasonable detail and satisfactory in scope to the Lessor, (d) a certificate of an officer of the Lessee describing any event during the preceding year which constituted, or with the passage of time will constitute, an Event of Default hereunder or, to the knowledge of the Lessee, an event of default under the Conditional Sale Agreement and, with respect to any event which constituted, or with the passage of time will constitute, an Event of Default, the actions taken, or scheduled to be taken, to correct such event and remedy the Event of Default, and (e) an opinion of counsel for the Lessee that either no additional filings of any nature are required

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under any federal, state or local law with respect to perfection of title to the Units in the Lessor and the Agent's Security Title (as defined in the Conditional Sale Agreement) or that all requisite filings, specifying same, have been duly made and are in full force and effect. The Lessor and the Agent shall have the right, by their agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Agent may request during the continuance of this Lease.

§ 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.* The Lessee takes each Unit hereunder as is. The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; and so long as an Event of Default has not occurred and is continuing hereunder, the Lessor shall and does hereby irrevocably appoint and constitute 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 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 under the provisions of Article 13 of the Conditional Sale Agreement. The Lessee's delivery of a Certificate of Delivery shall be conclusive evidence as between the Lessee and the Lessor that all 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 Agent, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration of any Unit, or in the event that any equipment or appliance on any such Unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such Unit in order to comply with such laws or rules, the Lessee will make such alterations, changes, replacements and additions at its own expense; *provided, however,* that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Agent, adversely affect the property or rights of the Lessor or the Agent under this Lease or under the Conditional Sale Agreement.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit in good order and repair.

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The Lessee shall make no improvements or additions to any Unit other than those provided above and except communications, signal and automatic control equipment or devices having a similar use which are owned by the Lessee and readily removable without causing material damage to the Units..

The Lessee agrees to defend, indemnify, protect and hold harmless the Lessor and the Agent and their respective successors and assigns from and against all losses, damages, injuries, liabilities, claims, demands, costs, charges and expenses whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, royalty payments and expenses, patent liabilities, penalties and interest arising out of or as the result of the entering into or the performance of the Conditional Sale Agreement or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, construction, storage or return of any Unit or any design, system, process, formula, combination, article or material used or contained therein or in the construction thereof or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, whether as a result of negligence, the application of the laws of strict liability, or otherwise except as otherwise provided in § 14 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease. The indemnities required to be paid by the Lessee under this paragraph shall be of an amount sufficient to restore the Lessor to the same position, after considering the effect of the receipt of such indemnities by the Lessor on its United States federal income taxes and state and city income taxes or franchise taxes based on net income that the Lessor would have been in had the indemnities not been required.

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

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

A. default shall be made in payment of any part of the rental provided in § 3 hereof, in the payment of Casualty Value under § 7 hereof, in the payment of any increased rental or Casualty Value payments as provided in § 17 hereof, or in the payment of any other monies hereunder, and such default shall continue for five days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. the insurance to be maintained by the Lessee under § 21 shall for any reason not remain in full force and effect as therein provided unless

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comparable substitute insurance satisfactory to the Lessor and the Agent shall be in force;

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

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

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

G. default shall be made in the payment of any premium payment under Section 3 of the Guaranty Agreement, and such default shall continue for five days (provided that such a payment default shall not constitute an Event of Default without the prior consent of the Builder);

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, or

(b) by notice in writing to the Lessee (i) terminate this Lease, or (ii) terminate the Lessee's interest in the Equipment and the Lease

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through the exercise of its rights under § 11 hereof to obtain possession of the Equipment from the Lessee and await the election of the Builder on or before the Election Date as that term is defined in the Guaranty Agreement with respect to the Lessor's assignment and the Builder's assumption, effective as of the occurrence of the Event of Default, of all of the Lessee's obligations and interests under the Lease with the exception of any obligations which arise by reason of events which have occurred prior to the effective date of such assignment to the Builder; 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 hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purpose whatever. The Lessor shall, nonetheless, 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 90) and also to recover from the Lessee as liquidated damages and not as a penalty (i) that percentage of the Purchase Price of the Equipment (as defined in the Conditional Sale Agreement) as is set forth on Schedule I hereto opposite the last quarterly period with respect to which the lease rental was paid by the Lessee under this Lease, plus interest at the rate of 13% from the date of the Event of Default to the date of payment thereof less (ii) the total net proceeds, if any, paid to Vendor and Vendee as defined in the Conditional Sale Agreement following any sale of the Equipment under the Conditional Sale Agreement or, if there has been no sale, the fair market value of the Equipment on the date of the Declaration of Default (as defined in the Conditional Sale Agreement) said fair market value to be determined by agreement of the parties, including any assignee of this Lease, or, in the event agreement cannot be reached, in the same manner as set forth in § 13 hereof plus (iii) any expenses, including reasonable attorney's fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental; provided, however, that in the event that sale of the Equipment is prevented by the order of a court of competent jurisdiction or by any other governmental action, no reduction in the amount owing shall be made until such time as the Vendor as defined in the Conditional Sale Agreement receives any "income or proceeds of the Equipment" as that term is defined in the Conditional Sale Agreement. The amount payable under (i) less (ii) shall be paid by the Lessee to the Lessor within 30 days after the date on which such amount is agreed upon or determined hereunder and the amounts payable under (iii) shall be payable promptly by the Lessee to the Lessor upon receipt of invoice or invoices therefor.

The remedies in this Lease provided in favor of the Lessor shall not be

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deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

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

§11. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 10 hereof, the Lessor may take, or cause to be taken or demand from the Lessee, immediate possession of Equipment, or one or more of the Units thereof, and may remove the same from possession and use of the Lessee. For such purpose, the Lessor may enter upon the premises of the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids, including but not limited to diesel fuel or other necessary petroleum products, and any available trackage and other facilities or means of the Lessee, with or without process of law.

In case the Lessor shall demand possession of the Equipment pursuant to this paragraph and shall designate a reasonable point or points on the lines or premises of the Lessee for the delivery of Equipment to the Lessor, the Lessee shall at its own cost, expense and risk, forthwith and in usual manner, cause the Equipment to be moved to such point or points on its lines and shall there deliver the Equipment or cause it to be delivered to the Lessor. At the option of the Lessor, the Lessor may keep the Equipment on any of the lines or premises of the Lessee for a period of one year or until the Lessor shall have leased, sold or otherwise disposed of the same, whichever first occurs, and for such purpose, the Lessee agrees to furnish, without charge or rent or storage, the necessary facilities at any point or points selected by the Lessor reasonably convenient to the Lessee. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Unit, to inspect the same; provided, however that the Lessee shall not be liable, except in the case of the negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising the rights of inspection granted under this Section. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as 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. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and upon application to any court of

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equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance hereof.

The Lessee hereby expressly waives any and all claims against the Lessor and its assigns or agents for damages of whatever nature in connection with the retaking of any Unit of the Equipment in any reasonable manner.

§ 12. *Assignment; Prohibition Against Liens; 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 assigns. Whenever the term Lessor is used in this Lease it shall include the assignees of the Lessor.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them except as hereinafter provided in this § 12. 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 resulting from claims against the Lessor or the Agent not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Agent or the Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises; *provided, however,* that the Lessee shall be under no obligation to pay any Impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Conditional Sale Agreement. If any Impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by this Section 12.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it, or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or in the transportation thereof from the place of delivery to the Lessee but only upon and subject to all the terms and conditions of this Lease and the Conditional Sale Agreement; *provided, however,* that the Lessee shall not use or permit the use of any Unit in service involving the regular opera-

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tion and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

The rights of Lessee under this Lease may not be assigned by the Lessee, except that, with the prior written consent of the Lessor and the Agent, the Lessee may assign all of its rights under this Lease to a third party of reliable standing with the financial community which shall have duly assumed Lessee's obligations hereunder. The obligations of the Lessee hereunder shall terminate upon the assignment of the Lessee's rights and obligations pursuant to this paragraph except as to obligations and claims arising prior to such assignments; provided that nothing contained herein shall prohibit or restrict the right of the Lessee to assign or transfer all of its rights hereunder to any corporation, which shall have duly assumed all of such obligations, into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety.

§ 13. *Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor not less than six months prior to the end of the term of this Lease, elect to extend the term of the Lease on the same terms and conditions contained herein except as otherwise provided in this Section in respect to all, but no fewer than all, the Units covered by this Lease for a five-year period commencing on the scheduled expiration of the original term, at a rental payable in advance in 20 quarterly payments, each in an amount equal to the Fair Market Rental as hereinafter defined, such quarterly payments to be made January 15, April 15, July 15 and October 15 in each year of the extended term and with a Casualty Value payment schedule to be negotiated by the Lessee and the Lessor.

In the event that the Lessee exercises its option to extend the initial term of the Lease for a five year period, and provided that this Lease, as extended, has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor not less than six months prior to the end of the initial extended term of this Lease, elect to extend the term of the Lease for an additional five year period subject to all the terms and conditions applicable to the exercise of the Lessee's option to extend the initial term of the Lease at a then Fair Market Rental as hereinafter defined and a Casualty Value payment schedule to be negotiated by the parties.

Fair Market Rental shall be determined on the basis of, and shall be equal to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than (i) a lessee currently in possession and (ii) a used equipment dealer), and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental. If on or before four months prior to the expiration of the term of this Lease or renewal term, as the case may be, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance

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with the foregoing definition by three qualified independent appraisers, one of whom shall be appointed by Lessor and the other by the Lessee and the two appraisers so chosen shall select a third appraiser and they shall render their appraisal within 30 days of the appointment of the third appraiser and such appraisal shall be final and conclusive between the parties. In case either of the parties shall fail or refuse to appoint an appraiser for a period of ten days after written notice is given by the other party to make such appointment, the appraiser appointed by the party having given notice to make such an appointment shall appoint a like qualified and disinterested appraiser for the defaulting party and the said two appraisers, so appointed, shall select a third appraiser and they shall render their appraisal within 30 days and such appraisal shall be final and conclusive upon the parties. In any case where two appraisers are to appoint a third and cannot agree within thirty days after the appointment of the second appraiser, the third appraiser shall be appointed, upon the application of either party, by the American Arbitration Association. If any appraiser shall decline or fail to act, the party originally having chosen such appraiser or the American Arbitration Association, as the case may be, shall appoint another to act in his place.

§ 14. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will (unless the Unit is re-leased to the Lessee), 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 reasonably designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor; the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The movement, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to move, deliver, store and transport the Units.

The Lessee shall return the Equipment upon the termination of the initial term or any extended term of this Lease in the same operating order, repair and condition as when originally delivered hereunder, ordinary wear and tear excepted.

§ 15. *Lessee's Warranties and Representations.* The Lessee warrants and represents as follows:

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A. The Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of Wisconsin and has the full corporate power and legal right and power to enter into this Lease, the acknowledgement to the Lease Assignment and the Purchase Agreement Assignment and to perform its duties and obligations hereunder and thereunder and is duly qualified and authorized to do business in each jurisdiction in which its failure to so qualify would have a material adverse impact upon its financial condition or its ability to perform and discharge its obligation under this Lease, the acknowledgement to the Lease Assignment and the Purchase Agreement Assignment.

B. Neither the execution and delivery of this Lease, the acknowledgement to the Lease Assignment or the Purchase Agreement Assignment nor the consummation of the transaction herein and therein contemplated or the fulfillment of, or compliance with, the terms and provisions hereof and thereof by the Lessee will conflict with, or result in a breach of, any of the terms, conditions or provisions of the Articles of Incorporation or By-laws of the Lessee or of any bond, debenture, note, mortgage, indenture, contract or other agreement or instrument to which the Lessee is a party or by which it or its property is bound or will constitute, with the giving of notice or the passage of time or both, a default hereunder or thereunder or will conflict with, or result in a breach of any of the terms, conditions or provisions of, any law, regulation, order, judgment or decree of any court or governmental instrumentality.

C. Insofar as the Lessee knows, no approval, order or license of the Interstate Commerce Commission or any other governmental authority, federal, state or local, is necessary in order for the Lessor to enter into the Conditional Sale Agreement, this Lease or the Lease Assignment or to perform its duties or obligations hereunder or thereunder, and the execution and delivery by the Lessor of such agreements and the performance by it of its obligations thereunder and its ownership of the Units do not subject the Lessor to the jurisdiction of, or regulation by, the Interstate Commerce Commission or any other regulatory authority, federal, state or local and in the event that the Lessor shall be advised by the Lessor's counsel that any such approval, order or license is so necessary or that such execution and delivery or performance does so subject the Lessor to any such jurisdiction or regulation solely as a result of the Lessor's ownership of the Units, the Lessee shall not operate or otherwise utilize the Equipment in any and all jurisdictions for which any such approval, order or license is necessary or in which the Lessor shall become subject to such jurisdiction or regulation, until the Lessee shall have either (i) obtained such approvals, orders or licenses or waivers thereof or waivers of all such jurisdiction or regulation from the applicable federal, state and local regulatory authority, as the case may be, or (ii) in form and substance satisfactory to the Lessor, indemnified the Lessor from and against any and all claims, liabilities, penalties or damages of any nature which might arise and/or result from the continued operations of the Equipment in any and all such jurisdictions.

D. The Lessee has the full corporate power and authority and legal right and possesses all licenses and permits necessary to carry on its principal business as now conducted.

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E. There are no actions, suits or proceedings pending or threatened which, if adversely determined against the Lessee, will materially prevent or interfere with its ability or right to perform its duties and obligations under this Lease, the acknowledgement to the Lease Assignment and the Purchase Agreement Assignment.

F. The Lessee has not directly or indirectly taken any action and will not take any action the effect of which will bring the sale of the conditional sale indebtedness under the Conditional Sale Agreement or the investment by the Vendee in the Units within the provisions of Section 5 of the Securities Act of 1933, as amended. The Lessee has not offered any rights, claims or indebtedness under the Conditional Sale Agreement or ownership interests in the Units (or any securities similar to any of the foregoing) to, or has solicited any offer to buy any thereof from, any person other than the Vendee and the Investors. The Lessee makes no representations as to activities by Radnor Associates, Ltd. or Interet Corporation.

G. The Lessee has furnished to the Investors and the Lessor a consolidated balance sheet, prepared utilizing generally accepted accounting principles, of the Lessee as of December 31, 1974, a related consolidated income statement (income and retained earnings), and an ICC CBS statement (condensed balance sheet) as of September 30, 1975, together with an income statement for the 9 months then ended, both prepared in accordance with the rules of the Interstate Commerce Commission. Such financial statements are in accordance with the books and records of the Lessee and have been prepared in accordance with the respectively applicable accounting principles on a consistent basis throughout the periods covered thereby, and such financial statements fairly present the financial condition of the Lessee at such dates and the results of its operations for such periods. Since September 30, 1975, there have been no changes which, individually or in the aggregate, have been materially adverse to the condition, financial or otherwise, of the Lessee as shown on the balance sheet as of such date, except changes in the ordinary course of business.

H. Each of the Units, as of the Closing Date, will have an estimated useful life of at least 18 years and an estimated fair market value at the end of the initial term of this Lease of at least 20% of the Purchase Price of such Unit.

I. As of the Closing Date, the Lessee has not directly or indirectly taken any action which would adversely affect the good and marketable title of the Lessor to each of the Units including, without limitation, any action which would create or result in the creation of any liens, encumbrances and claims of any nature whatsoever against the Equipment, except only for the rights of the Lessee under this Lease.

§ 16. *Recording; Expenses.* The Lessee will cause this Lease, the Conditional Sale Agreement and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Conditional Sale Agreement and will from time to time do and perform

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any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Agent for the purpose of proper protection, to their satisfaction, of the Agent's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Conditional Sale Agreement or the assignment thereof to the Agent; and the Lessee will promptly furnish to the Agent and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Agent and the Lessor. This Lease and the Conditional Sale Agreement shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

The Lessee will pay all reasonable costs and expenses (other than fees and expenses of counsel for the Builder) incident to this Lease and the Conditional Sale Agreement, the first assignments of the Lease and the Conditional Sale Agreement (including the fees and expenses of an agent, if the first assignee is an agent), any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of the Lease and the Conditional Sale Agreement and all printing costs.

§17. *Federal Income Taxes.* It is the intent of the parties to this Lease that it will be recognized as a lease for all Federal, State, city and local income taxes or franchise taxes imposed on or measured by net income, and that this Lease does not convey to the Lessee any right, title or interest in the Units except as lessee and that for United States income tax purposes (and to the extent applicable for state and local tax purposes), the Lessor as the beneficial owner of the Units shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property including (without limitation) the maximum depreciation deduction with respect to the Units authorized under section 167 of the Code based on the aggregate Purchase Price of the Units utilizing the 12-year depreciable life prescribed for the Units in the Asset Guideline Class No. 00.25 in accordance with section 167(m) of the Code employing the double declining balance method of depreciation, switching to the sum of the years-digits method when most beneficial to the Lessor [utilizing the half-year convention as provided in Reg. Sec. 1.167(a)-11(c)(2)(iii) to obtain 6 months' depreciation for calendar year 1975 and without taking into account the salvage value of the Units until the Units have been depreciated to a salvage value that is not greater than 10% of their basis to the Lessor (said 10% being based upon an estimated gross salvage value of 20% of the basis of the Units which will be reduced by 10% of such basis as provided in section 167(f) of the Code)] (such deductions being herein called the ADR Deductions), deductions with respect to interest payable under the Conditional Sale Agreement pursuant to section 163 of the Code (such deductions being herein called the Interest Deduction), and the 10% investment credit (herein called the Investment Credit) with respect to the aggregate Purchase Price of the Units pursuant to section 38 and related sections of the Code.

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

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

If by reason of the inaccuracy in law or in fact of the representations and warranties set forth in the preceding paragraph or any act or omission of the Lessee (including, but not limited to, the failure of the Lessee to furnish the notice to the Lessor contemplated by the penultimate paragraph of this § 17 or any inaccuracy in such notice), or for any other reason (other than a change in the Code occurring after the date of delivery of the Equipment hereunder), the Lessor shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of or shall be required to recapture all or any portion of the Investment Credit, the ADR Deduction, or the Interest Deduction with respect to all or part of any Unit (any such loss, disallowance, recapture or treatment being hereinafter called a Loss), then, unless the Lessee shall exercise its option pursuant to the proviso contained in this paragraph, the rentals for the Units set forth in § 3 hereof shall, beginning with the next succeeding rental payment date after written notice is given to the Lessee by the Lessor of such fact, be increased to such amount or amounts as shall, in the reasonable opinion of Lessor and agreed to by the Lessee, cause the Lessor's net return to equal the net return that would have been realized by the Lessor if such Loss had not occurred, and the Lessee shall forthwith pay to the Lessor as addi-

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tional rental the amount of any interest and/or penalties which may be assessed by the United States of America against the Lessor attributable to such Loss; *provided, however*, that in the event of any Loss of the Investment Credit, the Lessee may, in lieu of having the rentals increased as hereinabove provided, at its option, pay to the Lessor on the next succeeding rental payment date after written notice is given to the Lessee by the Lessor of the fact of such Loss, a single payment in an amount as shall, in the reasonable opinion of Lessor and agreed to by the Lessee, cause the Lessor's net return to equal the net return that would have been realized by the Lessor if such Loss had not occurred, together with payment of additional rental in an amount equal to any interest and/or penalties which may be assessed by the United States of America against the Lessor attributable to such Loss.

Notwithstanding the provisions of the immediately preceding paragraph, there shall be no increase made in rentals nor shall any single payment be required to be made by the Lessee if the Lessor shall have suffered such Loss with respect to all or part of such Unit as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit or the termination of this Lease pursuant to § 7 hereof, if the Lessee shall have paid to the Lessor the amounts stipulated under § 7 hereof;

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

(iii) the failure of the Lessor to claim in a timely or proper manner the Investment Credit, the ADR Deduction or the Interest Deduction;

(iv) the failure of the Lessor to have sufficient liability for Federal income tax against which to credit all such Investment Credit or sufficient taxable income (before taking into account the ADR Deduction or the Interest Deduction) to benefit in full from the ADR Deduction or the Interest Deduction, as applicable;

(v) the failure of the Lessor to timely contest a claim with respect to its income tax liability which, if successful, would under this § 17 lead to increased rental payments or a lump sum payment by the Lessee, after having received a timely written request from the Lessee, as hereinafter provided for in this § 17, to contest such claim; or

(vi) any other voluntary act or omission by the Lessor not contemplated or permitted by this Lease, the Conditional Sale Agreement, the Lease Assignment, the Purchase Agreement Assignment or the Guaranty Agreement.

If the deductions, credits or other benefits to which the Lessor is entitled are increased or decreased by a change in law (other than a change in income tax rates) that is effective prior to the delivery of the Units of Equipment which are affected by the change, the rental and Casualty

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Value under the Lease shall be adjusted appropriately by agreement of the Lessor and the Lessee so that the Lessor's net return shall not be decreased by reason of such change.

In the event the rental rates shall be increased or decreased as provided in this § 17 the Casualty Values set forth in Schedule I hereto shall be increased or decreased accordingly; provided that in no event shall such Casualty Values be reduced below the amount required to be paid to the Agent under Article 7 of the Conditional Sale Agreement in the event of a Casualty Occurrence thereunder.

If a claim shall be made by the Internal Revenue Service or any state or local taxing authorities with respect to the income tax liability of the Lessor which, if successful, would under this § 17 lead to increased rental payments or a lump sum payment by the Lessee, the Lessor shall give prompt notice of such claim to the Lessee and shall take such action to contest such claim as the Lessee shall reasonably request in writing from time to time, provided that within 30 days after notice by the Lessor of such proposed adjustment, the Lessee shall request that such adjustment be contested. The Lessor may in its discretion forego any administrative appeal with the Internal Revenue Service in respect of such claim and may at its option, either pay the tax claimed and sue for refund in the appropriate United States District Court or in the United States Court of Claims, as the Lessor may elect, or contest such claim in the United States Tax Court, considering, however, in good faith such request as the Lessee may make concerning the most appropriate forum in which to proceed; provided, however, that the final decision as to selection of the forum shall be solely the Lessor's. If the Lessor pays the tax claimed and sues for refund, subsequent rental payments by the Lessee shall be increased so as to maintain the Lessor's net return in the manner and to the extent provided in this § 17, and the Lessee shall forthwith pay to the Lessor as additional rental the amount of any interest and/or penalty assessed against the Lessor with respect to such additional income tax. If the Lessor receives a refund, it shall forthwith pay to the Lessee any interest thereon paid by the taxing jurisdiction together with the appropriate amount of any interest and or penalty which should not have been assessed against the Lessee as additional rental pursuant to the preceding sentence and the appropriate amount of such increased rental payments which should not have been paid by the Lessee to the Lessor pursuant to the preceding sentence, and the rentals for the Units shall, beginning with the next rental payment due after receipt by the Lessor of such refund, be decreased to such amount or amounts as shall, in the reasonable opinion of the Lessor and agreed to by the Lessee, cause the Lessor's net return over the term of this Lease to equal the net return that would have been realized by the Lessor if additional income taxes of the Lessor in the amount refunded had not been paid but not below the amounts required to satisfy the obligations of the Lessor under the Conditional Sale Agreement. Any such contest shall be at the sole expense of the Lessor, and the Lessee agrees to pay to the Lessor on demand any expense incurred by the Lessor in connection with such contest.

The Lessee's and the Lessor's agreements to pay any sums which may become payable pursuant to this § 17 shall survive the expiration or other termination of this Lease.

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In the event and to the extent that the cost of any improvement and/or addition (hereinafter called Capital Expenditures) to a Unit made by the Lessee, under and pursuant to the terms of this Lease or otherwise, is required to be included in the gross income of the Lessor for Federal income tax purposes at any time prior to the time such Unit is disposed of in a taxable transaction, then the rental for the Units set forth in § 3 hereof shall, beginning with the next succeeding rental payment date after the date on which the Lessee is required to furnish written notice thereof to the Lessor pursuant to the penultimate paragraph of this § 17 after said inclusion in the Lessor's gross income is required, be increased to such amount or amounts as shall, in the reasonable opinion of the Lessor and agreed to by the Lessee, after taking into account any present or future tax benefits that the Lessor reasonably anticipates it will derive from its additional investment in the Units (including without limitation any available current deduction, current and future depreciation deductions and investment tax credit), cause the Lessor's net return (calculated on the same basis as used by the Lessor in originally evaluating this transaction) to equal the net return that would have been realized by the Lessor if the cost of such Capital Expenditures had not been includible in the Lessor's gross income.

In determining the present or future tax benefits to be taken into account by the Lessor in establishing the rental increase required hereby, the Lessor shall attempt to maximize such benefits and hence minimize the increase in rents by making such elections (including where advantageous the applicable asset guideline repair allowance and accelerated depreciation, if then permitted) and utilizing such conventions and accounting methods as will further such objectives; *provided, however*, that the Lessor shall not be required to make any election or utilize a particular convention or accounting method if the Lessor determines, in its sole discretion but in good faith, that in so doing it will adversely affect its Federal income tax liability determined without regard to this transaction.

For purposes of this § 17 the cost of Capital Expenditures made by the Lessee shall be deemed to be "required to be included in the gross income of the Lessor for Federal income tax purposes" if such inclusion is required by (i) any provision of the Code or the applicable regulations enacted or adopted after the date of this Lease; or (ii) any published revenue ruling of the Internal Revenue Service issued after the date of this Lease which has not been held invalid by a court having appellate jurisdiction over the Federal income tax liability of the Lessor in a decision which has become final; or (iii) an Examination Report from the Internal Revenue Service accompanied by a thirty-day letter described in Reg. Sec. 601.105(d)(1).

The Lessor agrees that it will, upon the written request and at the sole expense of the Lessee, contest the inclusion of the cost of Capital Expenditures in its gross income in such forum as it, in its sole judgment but with due regard to the Lessee's advice, shall select; *provided, however*, that the Lessor shall not be required to contest such inclusion unless it has received an opinion from counsel selected by the Lessee and acceptable to the Lessor that there is a reasonable basis for contesting such inclusion. The Lessee agrees to pay the Lessor, on demand, the amount of any expense incurred by the Lessor in connection with such contest.

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The Lessee agrees to make a payment to the Lessor for any interest and/or penalties resulting from the failure to include the cost of Capital Expenditures in its income tax returns, such payment to be made upon demand and in amount sufficient to restore the Lessor to the same position it would have been in had such interest and/or penalties not been imposed.

The Lessor and Lessee agree that wherever in this Section 17 payments or increased rental are to be paid by Lessee to Lessor based upon the reasonable opinion of Lessor ~~[such opinion of Lessor is subject to agreement by Lessee]~~, In the event of disagreement between the parties as to any such payment or increased rental amounts the parties agree to submit the calculation of such amounts to one of the eight largest public accounting firms in the United States, chosen by mutual agreement or, in the absence of agreement to Peat Marwick Mitchell & Co. and such firm shall perform the calculation based on the assumptions originally utilized to determine the Lessor's net return and such calculation shall be binding upon both parties.

Notwithstanding anything herein to the contrary, in the event that an additional rental payment or payments are required to be made to the Lessor pursuant to this Section 17, if the total rental or other additional payments paid and payable by the Lessee hereunder, after giving effect to any increases under this § 17, shall be increased by more than 10% from the amount which would have been payable had this § 17 not been applicable and if Lessee is not in default under this Lease, the Lessee will have the option to purchase all of such Units then subject to this Lease from the Lessor at their then Fair Market Value (such Fair Market Value to be determined on the basis of and to be equal to the value which would be obtained in an arm's-length transaction between an informed and willing buyer-user, other than either a lessee currently in possession or a used equipment dealer, and an informed and willing seller under no compulsion to sell and otherwise utilizing the procedures in Section 13 hereof for this determination) or at the applicable Schedule I amount on the date of such purchase, whichever is greater.

The Lessee agrees that, within 30 days after the close of any calendar year (or in the event that Lessor gives the Lessee written notice that the Lessor's taxable year closes on a date specified therein other than December 31, within 30 days after said date) in which the Lessee has made Capital Expenditures which the Lessee believes are, or are of a type which it has been advised by the Lessor may be, required to be included in the gross income of the Lessor for Federal income tax purposes prior to the time such Unit is disposed of in a taxable transaction, the Lessee will give written notice thereof to the Lessor describing such Capital Expenditures in reasonable detail and specifying the cost thereof with respect to each Unit.

For purposes of this § 17, the term Lessor shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Lessor is a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

§18. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations

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due hereunder shall result in the obligation on the part of the Lessee promptly to pay as additional rental, to the extent legally enforceable, an amount equal to 13% per annum of the overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

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

- (a) if to the Lessor, at 45 Cardinal Drive, Westfield, N. J. 07902, Attn: President;
- (b) if to the Lessee, Room 746, Union Station Building, 516 W. Jackson Blvd., Chicago, Ill., 60606 Attn: Vice President, Finance and Accounting; and
- (c) if to the Agent at Broad and Chestnut Sts., Philadelphia, PA 19101,

or addressed to such other address as the Lessor, the Lessee or the Agent shall hereafter furnish to the others in writing.

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

This lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. 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 officers of the Lessor and of the Lessee or its duly authorized representative and consented to in writing by the Agent.

§ 21. *Insurance.* The Lessee will maintain, at its sole cost and expense, at all times during the term of this Lease and any renewals thereof (and thereafter during the first three (3) month period in which the Units are being assembled and delivered to the locations specified in § 14 hereof), with reputable insurers acceptable to the Lessor and, so long as any portion of the Conditional Sale Indebtedness under the Conditional Sale Agreement shall remain outstanding, acceptable to the Agent, insurance in an amount not less than the Casualty Value of each Unit leased hereunder, insuring against loss and destruction of, and damage to, such Unit arising out of fire, windstorm, explosion, and all other hazards and risks ordinarily subject to extended coverage insurance, and against such other hazards and risks as are customarily insured against by companies owning or leasing property of a similar character and engaged in a business similar to that engaged in by Lessee with a deductible amount not in excess of \$50,000. All such insurance policies shall (i) name the Lessor and Agent as additional insureds, with losses to be payable to the Lessor, the Agent and the Lessee as their respective interests may appear, (ii) pro-

LEASE OF RAILROAD EQUIPMENT

vide that the policies will not be invalidated as against the Lessor or the Agent because of any violation of a condition or warranty of the policy or application therefor by Lessee, and (iii) provide that the policies may be materially altered or cancelled by the insurer only after thirty (30) days prior written notice to the Lessor and the Agent. The Lessee shall deliver to the Lessor and the Agent, prior to the commencement of the lease term for any Unit (or at such other time or times as the Lessor may request) a certificate or other evidence of the maintenance of all such insurance satisfactory to the Lessor and the Agent provided, however, that the Lessor and the Agent shall be under no duty to examine such certificate or other evidence of insurance, or to advise the Lessee in the event that its insurance is not in compliance with this Lease. In the event of failure on the part of the Lessee to provide and furnish any of the aforesaid insurance, the Lessor or the Agent may procure such insurance and the Lessee shall, upon demand, reimburse the Lessors and the Agent for all expenditures made by the Lessor for such insurance, together with interest thereon computed at the maximum rate of interest permitted by law, but not more than 13%, from the date of the Lessor's or the Agent's payment until reimbursed by the Lessee. The insurance policies shall also provide that upon receipt by the insurer from the Lessor or the Agent of any written notice of the occurrence of an Event of Default hereunder, any proceeds payable by said insurer with respect to any loss or destruction of, or damage to, any Unit, shall be payable solely to the Agent (or the Lessor after payment of all outstanding Conditional Sale Indebtedness) from the date of said insurer's receipt of such written notice, up to the date said insurer receives written notice from the Agent or the Lessor that said Event of Default is no longer continuing hereunder.

The Lessee will procure and maintain at its expense during the term of this Lease (and any renewals thereof) with insurers satisfactory to the Lessor and the Agent bodily injury and third party property damage insurance for each Unit with liability limits not less than \$14 million per occurrence and with a deductible amount not in excess of \$50,000. The policies for such insurance shall (i) name the Lessor and the Agent as additional insureds, as their respective interests may appear, (ii) provide that if the insurers cancel such insurance for any reason whatsoever, or the same is allowed to lapse for non-payment of premium, such cancellation or lapse shall not be effective as to the Lessor or the Agent for thirty (30) days after receipt by the Lessor and the Agent of written notice by the insurers of such cancellation or lapse, (iii) provide for at least thirty (30) days prior written notice to the Lessor and the Agent of any alteration in the terms of such policy adverse to the respective interests of the Lessor or the Agent and (iv) provide that in respect of the interests of the Lessor or the Agent in such policies, the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than of the Lessor or the Agent), and shall insure the Lessor's and the Agent's interests as they appear regardless of any breach or violation by the Lessee of any warranties, declarations or conditions contained in such policies.

From time to time upon the expiration date of each policy of such insurance, the Lessee shall furnish to the Lessor and the Agent a certificate

LEASE OF RAILROAD EQUIPMENT

signed by the chief financial officer of the Lessee or by a firm of independent insurance brokers, appointed by the Lessee and not objected to by the Lessor or the Agent, showing the insurance then maintained by the Lessee pursuant to this § 21 with respect to the Units (and the expiration date of each policy of such insurance) and stating the opinion of said firm that the insurance then carried and maintained on or with respect to the Units complies with the terms hereof. In the event that the Lessee shall fail to maintain insurance as herein provided, the Lessor may at its option provide such insurance and, in such event, the Lessee shall, upon demand, reimburse the Lessor for the cost thereof, together with interest thereon at the rate of 13% per annum.

All insurance policies required to be procured and maintained by the Lessee under this Section shall be prepaid at all times for a period of not fewer than 90 days.

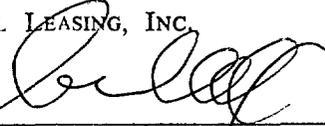
§ 22. Execution. This Lease may be executed in several counterparts, but the counterpart delivered to the Interstate Commerce Commission for recordation and subsequently redelivered to the Agent shall be deemed the original counterpart. Although this Lease is dated as of the date first above written, for convenience, 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.

§ 23. 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 Section 20c of the Interstate Commerce Act.

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

CONNELL LEASING, INC.

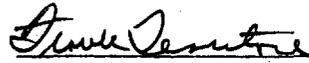
by



President

[CORPORATE SEAL]

Attest:



Secretary

CHICAGO, MILWAUKEE, ST. PAUL &
PACIFIC RAILROAD COMPANY

by



Vice President

[CORPORATE SEAL]

Attest:



Assistant Secretary


with the exception of any policy covering bodily injury to third party property damage in excess of \$2,000,000,

LEASE OF RAILROAD EQUIPMENT

STATE OF NEW JERSEY } ss.:
COUNTY OF UNION

On this 23 day of December, 1975, before me personally appeared Grover Connell, to me personally known, who, being by me duly sworn, says that he is President of Connell Leasing, Inc. that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public *Mark J. Blood*

Notary Public, Co.
My Commission Expires

NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Nov. 29, 1977

[NOTARIAL SEAL]

STATE OF ILLINOIS } ss.:
COUNTY OF COOK

On this 22 day of December, 1975, before me personally appeared R.F. Klotz to me personally known, who, being by me duly sworn, says that he is a Vice President of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Joanne H. Easton
Notary Public

Notary Public, Co.

My Commission Expires **February 19, 1978**

[NOTARIAL SEAL]

LEASE OF RAILROAD EQUIPMENT

SCHEDULE A

Type	Builder's Specifications	Quantity	Debtor's Road Numbers (inclusive)	Average Unit Base Price	Total Base Price	Delivery
MP-15AC	G.M. Locomotive Specification 8103;	10	466-475	\$326,198.50	\$3,261,985	F.O.B. McCook, Illinois
	Milwaukee	11	476-486	325,784.00	3,583,624	
	Proposal No. 75625	11	487-497	325,836.00	3,584,196	
	Total				<u>\$10,429,805</u>	

LEASE OF RAILROAD EQUIPMENT

SCHEDULE I

Last Lease Payment Due Date Month/Year	Percent of Purchase Price
01/76	104.576
04/76	105.395
07/76	106.134
10/76	106.789
01/77	107.356
04/77	107.684
07/77	107.931
10/77	108.092
01/78	108.164
04/78	108.020
07/78	107.788
10/78	107.461
01/79	100.625
04/79	99.992
07/79	99.262
10/79	98.429
01/80	97.546
04/80	96.637
07/80	95.701
10/80	94.736
01/81	87.332
04/81	86.309
07/81	85.255
10/81	84.169
01/82	83.051
04/82	81.899
07/82	80.713
10/82	79.491
01/83	71.822
04/83	70.526
07/83	69.191
10/83	67.816
01/84	66.399
04/84	64.940
07/84	63.437
10/84	61.890
01/85	60.295
04/85	58.653
07/85	56.962
10/85	55.220
01/86	53.425
04/86	51.577
07/86	49.673
10/86	47.713
01/87	45.693
04/87	43.775

LEASE OF RAILROAD EQUIPMENT

SCHEDULE I (Continued)

<u>Last Lease Payment Due Date Month/Year</u>	<u>Percent of Purchase Price</u>
07/87	41.898
10/87	40.067
01/88	38.288
04/88	36.659
07/88	35.090
10/88	33.507
01/89	31.909
04/89	30.400
07/89	28.888
10/89	27.372
01/90	25.850
04/90	24.435
07/90	23.031
10/90	21.637
Thereafter	20.000