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RECORDATION NO. 10627 Filed 1425
JUL 16 1979 -10 55 AM
INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 10627 Filed 1425
JUL 16 1979 -10 55 AM
INTERSTATE COMMERCE COMMISSION

No. 8
Date JUL 16 1979
Fee $100.00
ICC Washington, D. C.

RECORDATION NO. 10627-C Filed 1425
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INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 10627-B Filed 1425
JUL 16 1979 -10 55 AM
INTERSTATE COMMERCE COMMISSION

July 13, 1979

Consolidated Rail Corporation ("ConRail")
Lease Financing Dated as of February 1, 1979
11% Conditional Sale Indebtedness Due April 1, 1994

[CS&M Ref: 2043-933]

Dear Mr. Homme:

Pursuant to 49 U.S.C. § 11303(a), formerly Section 20c of the Interstate Commerce Act, I enclose herewith on behalf of Consolidated Rail Corporation, for filing and recordation, counterparts of the following:

Item No

(1) Conditional Sale Agreement dated as of February 1, 1979, between Unilease No. 15, Inc., and General Motors Corporation (Electro-Motive Division) and General Electric Company;

-A

(2) Agreement and Assignment dated as of February 1, 1979, between Mercantile-Safe Deposit and Trust Company and General Motors Corporation (Electro-Motive Division) and General Electric Company;

-B

(3) Lease of Railroad Equipment dated as of February 1, 1979, between Consolidated Rail Corporation and Unilease No. 15, Inc.; and

-C

(4) Assignment of Lease and Agreement dated as of February 1, 1979, between Unilease No. 15, Inc., and Mercantile-Safe Deposit and Trust Company.

Counterparts

The addresses of the parties to the aforementioned agreements are:

Lessor-Vendee:

Unilease No. 15, Inc.,
750 Third Avenue,
New York, N. Y. 10017

Builder-Vendor:

General Motors Corporation,
(Electro-Motive Division),
La Grange, Illinois 60525.

General Electric Company,
2901 East Lake Road,
Erie, Pennsylvania 16531.

Lessee:

Consolidated Rail Corporation,
1310 Six Penn Center Plaza,
Philadelphia, Pennsylvania 19104.

Agent-Vendor-Assignee:

Mercantile-Safe Deposit and Trust Company,
Two Hopkins Plaza,
Baltimore, Maryland 21203.

The equipment covered by the aforementioned agreements consists of 14 3,000 h.p. Model SD-40-2 Diesel-Electric Locomotives bearing the road numbers of the Lessee CR 6483-CR 6496 and 9 2,250 h.p. Model B23-7 Diesel-Electric Locomotives bearing the road numbers of the Lessee CR 1992-CR2000 and also bearing the legend "Ownership Subject to a Security Agreement filed with the Interstate Commerce Commission".

Enclosed is our check for $100 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them

to the delivering messenger along with your fee receipt addressed to the undersigned.

Very truly yours,

Martin D. Jacobson
As Agent for Consolidated
Rail Corporation

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

Encls.

52

19627
RECORDATION NO. ..... Filed 1425
JUL 16 1979 - 10 55 AM
INTERSTATE COMMERCE COMMISSION

[CS&M Ref. 2043-933]

# CONDITIONAL SALE AGREEMENT

**Dated as of February 1, 1979**

**between**

**GENERAL MOTORS CORPORATION**
**(ELECTRO-MOTIVE DIVISION)**

**and**

**GENERAL ELECTRIC COMPANY**

**and**

**UNILEASE NO. 15, INC.,**
**as Vendee**

**11% Conditional Sale Indebtedness due April 1, 1994**

**Conditional Sale 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.

CONDITIONAL SALE AGREEMENT dated as of February 1, 1979, between the corporations named in Item 1 of Annex A hereto (said corporations being hereinafter collectively called the "Builders" or severally the "Builder" or collectively or severally the "Vendor", as the context may require, all as more particularly set forth in Article 1 hereof) and UNILEASE NO. 15, INC., a Delaware corporation (the "Vendee").

WHEREAS each Builder has agreed severally to construct, conditionally sell and deliver to the Vendee, and the Vendee has agreed to conditionally purchase, the railroad equipment described in Annex B hereto to the extent not excluded herefrom under the provisions hereof (the "Equipment");

WHEREAS the Vendee is entering into a Lease of Railroad Equipment with Consolidated Rail Corporation (the "Lessee") in substantially the form annexed hereto as Annex C (the "Lease") pursuant to which the Lessee will lease from the Vendee all the units of Equipment so purchased, or such lesser number of units as are delivered and accepted hereunder; and

WHEREAS Mercantile-Safe Deposit and Trust Company (hereinafter called the "Assignee" or the "Vendor" as more particularly set forth in Article 1 hereof) is acting as Agent for investors pursuant to a Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Assignee, the Lessee, the Vendee, Equilease Corporation and the parties named in Schedule A thereto (the "Investors"), and all obligations of the Vendee to the Builders under the Purchase Order (as defined in the Participation Agreement) will be superseded by this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Assignment; Definitions.* The parties hereto contemplate that the Vendee will furnish that portion of the Purchase Price (as hereinafter defined) of the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the balance of such Purchase Price shall be paid to the Builders by the Assignee pursuant to an Agreement and Assignment (the "CSA Assignment") dated as of the date hereof between the Builders and the Assignee.

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, each of the respective corporations (as to the units of Equipment to be constructed by such corporation and sold hereunder), and any successor or successors for the time being to its manufacturing properties and business.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder", "the Builder", or other similar term, confers a right or imposes an obligation upon any corporation named in Item 1 of Annex A hereto or its successor, such right or obligation shall be construed to accrue to or be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

The parties hereto contemplate that the Vendee will assign to the Assignee, as security for the payment and performance of all the Vendee's obligations hereunder, certain rights, titles, and interests of the Vendee in and to the Lease, pursuant to an Assignment of Lease and Agreement in the form of Annex D hereto (the "Lease Assignment").

ARTICLE 2. *Construction and Sale.* Pursuant to this Agreement, each Builder shall construct its units of Equipment and will conditionally sell and deliver to the Vendee, and the Vendee will conditionally purchase from the Builder and accept delivery of and pay for (as hereinafter provided and subject to the limitations hereinafter set forth), such Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between such Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture thereof, to all United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and each such unit will be new railroad equipment, will not incorporate any used components (or, if such components are incorporated, their incorporation will not prevent such unit from constituting "new section 38 property" within the meaning of section 48(b) of the Internal Revenue Code of 1954, as amended, and the rulings of the Internal Revenue Service thereunder presently in effect) and will not have been used by any person so as to preclude the "original use" of such unit, within the meaning of Sections 48(b)(2) and 167(c)(2) of the Internal Revenue Code of 1954, as amended, from commencing with the Vendee.

ARTICLE 3. *Inspection and Delivery.* Each builder will deliver its units of the Equipment to the Vendee at the place or places specified in Annex B hereto in accordance with the delivery schedule set forth in Annex B hereto; *provided, however,* that delivery of any unit of the Equipment shall not be made (i) until this Agreement, the Lease, the CSA Assignment and the Lease Assignment have been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision shall have been made for publication of notice of such deposit in *The Canada Gazette*; (ii) subsequent to the commencement of any proceedings or the occurrence of any event specified in clauses (c) or (d) of Article 15 hereof or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default (any such commencement, occurrence, event of default or event being hereinafter in this Agreement called a "Default"); or (iii) if the Purchase Price for such unit when added to the aggregate Purchase Price of (A) all units theretofore delivered and accepted under and made subject to this Agreement and (B) all other units proposed to be delivered and accepted under and made subject to this Agreement concurrently with such unit would exceed the Maximum Purchase Price for the Equipment specified in Item 5 of Annex A hereto. Each Builder agrees not to deliver any unit of its Equipment hereunder (a) following receipt of written notice from the Vendee or the Assignee (i) of a Default, or (ii) that the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as the Vendee may have agreed to pursuant to Article 4) would be exceeded by any subsequent delivery of a unit, or (iii) of its determination that there has been a material adverse change in the business, prospects or financial condition of the Lessee since the date of the most recent financial statements referred to in Paragraph 4(b) of the Participation Agreement, other than as set forth in the Memorandum referred to in the Participation Agreement, and (b) until it receives notice from the Vendee and the Assignee that the conditions contained in Paragraphs 7 and 8 of the Participation Agreement have been met.

Any unit of Equipment not delivered at the time of receipt by the Builder of the notice specified in clause (a) of the last sentence of the first paragraph of this Article 3 and any unit of Equipment not delivered and accepted hereunder on or prior to December 31, 1979, by reason of noncompliance with the conditions referred to in the next preceding paragraph or causes set forth in the next succeeding paragraph or otherwise, shall be excluded from this Agreement and the Vendee shall be relieved of its obligation to purchase and pay for such unit of Equipment. If any unit of Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the Vendee and the Builder (and any assignee of the Builder) shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. Pursuant to the Participation Agreement the Lessee has agreed to purchase such excluded Equipment and any Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof from the Builders, upon the

satisfaction or waiver of any conditions of the Purchase Order, all as provided in Paragraph 1 of the Participation Agreement. The Vendee agrees, upon any such exclusion, to take such steps, including the execution of instruments of transfer, as may be reasonably requested by the Lessee and at Lessee's expense for the purpose of acknowledging and perfecting the interest of the Lessee in any unit of Equipment so excluded from this Agreement, and the Vendee shall have no further obligation or liability in respect of units so excluded.

Each Builder's obligation as to the time of delivery set forth in Annex B is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee) and each Builder shall grant to such inspectors reasonable access to its plant. Each Builder agrees to inspect the materials used in the construction of the Equipment in accordance with its standard quality control practices. Upon completion of each unit or a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Lessee) shall execute and deliver to the appropriate Builder a certificate of acceptance (the "Certificate of Acceptance") substantially in the form of Schedule C to the Lease; *provided, however,* that such Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

Upon delivery and acceptance of each such unit hereunder at the place specified for delivery, the Builder thereof shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; *provided, however,* that such Builder shall not thereby be relieved of its obligations referred to in Article 13 hereof.

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the delivery to and acceptance by or on behalf of the Vendee of any unit of Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof shall be ineffective, ab initio, to create in or transfer to the Vendee any legal or beneficial right or interest in such unit or (except as provided in the first paragraph of Article 4 hereof) to impose on the Vendee any liability, obligation or responsibility with respect thereto; any right or interest in any such unit created in or transferred to or purported to be created in or transferred to the Vendee shall be held by the Vendee solely as trustee for the benefit of the appropriate Builder.

ARTICLE 4. *Purchase Price and Payment.* The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the appropriate Builder, the Vendee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices per unit of the Equipment as so increased or decreased as set forth in the appropriate Builder's invoice or invoices delivered to the Vendee (the "Invoices") and, if the Purchase Price is other than the base price or prices set forth in Annex B, the Invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the Vendee. If on any Closing Date the aggregate Purchase Price of the Equipment for which settlement has theretofore been or is then being made would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as the Vendee may at its option agree to prior to delivery of any unit or units of Equipment that, but for such agreement, would be excluded from this Agreement), the appropriate Builder (and any assignee of such Builder) and the Vendee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for in inverse order of their delivery as specified pursuant to Article 3 hereof, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price to not more than such Maximum Purchase Price (or such higher amount as aforesaid).

The Equipment shall be settled for in such number of groups of units of the Equipment as is provided in Item 2 of Annex A hereto (each such group being hereinafter called a "Group"). The term "Closing Date" with respect to any Group shall mean such date, which shall be a business day not later than December 31, 1979 (such date being hereinafter called the "Final Delivery Date"), occurring following presentation by the appropriate Builder to the Vendee of the Invoices and Certificates of Acceptance for such Group and written notice thereof by such Builder to the Lessee, as shall be fixed by the Lessee by written notice delivered to the Vendee and the Vendor at least two business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York or Baltimore, Maryland, are authorized or obligated to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in immediately available funds to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on the Closing Date with respect to each Group (i) an amount equal to 32.890508% of the aggregate Purchase Price of such Group plus (ii) the amount, if any, by which (x) 67.109492% of the Purchase Price of all units of Equipment for which settlement has theretofore or is then being made, as set forth in the Invoices therefor, exceeds (y) the Maximum CSA Indebtedness specified in Item 6 of Annex A hereto and any amount or amounts previously paid or payable with respect to prior Invoices pursuant to this clause (ii); and

(b) in 57 quarterly installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (the "CSA Indebtedness") shall be payable on January 1, April 1, July 1 and October 1 of each year, commencing April 1, 1980, to and including April 1, 1994 (or, if any such date is not a business day, on the next preceding business day), each such date being hereinafter called a "Payment Date". The unpaid balance of the CSA Indebtedness from time to time outstanding shall bear interest at the rate of 11% per annum payable, to the extent accrued, on January 1, 1980, and on each Payment Date. The installments of principal payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the allocation set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal will completely amortize the CSA Indebtedness. The Vendee will furnish to the Vendor and the Lessee promptly after the last Closing Date a schedule showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at the rate of 12% per annum (the "Overdue Rate").

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7, the Vendee shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to the date it becomes due.

*Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof), but not limiting the effect of Article 21 hereof, the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under this Agreement, including any liability arising out of or in connection with the performance of its obligations hereunder and excluding only the obligations*

*set forth in the proviso in the third paragraph of Article 12 hereof and the payments to be made pursuant to subparagraph (a) of the third paragraph of this Article, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment" (as hereinafter defined), and such payments shall be made by the Vendee only to the extent that the Vendee (or any such assignee) shall have actually received sufficient "income and proceeds from the Equipment" to make such payments.* Except as provided in the next preceding sentence, the Vendee (and any such assignee) shall have no personal liability to make any payments under this Agreement except from the "income and proceeds from the Equipment". In addition, it is agreed that the Vendee (and such assignee) (i) make no representation or warranty with respect to, and are not responsible for, the execution, validity, sufficiency or enforceability of the Lease (or any document relative thereto) insofar as it relates to the Lessee or to any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such payments and other matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights under the Lease against the Lessee and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee (or any such assignee) at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 10 or any other provision of the Lease, and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee (or any such assignee) and as shall equal the portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include (A) amounts referred to in the foregoing clauses (a) and (b) received by the Vendee (or any such assignee) prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including such prepayments) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee (or any such assignee) were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease or (B) amounts excluded from the Lease Assignment pursuant to the first paragraph of Paragraph 1 thereof. Notwithstanding anything to the contrary contained in this Agreement, in the event the Vendor shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, the Vendor will limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment for the full unpaid Purchase Price of the Equipment and accrued interest thereon and all other payments and obligations hereunder.

ARTICLE 5. *Security Title to the Equipment.* The Vendor shall and hereby does retain a security title and interest in the Equipment until the Vendee shall have made all its payments under this Agreement, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Lessee as provided in this Agreement and the Lease. Any and all parts installed on and additions and replacements made to any unit of the Equipment (except as otherwise specifically provided in § 9 of the Lease) shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with accrued interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute a bill or bills of sale for the Equipment releasing its security title to and interest therein to the Vendee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee and (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment. The Vendee hereby waives any and all rights, existing or that may be acquired, in or to the payment of any penalty or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law requiring the filing of the same, except for failure so to do within a reasonable time after written demand by the Vendee.

ARTICLE 6. *Taxes.* All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, Federal or foreign taxes, license and registration fees, levies, imposts, duties, assessments, charges, fines, penalties or additions to tax hereafter levied or imposed upon or in connection with or measured by this Agreement or the Equipment or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license and registration fees, levies, imposts, duties, assessments, charges, fines, penalties or additions to tax being hereinafter called "impositions"), all of which impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment; *provided, however,* that the Vendee shall not pay, be responsible for or indemnify the Vendor for (i) any impositions imposed on or measured by any fees or compensation received by the Vendor, and (ii) impositions that are measured by net income or impositions that are gross receipts taxes (except gross receipts taxes in the nature of or in lieu of sales or use taxes) or excess profits taxes or similar taxes (each of the foregoing being called an "excluded imposition"); *provided, however,* that the Vendee shall not be required to pay any imposition if it is contesting the same in the manner provided in the next sentence. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom (except for the excluded impositions) or upon the Vendor solely by reason of its ownership thereof (except for the excluded impositions) and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title or interests of the Vendor or result in a lien upon any part of the Equipment; *provided, however,* that the Vendee 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 or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the title or interests or property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; *provided, however,* that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved in writing the payment thereof. If the Vendor shall obtain a refund of all or any part of such impositions previously reimbursed by the Vendee or an amount representing interest thereon, the Vendor shall pay the Vendee the amount of such refund or interest net of expenses. The obligations of the Vendee under this Article 6 are subject to the limitations contained in the last paragraph of Article 4 hereof and in Article 21 hereof.

ARTICLE 7. *Maintenance; Casualty Occurrences.* The Vendee shall, at its own cost and expense, maintain and service each unit of Equipment 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 of Equipment so that each unit of Equipment 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 the event that any unit of the Equipment 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 hereof, or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term of the Lease, or by any other government or governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days, or any unit shall have been deemed to have suffered a Casualty Occurrence as specified in § 7 of the Lease (any and all such occurrences being herein called "Casualty Occurrences"), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the Payment Date next succeeding such notice (hereinafter called a "Casualty Payment Date"), the Vendee shall pay to the Vendor an amount equal to the Casualty Value (as hereinafter defined in this Article) of such unit as of such Casualty Payment Date and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal, if any, on any of the CSA Indebtedness due on such date) to prepay without penalty or premium the installments of the CSA Indebtedness (ratably in accordance with the unpaid balance of each such installment) together with all unpaid and accrued interest thereon, and the Vendee will promptly furnish to the Vendor and the Lessee a revised schedule of payments of principal and interest with respect to the CSA Indebtedness thereafter to be made. In the event of the requisition for use by the United States Government or any other government or governmental entity of any unit of the Equipment not constituting a Casualty Occurrence, all of the Vendee's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's security title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the Casualty Payment Date (after taking into account the regular payment of interest and principal on such date) with respect to such unit (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit), plus interest accrued thereon but unpaid as of such Casualty Payment Date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

The Vendee will cause the Equipment to be insured as provided in the last paragraph of § 7 of the Lease. If the Vendor shall receive any insurance proceeds or condemnation payments in respect of units of Equipment suffering a Casualty Occurrence, the Vendor shall, subject to having received payment of the Casualty Value and provided no Default shall have occurred and be continuing, pay such insurance proceeds or condemnation payments to the Vendee. All insurance proceeds or condemnation payments received by the Vendor in respect of any unit of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon reasonable proof satisfactory to the Vendor 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 Article 7, provided no Default shall have occurred and be continuing.

ARTICLE 8. *Reports.* On or before the dates specified in § 8 of the Lease, the Vendee shall cause to be furnished to the Vendor the certificates required by § 8 of the Lease.

ARTICLE 9. *Marking of Equipment.* The Vendee will cause each unit of the Equipment to be kept numbered and marked as provided in § 5 of the Lease. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, defaced, obliterated or destroyed. The Vendee will not permit the identification number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed and deposited by the Vendee in all public offices where this Agreement shall have been filed and deposited.

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

ARTICLE 10. *Compliance with Laws and Rules.* During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all applicable laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment 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 Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement, addition or modification of or to any part on any unit of the Equipment, the Vendee will conform therewith at its own expense; *provided, however,* that the Vendee or 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 reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. *Possession and Use.* The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment to the Vendee, to the possession of the Equipment and the use thereof, upon and subject to all the terms and conditions of this Agreement.

The parties hereto acknowledge that the Vendee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall, subject to the provision of § 12 of the Lease, be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement.

ARTICLE 12. *Prohibition Against Liens.* The Vendee will pay or discharge any and all taxes and sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the interest of the Vendor therein, or the Vendee's interests in the Lease and the payments to be made thereunder, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the title or interests of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of such liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

The foregoing provisions of this Article 12 shall be subject to the limitations set forth in the last paragraph of Article 4 hereof and the provisions of Article 21 hereof; *provided, however,* that the Vendee will pay or discharge any and all taxes, claims, liens, charges or security interests claimed by any party from, through or under the Vendee or its successors or assigns, not arising out of the transactions contemplated hereby (but including income taxes arising out of the receipt of rentals and other payments under the Lease and any other proceeds from the Equipment), which, if unpaid, (i) might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's interest in the Lease and the payments to be made thereunder or (ii) would result in the bankruptcy or reorganization of the Vendee; but the Vendee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments to be made thereunder.

ARTICLE 13. *Indemnities and Warranties.* The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to, counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to or a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any claim for patent, trademark or copyright infringement, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when security title thereto or a security interest therein remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, in the case of either Builder, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort by or strict liability of such Builder, breach of warranty or failure to perform any covenant hereunder by such Builder and except Taxes (as defined in the Lease) measured by net income and any matter covered by such Builder's warranty or patent indemnification as set forth in Items 3 and 4 of Annex A hereto. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the release of the Vendor's security interest in, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

None of the indemnities in this Article shall be deemed to create any right of subrogation, from or under the Vendor, in any insurer or third party against the Vendee therefor, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder (except as provided in Article 21 hereof) in the event of, any damage to or the destruction or loss of any unit of or all of the Equipment.

Each Builder represents and warrants to the Vendee that, at the time of delivery and acceptance of each unit of Equipment under this Agreement, the Vendee will have good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor under this Agreement and the rights of the Lessee under the Lease.

Each Builder represents that it is not entering into this Agreement, or into any other transaction contemplated by the Participation Agreement, directly or indirectly in connection with any arrangement or

understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which it, or, insofar as is known to it, any party to the Participation Agreement is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974, as amended.

The agreements of the parties relating to each Builder's warranty of material and workmanship and patent indemnification, and the agreement of the parties relating to such Builder's limitation of liability, are set forth in Items 3 and 4 of Annex A hereto.

ARTICLE 14. *Assignments.* The Vendee agrees, for the benefit of the Investors, that it will not, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment, or sell, assign or otherwise dispose of any of its rights under this Agreement or the Lease, except that all, but not less than all, its right, title and interest in and to the Equipment together with its rights under this Agreement and the Lease may be assigned, conveyed or transferred by the Vendee to (a) a bank, trust company or insurance company which is organized and doing business in the United States and has a combined capital and surplus of at least $100,000,000; (b) a financial corporation which (i) is organized and doing business in the United States, (ii) has a combined capital and surplus of at least $100,000,000 and (iii) either has any securities listed on a national securities exchange or any long-term indebtedness rated "Aa" (or the equivalent) or better by Standard & Poor's Corporation or Moody's Investors Services, Inc. (or a comparable rating by any successor to either of their businesses); (c) any corporation which is a member of the same "affiliated group" (as defined in Section 1504 of the Internal Revenue Code of 1954, as amended) as any bank, trust company, insurance company or other financial corporation covered by clauses (a) or (b) above, *provided, however,* that such bank, trust company, insurance company or other financial corporation guarantees the obligations of such transferee corporation under the last paragraph of Article 12 hereof in such manner as shall be satisfactory to the Vendor and the Investors; or (d) an investor (other than an individual) acceptable to the holders of 66 2/3% in principal amount of the CSA Indebtedness; *provided, however,* that such sale, assignment, transfer or disposition shall be made subject in all respects to the rights and remedies of the Vendor (including, without limitation, rights and remedies against the Vendee and the Lessee) and that such transferee shall assume in writing all of the obligations of the Vendee in such manner as shall be satisfactory to the Vendor and the Investors. In the event of such a sale, assignment, transfer or disposition pursuant to clauses (a), (b), (c) or (d) of the preceding sentence, the Vendee shall be released from its obligations hereunder except to the extent accrued.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve either Builder from, any of the obligations of such Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 13 hereof, or relieve the Vendee of its obligations to such Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment, the assignor shall give written notice to the Vendee and the Lessee, together with a copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee at such address as it may direct.

The Vendee recognizes that this Agreement will be assigned to the Assignee as provided in the CSA Assignment. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest

thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of either Builder with respect to the Equipment or the construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by either Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee or the Lessee, as the case may be, against and only against the appropriate Builder.

ARTICLE 15. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) and such default shall continue for 10 business days after the date such payment is due and payable; or

(b) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Vendee (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) or the Lessee contained herein or in any agreement entered into concurrently herewith relating to the financing of the Equipment (other than the Lease), and such default shall continue for 30 days after the earlier of (i) written notice from the Vendor to the Vendee and the Lessee specifying the default and demanding that the same be remedied or (ii) the date on which such default shall first become known to any responsible officer of the Vendee; or

(c) 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 the 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

(d) any proceeding other than one referred to in (c) above shall be commenced by or against the Vendee or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Vendee hereunder or of the Lessee under the Lease under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), 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 Vendee under this Agreement or of the Lessee under the Lease, as the case may be, 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 Vendee or the Lessee, as the case may be, or for their respective property 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; or

(e) the Vendee shall make or permit any unauthorized assignment or transfer of the Equipment, this Agreement or the Lease or any interest herein or therein or any unauthorized transfer of the right to possession or use of any unit of the Equipment and the Vendee shall, for more than 30 days after demand in writing by the Vendor, fail to secure a reassignment or retransfer to the Vendee of such Agreement, interest or right; or

(f) if an Event of Default shall have occurred under the Lease; *provided, however,* that any Event of Default under clause (A) of § 10 of the Lease shall not be deemed to be an event of default hereunder if (i) within the 10 business day period provided by subparagraph (a) of this Article 15, the Vendee shall make payment of all amounts in default under said subparagraph (a), and (ii) not more than six such Events of Default shall have occurred and not more than four such Events of Default shall have occurred on consecutive dates; or

(g) if an event of default shall have occurred under any other conditional sale agreement dated as of February 1, 1979, pursuant to which an aggregate of up to approximately 242 locomotives are acquired by a vendee for the purpose of leasing the same pursuant to a lease to the Lessee, due to a default by the Lessee under such lease;

then at any time after the occurrence of such an event of default and so long as such event of default is continuing the Vendor may, upon written notice to the Vendee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the proviso in the second paragraph of § 4 of the Lease relating to termination and to the Lessee's rights of possession, use and assignment under §§ 4 and 12 of the Lease, cause the Lease immediately upon such notice to terminate, but the Lessee shall remain liable as therein provided and/or (ii) declare (herein called a "Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of the CSA Indebtedness and interest shall bear interest from the date of such Declaration of Default at the Overdue Rate, to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, subject to the provisions of Articles 4 and 21 hereof, and to collect such judgment out of the "income and proceeds of the Equipment" wherever situated.

The Vendor may, at its election, subject to the provisions of Paragraph 1 of the Lease Assignment, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 16. *Remedies.* Subject to the Lessee's rights of possession, use and assignment under §§ 4 and 12 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or any portion thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee or any other person and for such purpose may enter upon the premises of the Vendee 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 and any available trackage and other facilities of the Vendee, subject to all mandatory requirements of due process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk:

(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) cause the Equipment to be placed upon such storage tracks of the Lessee or any of its affiliates as the Vendor reasonably may designate;

(b) permit the Vendor to store the Equipment on such tracks at the risk of the Vendee without charge for insurance, rent or storage until the Equipment has been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the Equipment to be transported to any reasonable 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 Vendor.

During any storage period, the Vendee will, at its own cost and expense, insure (to the same extent as provided in § 7 of the Lease), maintain and keep each such unit in good order and repair (to the same extent as provided in the first paragraph of Article 7 hereof) and will permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. 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 equity having jurisdiction, the Vendor shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee and the Lessee by telegram or registered mail, and to any other persons to whom the law may require notice, within 60 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 60-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee or for its account may be retained by the Vendor as compensation for the use of the Equipment; *provided, however,* that if the Vendee, before the expiration of the 60-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; *provided, further, however,* that if the Vendee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 60 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

Subject to the Lessee's rights of possession, use and assignment under §§ 4 and 12 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Lessee or any other party claiming from, through or under the Vendee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however,* that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at New York, New York or Philadelphia, Pennsylvania at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor and the Vendee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Vendee and the Lessee shall be given written notice of such sale or the making of a contract for such sale not less than 10 business days prior thereto, by telegram or registered mail. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where fewer than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee and the Vendee to purchase or provide a purchaser, within 10 days after receipt of notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence granted to the Vendee or the Lessee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

Subject to the third paragraph of this Article 16, if, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall, subject to the limitation of the last paragraph of Article 4 hereof, pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Overdue Rate, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of the last paragraph of Article 4 hereof, be

entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

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

ARTICLE 18. *Recording.* The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto, to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in *The Canada Gazette*) pursuant to Section 86 of the Railway Act of Canada; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. *Article Headings; Effect and Modification of Agreement.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Except for the Participation Agreement, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Vendee.

ARTICLE 20. *Notice.* Any notice hereunder to any of the parties designated below shall be deemed to be properly made if delivered or mailed to it by registered mail (unless otherwise specifically required herein), postage prepaid, at the following addresses:

(a) to the Vendee, at 750 Third Avenue, New York, New York 10017, Attention of Treasurer;

(b) to the Lessee, at 1310 Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, Attention of Assistant Treasurer - Financing & Collections,

(c) to either Builder at its address specified in Item 1 of Annex A hereto,

(d) to the Assignee, at its address at P.O. Box 2258, Baltimore, Maryland 21203, Attention of Corporate Trust Department,

(e) to any assignee of the Vendor or Assignee, or of the Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor or the Assignee, as the case may be, and to the Lessee, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties referred to above.

ARTICLE 21. *Immunities; Satisfaction of Undertakings.* No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto 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 Agreement.

The obligations of the Vendee under the second and eighth paragraphs of Article 16 (including the provisions thereof with respect to insurance, maintenance and repair) and under Articles 3, 6, 7 (other than the second and third sentences of the second paragraph thereof, which are subject to the provisions of the last paragraph of Article 4), 8, 9, 10, 12 (other than the proviso to the last paragraph thereof), 13 and 18 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default pursuant to Article 15 hereof.

ARTICLE 22. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; *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, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited and any rights arising out of the marking on the units of Equipment.

ARTICLE 23. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. It shall not be necessary that any counterpart be signed by both the Vendee and either Builder so long as each such party has executed and delivered to the other one counterpart hereof. Each Builder shall be bound hereunder notwithstanding the failure of the other Builder to execute and deliver this Agreement or to perform its obligations hereunder. Although for convenience this Agreement is dated as of the date first above written, 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.

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

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

[Corporate Seal]

by _____
Vice President

Attest:

_____
Assistant Secretary

GENERAL ELECTRIC COMPANY,

[Corporate Seal]

by _____
MANAGER-MARKETING
LOCOMOTIVE MARKETING DEPARTMENT

Attest:

_____
Attesting Secretary

UNILEASE NO. 15, INC.,

[Corporate Seal]

by _____
Vice President

Attest:

_____
Assistant Secretary

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

On this day of July, 1979, before me personally appeared P. K. Hoglund, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), 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]

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

On this 13th day of July, 1979, before me personally appeared R. D. Morey, to me personally known, who, being by me duly sworn, says that he is Manager Marketing-Locomotive Marketing Department of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation, by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Doris W. Chilcott
Notary Public

[Notarial Seal]

DORIS W. CHILCOTT, NOTARY PUBLIC
LAWRENCE PARK TWP., ERIE CO., PA.
MY COMMISSION EXPIRES NOV. 26, 1979

STATE OF NEW YORK, }
}ss.:
COUNTY OF NEW YORK, }

On this day of July, 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of UNILEASE NO. 15, INC., 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]

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

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

[Corporate Seal]

by _____
Vice President

Attest:

_____
Assistant Secretary

GENERAL ELECTRIC COMPANY,

[Corporate Seal]

by _____

Attest:

_____
Attesting Secretary

UNILEASE NO. 15, INC.,

[Corporate Seal]

by _____
Vice President

Attest:

_____
Assistant Secretary

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

On this 13TH day of July, 1979, before me personally appeared P. K. Hoglund, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), 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] JANUARY 17, 1983

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

On this day of July, 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation, by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

STATE OF NEW YORK, }
}ss.:
COUNTY OF NEW YORK, }

On this day of July, 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of UNILEASE NO. 15, INC., 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]

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

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

[Corporate Seal]

by _____
Vice President

Attest:

_____
Assistant Secretary

GENERAL ELECTRIC COMPANY,

[Corporate Seal]

by _____

Attest:

_____
Attesting Secretary

UNILEASE NO. 15, INC.,

[Corporate Seal]

by _____
Vice President

Attest:

_____
~~Assistant~~ Secretary

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

On this day of July, 1979, before me personally appeared P. K. Hoglund, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), 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]

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

On this day of July, 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation, by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

STATE OF NEW YORK, }
}ss.:
COUNTY OF NEW YORK, }

On this 13 day of July, 1979, before me personally appeared Louis B Seibel, to me personally known, who, being by me duly sworn, says that he is a Vice President of UNILEASE NO. 15, INC., 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.

Raymond E. Sturz
Notary Public

[Notarial Seal]

RAYMOND E. STURZ
Notary Public, State of New York
No. 60-4638928
Qualified in Westchester County
Commission Expires March 30, 1980

## SCHEDULE I

### Allocation Schedule of Each $1,000,000 of 11% CSA Indebtedness

| Payment Date | Debt Service | Interest Payment | Principal Repayment | Ending Principal Balance |
|---|---|---|---|---|
| (Interim Payment) | $ * | $ * | $ * | $1,000,000.00 |
| April 1, 1980 | 36,157.26 | 27,500.00 | 8,657.26 | 991,342.74 |
| July 1, 1980 | 36,157.26 | 27,261.93 | 8,895.34 | 982,447.40 |
| October 1, 1980 | 36,157.26 | 27,017.30 | 9,139.96 | 973.307.44 |
| January 1, 1981 | 36,157.26 | 26,765.95 | 9,391.31 | 963.916.13 |
| April 1, 1981 | 36,157.26 | 26,507.69 | 9,649.57 | 954,266.56 |
| July 1, 1981 | 36,157.26 | 26,242.33 | 9,914.93 | 944,351.62 |
| October 1, 1981 | 36,157.26 | 25,969.67 | 10,187.59 | 934,164.03 |
| January 1, 1982 | 36,157.26 | 25,689.51 | 10,467.75 | 923,696.28 |
| April 1, 1982 | 36,157.26 | 25,401.65 | 10,755.62 | 912,940.66 |
| July 1, 1982 | 36,157.26 | 25,105.87 | 11,051.40 | 901,889.26 |
| October 1, 1982 | 36,157.26 | 24,801.95 | 11,355.31 | 890,533.95 |
| January 1, 1983 | 36,157.26 | 24,489.68 | 11,667.58 | 878,866.37 |
| April 1, 1983 | 36,157.26 | 24,168.83 | 11,988.44 | 866,877.94 |
| July 1, 1983 | 36,157.26 | 23,839.14 | 12,318.12 | 854,559.81 |
| October 1, 1983 | 36,157.26 | 23,500.39 | 12,656.87 | 841,902.95 |
| January 1, 1984 | 36,157.26 | 23,152.33 | 13,004.93 | 828,898.01 |
| April 1, 1984 | 36,157.26 | 22,794.70 | 13,362.57 | 815,535.44 |
| July 1, 1984 | 36,157.26 | 22,427.22 | 13,730.04 | 801,805.40 |
| October 1, 1984 | 36,157.26 | 22,049.65 | 14,107.62 | 787,697.79 |
| January 1, 1985 | 36,157.26 | 21,661.69 | 14,495.57 | 773,202.21 |
| April 1, 1985 | 36,157.26 | 21,263.06 | 14,894.20 | 758,308.01 |
| July 1, 1985 | 36,157.26 | 20,853.47 | 15,303.79 | 743,004.22 |
| October 1, 1985 | 36,157.26 | 20,432.62 | 15,724.65 | 727,279.57 |
| January 1, 1986 | 36,157.26 | 20,000.19 | 16,157.08 | 711,122.49 |
| April 1, 1986 | 36,157.26 | 19,555.87 | 16,601.40 | 694,521.10 |
| July 1, 1986 | 36,157.26 | 19,099.33 | 17,057.93 | 677,463.16 |
| October 1, 1986 | 36,157.26 | 18,630.24 | 17,527.03 | 659,936.14 |
| January 1, 1987 | 36,157.26 | 18,148.24 | 18,009.02 | 641,927.12 |
| April 1, 1987 | 36,157.26 | 17,653.00 | 18,504.27 | 623,422.85 |
| July 1, 1987 | 36,157.26 | 17,144.13 | 19,013.14 | 604,409.71 |
| October 1, 1987 | 36,157.26 | 16,621.27 | 19,536.00 | 584,873.71 |
| January 1, 1988 | 29,807.85 | 16,084.03 | 13,723.82 | 571,149.89 |
| April 1, 1988 | 35,990.57 | 15,706.62 | 20,283.94 | 550,865.95 |
| July 1, 1988 | 36,157.26 | 15,148.81 | 21,008.45 | 529,857.50 |
| October 1, 1988 | 36,157.26 | 14,571.08 | 21,586.18 | 508,271.31 |
| January 1, 1989 | 29,686.56 | 13,977.46 | 15,709.10 | 492.562.21 |
| April 1, 1989 | 26,335.98 | 13,545.46 | 12,790.52 | 479,771.69 |
| July 1, 1989 | 34,496.78 | 13,193.72 | 21,303.06 | 458,468.63 |
| October 1, 1989 | 34,496.64 | 12,607.89 | 21,888.75 | 436,579.88 |
| January 1, 1990 | 29,624.10 | 12,005.95 | 17,618.16 | 418,961.72 |
| April 1, 1990 | 19,681.13 | 11,521.45 | 8,159.68 | 410,802.04 |
| July 1, 1990 | 31,230.45 | 11,297.06 | 19,933.40 | 390,868.64 |

*Interest only shall be payable to the extent accrued on this date.

## SCHEDULE I

### Allocation Schedule of Each $1,000,000 of 11% CSA Indebtedness

| Payment Date | Debt Service | Interest Payment | Principal Repayment | Ending Principal Balance |
|---|---|---|---|---|
| October 1, 1990 | 31,230.35 | 10,748.89 | 20,481.46 | 370,387.17 |
| January 1, 1991 | 29,725.00 | 10,185.65 | 19,539.35 | 350,847.82 |
| April 1, 1991 | 13,291.15 | 9,648.32 | 3,642.83 | 347,204.99 |
| July 1, 1991 | 28,014.74 | 9,548.14 | 18,466.60 | 328,738.39 |
| October 1, 1991 | 28,014.68 | 9,040.31 | 18,974.37 | 309,764.02 |
| January 1, 1992 | 33,447.24 | 8,518.51 | 24,928.73 | 284,835.29 |
| April 1, 1992 | 36,157.26 | 7,832.97 | 28,324.29 | 256,511.00 |
| July 1, 1992 | 36,157.26 | 7,054.05 | 29,103.21 | 227,407.79 |
| October 1, 1992 | 36,157.26 | 6,253.71 | 29,903.55 | 197,504.24 |
| January 1, 1993 | 36,157.26 | 5,431.37 | 30,725.90 | 166,778.34 |
| April 1, 1993 | 36,157.26 | 4,586.40 | 31,570.86 | 135,207.48 |
| July 1, 1993 | 36,157.26 | 3,718.21 | 32,439.06 | 102,768.42 |
| October 1, 1993 | 36,157.26 | 2,826.13 | 33,331.13 | 69,437.29 |
| January 1, 1994 | 36,157.26 | 1,909.53 | 34,247.74 | 35,189.55 |
| April 1, 1994 | 36,157.26 | 967.71 | 35,189.55 | - |
| TOTALS | $1,999,511.65 | $999,511.65 | $1,000,000.00 | $ - |

*Interest only shall be payable to the extent accrued on this date.

**Annex A**

**to**

**Conditional Sale Agreement**

Item 1: (a) General Motors Corporation (Electro-Motive Division) (hereinafter in this Annex called "GM"), La Grange, Illinois 60525.

(b) General Electric Company (hereinafter in this Annex called "GE"), 2901 East Lake Road, Erie, Pennsylvania 16531.

Item 2: Unless otherwise agreed to by the parties hereto, the Equipment shall be settled for within ten business days of delivery.

Item 3. (A) *GM Warranty.* GM Warrants that the Equipment manufactured by it hereunder is of the kind and quality described in, and will be built in accordance with, the Specifications referred to in Article 2 of this Agreement and is suitable for the ordinary purposes for which such Equipment is used and warrants each unit of such Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit or before such unit has been operated 250,000 miles, whichever event shall first occur. GM agrees to correct such defects, which examination shall disclose to GM's satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of GM's obligation with respect to such defect under this warranty. GM warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to GM. GM further agrees with the Vendee that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Vendee of any of its rights under this Item 3.

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP, EXPRESSED OR IMPLIED, MADE BY GM EXCEPT THE WARRANTIES SET OUT ABOVE.

(B) *GE Warranty.* GE warrants to the Vendee that each unit of Equipment manufactured by it hereunder will be free from defects in material, workmanship and title under normal use and service, and will be of the kind and quality designated or described in the Specifications referred to in Article 2 of this Agreement. The foregoing warranty is exclusive and in lieu of all other warranties, whether written, oral, implied or statutory (except as to title). NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PURPOSE SHALL APPLY. If it appears within two years from the date of shipment by GE, or within 250,000 miles of operation, whichever event shall first occur, that any unit of the Equipment does not meet the warranties specified above, and the Vendee or its agent notifies GE promptly, GE, after verification as to condition and usage, shall correct any defect including nonconformance with the Specifications, at its option, either by repairing any defective part or parts made available to GE, or by making available at GE's plant or warehouse a repaired or replacement part. If requested by GE, the Vendee will ship the defective part or parts, with shipping charges prepaid, to the plant or warehouse designated by GE.

The liability of GE to the Vendee (except as to title) arising out of the supplying of any unit of Equipment hereunder, or its use, whether on warranty, contract or negligence, shall not in any case exceed the cost of correcting defects in the Equipment as herein provided, and upon the

expiration of the warranty period specified above, all such liability shall terminate. GE shall have no liability for any unit of Equipment or part thereof which becomes defective by reason of improper storage or application, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Vendee, or any third party other than GE. The foregoing shall constitute the sole remedy of the Vendee and the sole liability of GE.

It is understood that GE has the right to make any changes in design and add improvements to equipment at any time without incurring any obligations to install, at GE's expense, the same on other equipment sold by GE.

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP, EXPRESSED OR IMPLIED, MADE BY GE EXCEPT THE WARRANTIES SET OUT ABOVE.

GE further agrees with the Vendee that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Vendee of any of its rights under this Item 3. In no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall GE or its suppliers be liable for any special, consequential, incidental or penal damages including, but not limited to, loss of profit or revenues, loss of use of the products or any associated equipment, damage to associated equipment, cost of capital, cost of substitute products, facilities, services or replacement power, down time costs, or claims of the Vendee's customers for such damages. If the Vendee transfers title to or leases the products hereunder to any third party (other than pursuant to the Lease), the Vendee shall obtain from such third party a provision affording GE and its suppliers the protection of the preceding sentence; provided that the Vendee shall have such obligation following expiration of the stated original term or any renewal term, as the case may be, as provided in the Lease, only if GE shall, not more than nine nor less than six months prior to the expiration of such original term or any such renewal term, as the case may be, notify the Vendee of its obligation under this sentence.

In no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall GE's liability to the Vendee for any loss or damage arising out of, or resulting from this agreement, or from its performance or breach, or from the products or services furnished hereunder, exceed the price of the specific product or service which gives rise to the claim. Except as to title any such liability shall terminate upon the expiration of the warranty period specified in subsection (B) of this Item 3 hereof. If GE furnishes the Vendee with advice or other assistance which concerns any product supplied hereunder or any system or equipment in which any such product may be installed and which is not required pursuant to this agreement, the furnishing of such advice or assistance will not subject GE to any liability, whether in contract, warrany, tort (including negligence) or otherwise.

The invalidity, in whole or in part, of any of the foregoing paragraphs will not affect the remainder of such paragraph or any other paragraph in this subsection (B).

Item 4: (A) *GM Patent Indemnification.* GM shall defend any suit or proceeding brought against the Vendee, the Lessee and/or each assignee of GM's rights under this Agreement so far as the same is based on a claim that the Equipment of GM's specification, or any part thereof, furnished under this Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at GM's expense) for the defense of same, and GM shall pay all damages and costs awarded therein against the Vendee, the Lessee and/or any such assignee.

In case any unit of such Equipment, or any part thereof, is in such suit held to constitute infringement and the use of such unit or part is enjoined, GM shall at its option and at its own expense either procure for the Vendee, the Lessee and any such assignee the right to continue using such unit or part, or replace the same with noninfringing equipment subject to this Agreement, or modify it so it becomes noninfringing, or remove such unit and refund the Purchase Price and the transportation and installation costs thereof. If the Purchase Price is so refunded, such refund shall be made to the assignee of GM's rights under this Agreement if this Agreement has been so assigned, which refund, to the extent of the unpaid CSA Indebtedness, shall be applied in like manner as payments in respect of Casualty Occurrences under Article 7 of this Agreement and, as long as no event of default or event which with the lapse of time and/or demand could constitute an event of default under this Agreement shall have occurred and be continuing, the balance shall be paid by such assignee to the Vendee.

GM will assume no liability for patent infringement by reason of purchase, manufacture, sale or use of devices not included in and covered by its specification. The foregoing states the entire liability of GM for patent infringement by the Equipment or any part thereof.

(B) *GE Patent Indemnification.* Except in cases of designs specified by the Lessee and not developed or purported to be developed by GE, and articles and materials specified by the Lessee and not manufactured by GE, GE warrants that the Equipment furnished hereunder, and any part thereof, shall be delivered free of any rightful claim of any third party for infringement of any United States patent. If notified promptly in writing and given authority, information and assistance, GE shall defend, or may settle, at its expense, any suit or proceeding against the Vendee or the Lessee so far as based on a claimed infringement which would result in a breach of this warranty and GE shall pay all damages and costs awarded therein against the Vendee or the Lessee due to such breach. In case any equipment or part thereof is in such suit or proceeding found to constitute such an infringement and the use of such Equipment or part thereof is enjoined, GE shall, at its expense and option, either procure for the Vendee and the Lessee the right to continue using said equipment or part thereof, or replace same within six months of such injunction with noninfringing Equipment or part thereof acceptable to the Vendee, or modify same so it becomes noninfringing, or remove the Equipment or part thereof and refund the Purchase Price (less reasonable depreciation for any period of use) and any transportation costs separately paid by the Vendee or the Lessee, but in each case without impairing the operational capability of such Equipment. (If the Purchase Price is so refunded, such refund shall be made to the assignee of GE's rights under this Agreement if this Agreement has been so assigned, which refund, to the extent of the unpaid CSA Indebtedness, shall be applied in like manner as payments in respect of Casualty Occurrences under Article 7 of this Agreement and, as long as no event of default or event which with lapse of time or demand could constitute an event of default under this Agreement shall have occurred and be continuing, the balance shall be paid by such assignee to the Vendee.) The preceding shall not apply to the use of any Equipment or part thereof furnished hereunder in conjunction with any other product in a combination not furnished by GE as a part of this transaction. As to any such combination, GE assumes no liability whatsoever for patent infringement and the Lessee will hold GE harmless against any infringement claims arising therefrom. GE will give notice to the Vendee and the Lessee of any claim known to GE from which liability may be charged against the Vendee or the Lessee hereunder and the Vendee and the Lessee will give notice to GE of any claim known to them from which liability may be charged against GE hereunder.

The foregoing states the entire liability of GE for patent infringement by the Equipment or any part thereof.

Item 5: The Maximum Purchase Price referred to in Article 4 of this Agreement is $15,700,000.

Notwithstanding the provisions of Article 3 and Article 4 of this Agreement, it is understood and agreed that the Maximum Purchase Price is composed of a GM portion equal to $10,251,956 and of a GE portion equal to $5,448,044. Without the consent of the other Builder, neither Builder shall be entitled to either deliver or obtain settlement in excess of its portion, unless the Maximum Purchase Price shall have been increased by an equivalent amount with the consent of the Vendee.

Item 6: The Maximum CSA Indebtedness referred to in Article 4 of this Agreement is $10,536,190.

**Annex B**

**to**

**Conditional Sale Agreement**

| Builder | Type | Builder's Specifications | Plant | Quantity | Lessee's Identification Numbers (Both Inclusive) | Average Unit Base Price | Total Base Price | Estimated Time and Place of Delivery |
|---|---|---|---|---|---|---|---|---|
| General Motors Corporation (Electro-Motive Division) | 3000 h.p. Model SD-40-2 Diesel-Electric Locomotives | 8087 | La Grange, Illinois | 14 | CR 6483-6496 | $730,590 | $10,228,260 | July-August 1979, f.o.b., McCook, Illinois |
| General Electric Company | 2,250 h.p. Model B23-7 Diesel-Electric Locomotives (with 345 signal cabs) | GE3530D | Erie, Pennsylvania | 9 | CR 1992-2000 | 603,939 | 5,435,451 | July-August 1979, f.o.b. Builder's plant, Erie, Pennsylvania |
| | | | | | | | $15,663,711 | |

ANNEX C
[CS&M Ref. 2043-933]

# LEASE OF RAILROAD EQUIPMENT

**Dated as of February 1, 1979**

**between**

**CONSOLIDATED RAIL CORPORATION**

**and**

**UNILEASE NO. 15, INC.,**
**as Lessor**

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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 UNILEASE NO. 15, INC., a Delaware corporation (the "Lessor").

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 Vendor, Equilease Corporation 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 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 60 consecutive quarterly payments payable in arrears. The interim payment for each Unit is payable on January 1, 1980 (such date being hereinafter called the "Basic Rent Commencement Date"). The 60 quarterly payments are payable on January 1, April 1, July 1 and October 1 in each year, commencing April 1, 1980, to and including January 1, 1995 (each of such 60 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 (as defined in the CSA) for such Unit to, but not including, the Basic Rent Commencement Date, times (b) .026961% of the Purchase Price (as defined in the CSA) of such Unit. The 60 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 2.4265% or such percentage as it may be adjusted pursuant to the second paragraph this § 3 or § 16 hereof.

The rentals payable hereunder and the Casualty Values (as defined in § 7 hereof) will be adjusted upward or downward to reflect (i) the delivery of any Unit or Units after September 30, 1979, and (ii) any amendment to, or change in, the Internal Revenue Code of 1954, as amended (the "Code"), the income tax regulations thereunder, or published administrative interpretations of the Code or such regulations, which change or amendment is enacted, adopted, or effective on or before the later of December 31, 1979 and the last Closing Date. Such adjustments will be effective as of the Rental Payment Date next following such delivery and will be made in such manner as will result, in the Lessor's reasonable judgment, in preserving for the Lessor both the after-tax rate of return and the after-tax cash flow that would have been realized by the Lessor had such difference in delivery schedule, or such amendment or change, as the case may be, not occurred, based on the rates of Federal, state and local taxes on, or measured by, net income from time to time in effect. The Lessor shall furnish the Lessee and Vendor prior to the effective date of such adjustments with a notice setting forth in reasonable detail the computations and methods used in computing the adjustments. The rental payments hereinbefore provided and the Casualty Values (as defined in § 7 hereof) are also subject to adjustment pursuant to § 16 hereof. In all events, the rental payments hereunder and the Casualty Values (as defined in § 7 hereof) shall be in amounts sufficient to satisfy the obligations of the Lessor under the CSA, regardless of any limitation of liability set forth therein or any provision hereof.

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 equal (i) the amounts required by the Lessor to make the payments provided for in the third paragraph of Paragraph 2 and the last sentence of the second paragraph of, and the last paragraph of, Paragraph 9 of the Participation Agreement on the dates on which the Lessor is required to make such payments, (ii) the amount by which the Transaction Expenses (as defined in the Participation Agreement), other than those referred to in clause (vi) of Paragraph 12 of the Participation Agreement, exceed 1.5% of the aggregate Purchase Price of the Equipment and (iii) the Transaction Expenses referred to in clause (vi) of Paragraph 12 of the Participation Agreement.

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 on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 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 242 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, the Vendor 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, CSA Assignment 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 agency fees received by the Vendor, (ii) Federal income Taxes measured solely by net income or excess profits of an Investor, or (iii) Taxes measured solely by net income or excess profits of, and franchise Taxes imposed on, an Investor or its 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 Lessor 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 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, including but not limited to information relating to the use of any Units outside the United States.

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 and the Vendor with respect thereto. On the Rental Payment Date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the Casualty Value (as hereinafter defined) of such Unit as of such date in accordance with Schedule B hereto referred to below, plus the rental payment or payments in respect of such Unit then due and payable. 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 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; *provided, however,* that, with respect to such insurance, the foregoing provisions of this sentence shall be deemed to have been satisfied if and to the extent that the Lessee is unable to obtain insurance meeting the requirements of this paragraph, the Lessor obtains and maintains, for the duration of such inability on the part of the Lessee, insurance meeting the requirements of this paragraph; *provided, further,* that the Lessor shall have no obligation to obtain or maintain any such insurance. 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 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 and the Vendor in the event of cancelation, expiration or amendment (and the Lessee shall provide 30 days' prior written notice to the Lessor and the Vendor in any such event), shall include waivers by the insurer of all claims for premiums against the Lessor and the Vendor and shall provide that losses are payable notwithstanding, among other things, any act of negligence of the Lessee, the Lessor 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 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 or the Vendor. The Lessee shall, not later than June 15 of each year, commencing June 15, 1980, furnish to the Lessor 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.

The Lessor or the Owner Parent (as defined in the Participation Agreement) shall have the right to obtain at its own expense additional insurance against loss of or damage to the Equipment to protect its interests in such Equipment; *provided, however,* that such additional insurance shall not conflict with or otherwise adversely affect the insurance required to be carried pursuant to the preceding paragraph of this § 7, or reduce the amounts otherwise payable to or receivable thereunder by the Vendor as an additional named insured or loss payee.

§ 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 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 66 2/3% 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 the 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 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 or the Vendor, adversely affect the property or rights of the Lessor 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 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 upon strict liability, whether based upon tort or imposed by statute, or any claims in which the negligence of an Indemnified Person, whether active or passive, is alleged; (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; *provided, however,* that the Lessor's failure to give such notice shall not adversely affect its rights of indemnification. 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 and the Lessor 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 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 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, from or under any Indemnified Person, in any insurer or third party against the Lessee or the Lessor therefor, 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, referred to in Section 16(a)(i) 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 deductions with respect to depreciation and interest, referred to in Sections 16(a)(ii) and (iii), respectively, hereof which were 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 242 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 or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit 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.* 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 25 years after the Basic Rent Commencement Date, at a Fair Market Rental (as defined below) payable in quarterly payments in arrears, commencing three months after the next preceding Rental Payment Date, in each year of such extended term.

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, 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 the Fair Market Purchase Price at the beginning and end of such renewal period) of the Units subject to the proposed extended term 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. Such appraisal procedure expenses shall be borne equally by the Lessee and 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) *Loss of Assumed Tax Benefits.* If

(i) the Lessor is not allowed for its taxable year an investment credit under Section 38 of the Code, with respect to any one or more of the Units placed under this Lease in such taxable year, of not less than 10% of the Purchase Price with respect to such Unit or Units; or

(ii) the Lessor is not allowed the benefit of current deductions for depreciation, commencing with its taxable year during which a Unit or Units are placed under this Lease, on any one or more of the Units under Section 167(a) of the Code (x) computed pursuant to any method of depreciation authorized by Section 167(b)(2) or (3) of the Code and pursuant to the asset depreciation range system of Section 167(m) of the Code and Section 1.167(a)-11 of the income tax regulations, (y) computed on the basis (A) of a net salvage value of zero, (B) that the basis of such Unit or Units under Section 167(g) of the Code is not less than the Purchase Price with respect to such Unit or Units, and (C) that such Unit or Units have an asset depreciation period of 12 years, and (z) determined on the basis of the "half-year convention" of Section 1.167(a)-11(c)(2)(iii) of the income tax regulations; or

(iii) the Lessor is not allowed the benefit of current deductions under Section 163 of the Code for interest payable under the CSA; or

(iv) any investment credits or deductions for depreciation with respect to any one or more of the Units are recaptured in whole or in part pursuant to Section 47 or Section 1245 of the Code or any successor provision or provisions thereto; or

(v) any amount includible in the gross income of the Lessor with respect to any one or more of the Units or any deduction allowable to the Lessor with respect to such Unit or Units or with respect to any interest payable under the CSA shall be treated as derived from, or allocable to, sources outside the United States; or

(vi) any amount is included, at any time prior to the end of the term of this Lease (including renewal terms), in the gross income of the Lessor as a result of any repair, improvement, alteration, modification or addition (including replacement of parts) to such Unit or Units made by the Lessee (herein called a "Capital Expenditure");

(any such failure to allow, such recapture, such treatment of income or deductions as derived from or allocable to sources without the United States, or such inclusion in gross income as a result of a Capital Expenditure being herein called a "Loss"), then, subject to paragraph (b) of this § 16, the Lessee shall pay to the Lessor as an indemnity the amount set forth in paragraph (d) of this § 16 at the time set forth therein.

(b) *Indemnification and Exceptions.* Except as hereinafter provided, the Lessee shall be required to indemnify the Lessor with respect to any Loss which results from:

(A) a Loss described in clause (i) or (ii) of paragraph (a) of this § 16, if such Loss results from the use of a Unit by any person so as to preclude the "original use of such property" within the meaning of Section 48(b) or 167(c)(2) of the Code from commencing with the Lessor;

(B) the Lessee's use of a Unit or Units in such a manner as to result in a Loss described in clauses (i), (ii), (iv) or (v) of paragraph (a) of this § 16;

(C) a Capital Expenditure; or

(D) any act, or failure to act, at any time, by the Lessee or any of its officers, employees or agents (including, without limitation, any act, or failure to act, in respect of the income tax returns of the Lessee).

However, the Lessee shall not be required to indemnify the Lessor with respect to any Loss that results directly from:

(i) a Casualty Occurrence, if the Lessee has made all payments with respect thereto that are required to be made pursuant to § 7 hereof;

(ii) a voluntary disposition by the Lessor of its beneficial interest in any Unit or Units, if such disposition (x) shall be the direct cause of such Loss with respect to such Unit or Units, (y) shall occur at a time while no Event of Default (and no event that, with the lapse of time or the giving of notice, or both, would constitute an Event of Default) has occurred and is continuing, and (z) shall not be pursuant to the written consent of the Lessee;

(iii) the failure of the Lessor to claim in a timely and proper manner on its income tax returns for the appropriate years any credits or deductions contemplated by paragraph (a) of this § 16, unless the Lessor shall have been advised by Messrs. Donovan Leisure Newton & Irvine, or other independent tax counsel selected by the Lessor and approved by the Lessee, that there is no reasonable basis for claiming any such deduction or credit;

(iv) the failure of the Lessor to have sufficient Federal income tax liability against which to apply such credits or sufficient income to benefit from such depreciation or interest deductions;

(v) the failure of the Lessor to take timely action in contesting a claim made by the Internal Revenue Service, but only if such action is required by the terms of paragraph (c) of this § 16;

(vi) any amendment to, or change in, the Code, the income tax regulations thereunder or published administrative interpretations of the Code or such regulations, which amendment or change is not enacted, adopted or effective on or before the later of December 31, 1979, and the last Closing Date (as defined in the CSA); or

(vii) any act, or failure to act, at any time, by the Lessor or any of its officers, employees or agents, which is inconsistent with the Lessor's obligations under its Documents (as defined in the Participation Agreement) except at a time when an Event of Defualt (or an event that, with the lapse of time or the giving of notice, or both, would constitute an Event of Default) has occurred and is continuing.

(c) *Proceedings.* If at the conclusion of any audit the Lessor receives a preliminary or "30 day" letter from the Internal Revenue Service proposing an adjustment in any item that, if agreed to by the Lessor, would result in a Loss with respect to which the Lessee would be required to indemnify the Lessor pursuant to this § 16, the Lessor shall promptly notify the Lessee of such proposed adjustment and shall furnish to the Lessee a statement describing such Loss in reasonable detail. If requested to do so by the Lessee, within 20 days after receipt of such statement, the Lessor shall promptly request from Messrs. Donovan Leisure Newton & Irvine, or such other independent tax counsel as may be selected by the Lessor and approved by the Lessee (the "Special Tax Counsel"), their opinion as to whether there is a meritorious basis for contesting such proposed adjustment. If the opinion is to the effect that there is a meritorious basis for contesting such proposed adjustment, the Lessor shall contest such proposed adjustment beyond the level of the Internal Revenue Service auditing agent by such administrative proceedings, if any, as may be determined by the Lessor in its sole discretion. Upon the conclusion of such administrative proceedings, if any, the Lessor shall promptly

notify the Lessee of the final adjustment proposed by the Internal Revenue Service and, if the Lessor receives within 30 days after such notice a written request to do so from the Lessee, the Lessor shall contest such final adjustment in a court of competent jurisdiction. If the Lessee requests the Lessor to appeal the decision of such a court or of any intermediate appellate court, the Lessor shall promptly request from Special Tax Counsel their opinion as to whether there is a meritorious basis for appealing such decision. If the opinion is to the effect that there is a meritorious basis for appealing such decision, the Lessor shall appeal such decision. The Lessor, in its sole discretion, shall determine the initial and any appellate court and, if the adjustment relates to an item claimed on a tax return, shall determine whether the proceedings shall be for redetermination of the deficiency proposed to be assessed by the Internal Revenue Service or for refund of taxes paid based on such deficiency. The Lessor shall not be required to take any action as set forth in this paragraph (c) unless and until the Lessee shall have agreed to indemnify the Lessor in a manner satisfactory to it for any Loss that results from an adverse determination with respect to the proposed adjustment and shall have agreed to pay to the Lessor on demand all reasonable out-of-pocket costs and expenses, including without limitation attorneys' fees and expenses incurred by it in connection with the taking of such action. If the Lessor elects to pay taxes based on a proposed deficiency and sue for a refund thereof, the Lessee shall pay to the Lessor on demand the amount of such taxes and interest thereon which the Lessor shall have paid, and if the Lessor subsequently receives a refund of all or any part of such taxes and interest, it shall promptly pay to the Lessee the amount of such refunded taxes and interest plus the amount of any interest received by the Lessor from the United States Government with respect to such refunded taxes and interest. Notwithstanding anything to the contrary contained in this paragraph (c), the Lessor may at any time, whether before or after commencing to take any action with respect to a proposed adjustment, decline to take any further action with respect thereto, provided that the Lessor notifies the Lessee that it waives its right to any indemnity with respect to any Loss that will result from acceptance of such proposed adjustment.

(d) *Amount and Time of Payment of Indemnity.* The amount of indemnity payable by the Lessee pursuant to this § 16 with respect to a Loss shall be such amount as will result, in the Lessor's reasonable judgment, in preserving for the Lessor both the after-tax rate of return and the after-tax cash flow that would have been realized by the Lessor if such Loss had not occurred, based on the rates of Federal, state and local taxes on, based on, or measured by, net income in effect from time to time. The amount of such payment of indemnity shall reflect (A) the amount of interest, additions to tax and penalties payable by the Lessor with respect to such Loss, but in the case of penalties, only if they are attributable to any act or failure to act at any time by the Lessee or any of its officers, employees or agents (including, without limitation, any act or failure to act in respect of the income tax returns of the Lessee), (B) the amount of Federal, state and local taxes on, based on, or measured by, net income (at the rates in effect from time to time), interest, additions to tax and penalties incurred by the Lessor as a result of the receipt of such indemnity payment, but in the case of penalties, only if they are attributable to any act or failure to act at any time by the Lessee or any of its officers, employees or agents (including, without limitation, any act or failure to act in respect of the income tax returns of the Lessee), and (C) any amount paid by the Lessee to the Lessor pursuant to the next-to-last sentence of paragraph (c) of this § 16 which has not been repaid by the Lessor to the Lessee pursuant to such sentence. The Lessor shall furnish the Lessee with a notice setting forth in reasonable detail the computations and methods used in computing such amount of indemnity.

In determining the amount of indemnity payable by the Lesseee pursuant to this § 16 with respect to a Loss which results from a Capital Expenditure, there shall be taken into account any investment credits and depreciation deductions to which the Lessor is or expects to be entitled with respect to such Capital Expenditure in the year in which the Capital Expenditure is made and in subsequent years, but if any such investment credits or depreciation deductions are subsequently disallowed, recaptured or treated as derived from or allocable to sources outside the United States, such disallowance, recapture or allocation shall be treated as a Loss described in clause (i), (ii), (iv) or (v) of paragraph (a) of this § 16, as the case may be.

The Lessee's obligation to pay any indemnity payable pursuant to this § 16 with respect to a Loss shall become unconditional (1) in the case of a Loss that is required to be reflected on a tax return of the Lessor, 30 days after the date such tax return is filed; (2) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service that is not contested pursuant to paragraph (c) of this § 16, 30 days after the Lessee's receipt of the statement referred to in the first sentence of paragraph (c) of this § 16; and (3) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service that is contested pursuant to paragraph (c) of this § 16, 30 days after the day on which such contest is finally concluded. The Lessee shall pay to the Lessor a lump sum indemnity at the time its obligation to pay indemnity pursuant to this § 16 with respect to a Loss becomes unconditional.

(e) *Adjustment of Casualty Values.* In the event that the Lessee shall be required to indemnify the Lessor pursuant to this § 16 with respect to a Loss relating to a Unit or Units, the Casualty Value of such Unit or Units shall be appropriately reduced to reflect the reduction, if any, in taxes that will be payable by the Lessor with respect to such Unit or Units upon a Casualty Occurrence with respect thereto; *provided, however,* that such Casualty Values shall not be reduced below the amounts required to satisfy the obligations of the Lessor under the CSA.

(f) *Definition of Lessor.* For purposes of this § 16, 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.

(g) All payments of indemnity made pursuant to this § 16 shall be made by the Lessee directly to the Lessor by wire transfer of immediately available funds to the Lessor in such manner as the Lessor from time to time shall specify in written instructions given to the Lessee.

§ 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 750 Third Avenue, New York, New York 10017, Attention of Treasurer; 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, 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.

§ 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 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]

by _____
Assistant Treasurer - Financing & Collections

Attest:

_____
Assistant Secretary

UNILEASE NO. 15, INC.,

[Corporate Seal]

by _____
Vice President

Attest:

_____
Assistant Secretary

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

On this day of July 1979, before me personally appeared H. W. Brown, to me personally known, who, being by me duly sworn, says that he is Assistant Treasurer - Financing & 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.

_____
Notary Public

[Notarial Seal]

STATE OF NEW YORK }
}ss.:
COUNTY OF NEW YORK }

On this day of July 1979, before me personally appeared Louis B Seibel, to me personally known, who, being by me duly sworn, says that he is Vice President of UNILEASE NO. 15, INC., 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) |
|---|---|---|---|
| 3000 h.p. Model SD-40-2 Diesel Electric Locomotives | General Motors Corporation (Electro-Motive Division) | 14 | CR 6483-6496 |
| 2,250 h.p. Model B23-7 Diesel Electric Locomotives (with 345 signal cabs) | General Electric Company | 9 | CR 1992-2000 |

SCHEDULE B TO LEASE

## Casualty Value

| Rental Payment Date | Percentage of Purchase Price |
|---|---|
| April 1, 1980 | 108.1635 |
| July 1, 1980 | 108.8217 |
| October 1, 1980 | 108.2868 |
| January 1, 1981 | 108.7226 |
| April 1, 1981 | 109.2535 |
| July 1, 1981 | 109.8514 |
| October 1, 1981 | 108.6921 |
| January 1, 1982 | 109.1605 |
| April 1, 1982 | 109.6305 |
| July 1, 1982 | 110.0899 |
| October 1, 1982 | 108.3148 |
| January 1, 1983 | 101.8154 |
| April 1, 1983 | 102.0192 |
| July 1, 1983 | 102.1982 |
| October 1, 1983 | 100.2103 |
| January 1, 1984 | 100.2639 |
| April 1, 1984 | 100.3024 |
| July 1, 1984 | 100.3176 |
| October 1, 1984 | 97.8354 |
| January 1, 1985 | 90.8875 |
| April 1, 1985 | 90.6409 |
| July 1, 1985 | 90.3700 |
| October 1, 1985 | 87.8219 |
| January 1, 1986 | 87.4258 |
| April 1, 1986 | 87.0143 |
| July 1, 1986 | 86.5816 |
| October 1, 1986 | 83.6881 |
| January 1, 1987 | 76.2973 |

| Rental Payment Date | Percentage of Purchase Price |
|---|---|
| April 1, 1987 | 75.6094 |
| July 1, 1987 | 74.9015 |
| October 1, 1987 | 72.0933 |
| January 1, 1988 | 71.2703 |
| April 1, 1988 | 70.4267 |
| July 1, 1988 | 69.5650 |
| October 1, 1988 | 66.5545 |
| January 1, 1989 | 65.5834 |
| April 1, 1989 | 64.5934 |
| July 1, 1989 | 63.5756 |
| October 1, 1989 | 60.4220 |
| January 1, 1990 | 59.2959 |
| April 1, 1990 | 58.1553 |
| July 1, 1990 | 56.9801 |
| October 1, 1990 | 53.7442 |
| January 1, 1991 | 52.4576 |
| April 1, 1991 | 51.1604 |
| July 1, 1991 | 49.8218 |
| October 1, 1991 | 46.5613 |
| January 1, 1992 | 45.1093 |
| April 1, 1992 | 43.6573 |
| July 1, 1992 | 42.2130 |
| October 1, 1992 | 39.0700 |
| January 1, 1993 | 37.5573 |
| April 1, 1993 | 36.0515 |
| July 1, 1993 | 34.5578 |
| October 1, 1994 | 31.5859 |
| January 1, 1994 | 30.0365 |
| April 1, 1994 | 28.4988 |
| July 1, 1994 | 26.9794 |
| October 1, 1994 | 24.1268 |
| January 1, 1995 | 20.0000 |

**SCHEDULE C TO LEASE**

**Certificate of Acceptance**

To: Unilease No. 15, Inc. (the "Lessor")
750 Third Avenue
New York, New York 10017
Attention of Treasurer

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]

**ANNEX D**

**[CS&M Ref.: 2043-933]**

ASSIGNMENT OF LEASE AND AGREEMENT dated as of February 1, 1979 (this "Assignment"), between UNILEASE NO. 15, INC., a Delaware corporation (the "Lessor"), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent (the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement").

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, severally (collectively the "Builders"), providing for the sale to the Lessor of such units of railroad equipment (the "Units") described in Annex B thereto as are delivered to and accepted by the Lessor thereunder;

WHEREAS the Lessor and Consolidated Rail Corporation (the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") which provides for the leasing by the Lessor to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Lessor under the CSA and as an inducement to the Vendor and the Investors (as defined in the Participation Agreement) for whom the Vendor is acting to invest in the CSA Indebtedness (as defined in the CSA), the Lessor has agreed to assign for security purposes certain of its rights in, to and under the Lease to the Vendor.

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned, the parties hereto agree as follows:

1. The Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor under the CSA, all the Lessor's rights, titles and interests, powers, privileges, and other benefits in, to and under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable from the Lessee by the Lessor under or pursuant to the provisions of the Lease (other than payments by the Lessee to the Lessor under § 16 of the Lease) whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the "Payments"), and the right to make all waivers, modifications and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under or with respect to the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as attorney for the Lessor to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments first, to satisfy the obligations of the Lessor under the CSA which are due and payable on the date such Payments were required to be made pursuant to the Lease, 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 thereunder shall have occurred and be continuing, any balance shall be deemed to be held by the Vendor in trust for the Lessor and shall be paid immediately to the Lessor, by bank wire to the Lessor at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Lessor. If the Vendor shall not receive any rental payment under the first paragraph of § 3 of the Lease when due, the Vendor shall notify the Lessor at the address set forth in the Lease; *provided, however,* that the failure of the Vendor to so notify the Lessor shall not affect the obligations of the Lessor hereunder or under the CSA; except that the Vendor may not declare an event of

default under subparagraph (a) or (f) of Article 15 of the CSA arising solely by reason of the failure of the Lessee to make any such rental payment which, pursuant to subparagraph (f) of the Section 15 of the CSA, would not constitute an event of default thereunder if the Lessor complies with the provisions thereof, unless such event of default is not remedied within 10 business days after notification is given as aforesaid.

2. The assignment made by the Lessor hereunder is executed only as security and, therefore, the execution and delivery of this Assignment by the Lessor shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify, the liability of the Lessor under the Lease, it being agreed that, notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor. The Lessor shall appear in and defend every action in connection with its obligations or duties under the Lease at its sole cost.

3. The Lessor represents and warrants to the Vendor that the Lessor has not entered into any assignment of its interests in the Lease other than this Assignment, has not entered into any amendment or modification of the Lease and has not created or incurred or suffered to exist with respect to the Lease or with respect to any of its interests therein any claim, lien or charge arising by, through or under the Lessor.

The Lessor agrees that it will from time to time and at all times, at the reasonable request of the Vendor or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions herein set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Vendor or intended so to be.

4. The Lessor will faithfully abide by, perform and discharge each and every obligation and agreement which the Lease provides is to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee of or from the obligations, covenants, conditions and agreements to be performed by the Lessee thereunder, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.

5. The Lessor does hereby constitute the Vendor its true and lawful attorney, irrevocably, with full power (in the name of the Lessor or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

6. Upon the full discharge and satisfaction of all sums due from the Lessor under the CSA, the Lessor's assignment hereunder of its rights in, to and under the Lease shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor. However, the Vendor, if so requested by the Lessor at that time, will (a) execute an instrument releasing its entire estate, right, title and interest in the Lease and transferring such estate, right, title and interest to the Lessor and (b) execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Lessor in order to confirm or further assure the interest in the Lease which shall have reverted or been so transferred to the Lessor.

7. The Lessor will pay and discharge any and all taxes, claims, liens, charges or security interests (other than those created by the CSA) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Lessor or its successors and assigns (other than the Vendor), not arising out of the transactions contemplated by the CSA or the Lease (but including income taxes arising

out of the receipt of rentals and other payments under the Lease and any other proceeds from the Equipment) which, if unpaid, might become a claim, lien, charge or security interest on or with respect to the Lease or such rentals or other payments, unless the Lessor shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect such interests of the Vendor.

8. The Lessor will, from time to time, execute, acknowledge and deliver any and all further instruments reasonably requested by the Vendor in order to confirm the interest of the Vendor hereunder.

9. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

10. This Assignment shall be governed by the laws of the State of New York, but 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, as shall be conferred by the laws of the several jurisdictions in which this Assignment shall be filed or deposited.

11. The Lessor shall cause copies of all notices and other documents received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 20 of the CSA, or at such other address as the Vendor shall designate in writing.

12. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no event of default under the CSA has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Lessor to the Vendor by this Assignment, without the prior written consent of the Lessor, except the right to receive Payments under Paragraph 1 hereof and to enforce any right, power, agreement or indemnity under the Lease (other than any rights, powers, privileges, authorizations or benefits under § § 6, 9 and 16 of the Lease to the extent they inure to the benefit of the Lessor); *provided, however,* that if the Vendor does not seek to enforce any such right, power or agreement or does not seek to collect that portion of the Payments which would otherwise be paid to the Lessor pursuant to the second paragraph of Paragraph 1 of this Assignment, the Lessor shall have the right, only so long as no event of default under the CSA has occurred and is continuing, to proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of such obligations or to recover damages for the breach thereof as provided in § 10(a) of the Lease, but may not, without the prior written consent of the holders of 66 2/3% in principal amount of the CSA Indebtedness, declare an Event of Default under or terminate the Lease. Notwithstanding the provisions of the Lease or this Assignment, should the Lessee default in the observance or performance of any obligations contained in §§ 6, 9 or 16 of the Lease to the extent made for the benefit of the Lessor, and such default shall continue for 30 days after written notice thereof from the Lessor to the Lessee, the Lessor shall have the right (but, with respect to §§ 6 and 9 of the Lease, only so long as no event of default shall have occurred and is continuing under the CSA) to proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of such obligations or to recover damages for the breach thereof as provided in § 10(a) of the Lease (which shall, except for any recovery in respect of the obligations of the Lessee under § 16 of the Lease, constitute collateral security for the payment and performance of the obligations of the Lessor under the CSA pursuant to Paragraph 1 of this Assignment and shall be applied as therein provided), but may not, without the prior written consent of the holders of 66 2/3% in principal amount of the CSA Indebtedness, declare an Event of Default under or terminate the Lease. After the occurrence of an event of default under the CSA the Vendor agrees to (i) permit the Lessor (at Lessor's expense) to enforce performance by the Lessee or to seek to recover damages from the Lessee for the breach of any obligations of the Lessee contained in § § 6 or 9 of the Lease to the extent made for the benefit of the Lessor (but the Lessor shall not have the right to terminate the Lease without the prior written consent of the

Vendor) or (ii) enforce (at Lessor's expense) such performance by, or seek to recover such damages from, the Lessee; *provided, however,* that Payments received pursuant to this sentence shall constitute collateral security for the payment and performance of the obligations of the Lessor under the CSA pursuant to Paragraph 1 of this Assignment and shall be applied as therein provided; and *provided, further, however,* that the foregoing provision shall not be deemed to prohibit or limit in any way the right of the Vendor to enforce any of the rights and remedies under § 10(b) of the Lease. The right of the Lessor under the second preceding sentence shall not affect the rights of the Vendor, before or after the occurrence of an event of default under the CSA, which arise under or with respect to § § 6 or 9 of the Lease.

13. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Vendor shall be deemed to be the original and all others shall be deemed to be duplicates thereof. It shall not be necessary that any counterpart be signed by both parties so long as each party shall sign at least one counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

UNILEASE NO. 15, INC.,

[Corporate Seal]

by _____
Vice President

Attest:

_____
Assistant Secretary

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent,

[Corporate Seal]

by _____
Assistant Vice President

Attest:

_____
Corporate Trust Officer

STATE OF NEW YORK, }
}ss.:
COUNTY OF NEW YORK, }

On this day of July 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of UNILEASE NO. 15, INC., 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]

STATE OF MARYLAND, }
}ss.:
CITY OF BALTIMORE, }

On this day of July 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT 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]

## CONSENT AND AGREEMENT

The undersigned, CONSOLIDATED RAIL CORPORATION (the "Lessee"), the lessee named in the Lease (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Lease Assignment"), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease, other than such unassigned amounts (which moneys, other than such unassigned amounts, are hereinafter called the "Payments"), due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to Mercantile-Safe Deposit and Trust Company, as Agent (the "Agent-Vendor"), the assignee named in the Lease Assignment, by bank wire transfer of immediately available funds to The Annapolis Banking and Trust Company, Main Street and Church Circle, Annapolis, Maryland, for credit to the Agent-Vendor's Account No. 52076-1, with the request that The Annapolis Banking and Trust Company advise Mrs. K.M. Tollberg, Assistant Vice President, Mercantile-Safe Deposit and Trust Company, Baltimore, Maryland, that funds are "RE: Conrail 2/1/79 No. 3 (Unilease)" (or at such other address as may be furnished in writing to the Lessee by the Agent-Vendor);

(2) it shall not be entitled to any abatement of rent or additional rent, reduction thereof or setoff against or recoupment of rent or additional rent, including, but not limited to, abatements, reductions, setoffs 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 the Lease or under the CSA or against either Builder (as defined in the Lease Assignment) or the Agent-Vendor or otherwise;

(3) the Agent-Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Agent-Vendor were named therein as the Lessor;

(4) the Agent-Vendor shall not, by virtue of the Lease Assignment, be or become subject to any liability or obligation under the Lease or otherwise; and

(5) the Lease shall not, without the prior written consent of the Agent-Vendor, be terminated, amended or modified, nor shall any waiver or release be given or accepted with respect thereto nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Agent-Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the Commonwealth of Pennsylvania and, for all purposes, shall be construed in accordance with the laws of said Commonwealth.

CONSOLIDATED RAIL CORPORATION,
as Lessee,

[Corporate Seal]

by _____
Assistant Treasurer - Financing & Collections

Attest:

_____
Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the 1st day of February 1979.

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY, as Agent,

by _____
Assistant Vice President

# Interstate Commerce Commission

Washington, D.C. 20423

7/16/79

OFFICE OF THE SECRETARY

Martin D. Jacobson
Cravath, Swaine & Moore
One Chase Manhatten Plaza
New York, N.Y. 10005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 7/16/79 at 10:55am, and assigned recordation number(s) 10627, 10627-A 10627-B 10627-C

Sincerely Yours,

H.G. Homme, Jr.,
Secretary

Enclosure(s)

SE-30-T
(2/78)