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RECORDATION NO. 11188 Filed 1425
DEC 12 1979 -3 10 PM
INTERSTATE COMMERCE COMMISSION

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INTERSTATE COMMERCE COMMISSION

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INTERSTATE COMMERCE COMMISSION

No. 9-[illegible]090
Date DEC 12 1979
Fee $ 100.00
ICC Washington, D. C.

December 12, 1979

Burlington Northern Inc.
Lease Financing Dated as of October 1, 1979
9-7/8% Conditional Sale Indebtedness
Due December 30, 1996
[CS&M Ref.: 4657-003]

Dear Madam:

Pursuant to 49 U.S.C. § 11303(a), I enclose herewith on behalf of Burlington Northern Inc. for filing and recordation counterparts of the following documents:

New number

1. (a) Conditional Sale Agreement dated as of October 1, 1979, between BameriLease Capital Corporation, as Vendee, and General Motors Corporation (Electro-Motive Division) and General Electric Company, as Builders; and

— A

(b) Agreement and Assignment dated as of October 1, 1979, between General Motors Corporation (Electro-Motive Division) and General Electric Company, as Builders, and Mercantile-Safe Deposit and Trust Company, as Agent.

— B

2. (a) Lease of Railroad Equipment dated as of October 1, 1979, between Burlington Northern Inc. and BameriLease Capital Corporation, as ~~Vendee~~ Lessor; and

— C

(b) Assignment of Lease and Agreement dated as of

Counterpart — Eduardo J. Solis

October 1, 1979, between BameriLease Capital Corporation, as Vendee, and Mercantile-Safe Deposit and Trust Company, as Agent.

The names and addresses of the parties to the aforementioned Agreements are as follows:

(1) Agent-Vendor-Assignee:

Mercantile-Safe Deposit and Trust Company
P. O. Box 2258
Baltimore, Maryland 21203

(2) Vendee-Lessor:

BameriLease Capital Corporation
P.O. Box 37009
San Francisco, California 94137

(3) Builder-Vendor:

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

General Electric Company
2901 East Lake Road
Erie, Pennsylvania 16531

(4) Lessee:

Burlington Northern Inc.
176 East Fifth Street
St. Paul, Minnesota 55101

Please file and record the documents referred to in this letter and cross-index them under the names of the Agent-Vendor-Assignee, the Vendee-Lessor, the Builder-Vendor and the Lessee.

The equipment covered by the aforementioned documents consists of:

150 GMC-EMD 3,000 h.p. Model SD-40-2 diesel-electric locomotives bearing identifying numbers BN 7206-7301, 7924-7940, 8090-8126 inclusive; and

40 GE 3,000 h.p. Model C30-7 diesel-electric

locomotives bearing identifying numbers BN5087-5126, inclusive.

There is also enclosed a check for $100 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document) and the Lease of Railroad Equipment, and related Assignment of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

Laurance V. Goodrich

Laurance V. Goodrich
As Agent for Burlington Northern Inc.

Interstate Commerce Commission,
Washington, D. C. 20423

Attention of Agatha L. Mergenovich,
Secretary.

Encls.

9N

[CS&M Ref. 4657-003]

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RECORDATION NO. ..... Filed 1425
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INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of October 1, 1979

BETWEEN

BURLINGTON NORTHERN INC.,
as Lessee,

AND

BAMERILEASE CAPITAL CORPORATION,
as Lessor.

LEASE OF RAILROAD EQUIPMENT

TABLE OF CONTENTS*

*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.

	Page
PARTIES	L-1
PREAMBLES	L-1
GRANTING CLAUSE	L-1
SECTION 1. NET LEASE	L-1
SECTION 2. DELIVERY	L-2
2.1. Delivery and Acceptance of Units	L-2
SECTION 3. RENTALS	L-2
3.1. Amount and Date of Payment	L-2
3.2. Payments on Nonbusiness Days	L-3
3.3. Instructions to Pay Vendor and Lessor	L-3
3.4. Payment in Immediately Available Funds	L-4
SECTION 4. TERM OF LEASE	L-4
4.1. Beginning and Termination; Survival	L-4
4.2. Rights and Obligations of Lessee Subject to Conditional Sale Agreement	L-4
SECTION 5. IDENTIFICATION MARKS	L-4
5.1. Identifying Numbers; Legend; Changes	L-4
5.2. Insignia of Lessee	L-5
SECTION 6. TAXES	L-5
6.1. Indemnification for Nonincome Taxes	L-5
6.2. Claims; Contests; Refunds	L-5
6.3. Reports or Returns	L-6
6.4. Survival	L-6
SECTION 7. PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE	L-6
7.1. Definitions of Casualty Occurrence; Payments	L-6
7.2. Requisition by United States Government	L-7
7.3. Lessee Agent for Disposal	L-7
7.4. Payments After Expiration of Lease	L-7
7.5. Amount of Casualty Value	L-7
7.6. No Release	L-8
7.7. Insurance To Be Maintained	L-8
7.8. Insurance Proceeds and Condemnation Payments	L-9

Page

SECTION 8. REPORTS L-9

SECTION 9. DISCLAIMER OF WARRANTIES..... L-9

SECTION 10. LAWS AND RULES L-10
10.1. Compliance L-10
10.2. Reports by Lessor L-10

SECTION 11. MAINTENANCE L-10
11.1. Units in Good Operating Order..... L-10
11.2. Additions and Accessions L-10

SECTION 12. INDEMNIFICATION L-11
12.1. Indemnified Persons L-11
12.2. Indemnification of Builders L-12
12.3. Survival L-12

SECTION 13. DEFAULT L-12
13.1. Events of Default; Remedies L-12
13.2. Remedies Not Exclusive; Waiver L-14
13.3. Failure to Exercise Rights Is Not Waiver..... L-14
13.4. Notice of Event of Default..... L-14

SECTION 14. RETURN OF UNITS UPON DEFAULT L-14
14.1. Return of Units L-14
14.2. Lessor Appointed Agent of Lessee L-15

SECTION 15. ASSIGNMENT, POSSESSION AND USE L-15
15.1. Assignment; Consent..... L-15
15.2. Lessee's Rights To Use the Units, To Permit Use Thereof by Others and To Sublease the Units L-15
15.3. Transfers by Lessee Through Merger, Acquisition or Consolidation L-16

SECTION 16. RENEWAL OPTIONS L-16
16.1. Renewal for Successive Periods..... L-16
16.2. Determination of Fair Market Rental..... L-17

SECTION 17. RETURN OF UNITS UPON EXPIRATION OF TERM L-17

SECTION 18. RECORDING..... L-18

SECTION 19. INTEREST ON OVERDUE RENTALS L-18

SECTION 20. LESSOR'S RIGHT TO PERFORM FOR THE LESSEE..... L-19

SECTION 21. NOTICES..... L-19

Page

SECTION 22. SEVERABILITY L-19

SECTION 23. EFFECT AND MODIFICATION OF LEASE L-19

SECTION 24. THIRD PARTY BENEFICIARIES L-19

SECTION 25. EXECUTION L-19

SECTION 26. LAW GOVERNING L-20

SECTION 27. AGREEMENTS FOR BENEFIT OF LESSOR'S ASSIGNS L-20

TESTIMONIUM L-20

SIGNATURES L-20

ACKNOWLEDGMENTS L-21

APPENDIX A Units Leased

APPENDIX B Rental Rates

APPENDIX C Schedule of Casualty Values

LEASE OF RAILROAD EQUIPMENT dated as of October 1, 1979, between BURLINGTON NORTHERN INC., a Delaware corporation (the "Lessee"), and BAMERILEASE CAPITAL CORPORATION, a California corporation (the "Lessor").

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

WHEREAS each Builder is assigning its interests in the Conditional Sale Agreement pursuant to an Agreement and Assignment dated the date hereof (the "CSA Assignment") to Mercantile-Safe Deposit and Trust Company, acting as agent for certain investors under a Participation Agreement dated as of the date hereof (the "Participation Agreement") among said agent, the Lessee, the Lessor and the investors named in Appendix I thereto (the "Investors") (said agent as so acting, together with the Investors unless the context otherwise requires, being hereinafter, together with its successors and assigns, called the "Vendor");

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

WHEREAS the Lessor will assign certain of its rights under this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement (the "Lease Assignment") dated as of the date hereof and the Lessee will acknowledge and consent thereto pursuant to the Consent and Agreement (the "Consent") in the form attached to the Lease Assignment;

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. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein specifically provided, the Lessee shall not be entitled to any abatement of rent, reduction thereof, recoupment or setoff against rent or such other amounts, including, but not limited to, abatements, reductions, recoupments or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or the Conditional Sale Agreement including the Lessee's rights by subrogation thereunder to the Builders or the Vendor or otherwise (except as provided in §3.1(4) hereof); nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final, and the Lessee shall not seek to recover all or any part of such payment from the Lessor (except as provided in §3.1(4) hereof) or the Vendor for any reason whatsoever.

§2. DELIVERY

2.1. *Delivery and Acceptance of Units.* The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Conditional Sale Agreement. Each delivery of a Unit to the Lessor under the Conditional Sale Agreement shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is so delivered to the Lessor. 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 on behalf of the Lessor under the Conditional Sale Agreement and on behalf of itself hereunder and execute and deliver to the Lessor a certificate of acceptance (the "Certificate of Acceptance") in accordance with the provisions of Article 3 of the Conditional Sale Agreement, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with §5.1 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§3. RENTALS

3.1. *Amount and Date of Payment.* (1) As rental for each Unit subject to this Lease, the Lessee agrees to pay the Lessor 16 consecutive annual payments payable, in arrears, on December 30 in each year, commencing December 30, 1981, to and including December 30, 1996. The 16 annual rental payments shall each be in an amount equal to the basic lease rate set forth in Appendix B-1 hereto for the applicable payment date multiplied by the Purchase Price (as defined in Paragraph 4.1 of the Conditional Sale Agreement) of each Unit.

(2) The basic lease rates set forth in Appendix B-1 hereto have been calculated on the assumption that the Units will have been settled for on the dates, in the amounts and with funds as follows:

Assumed Settlement Date	Assumed Settlement Amount	Assumed Investors' Funds	Assumed Lessor's Funds
1/30/80	$ 17,862,523	$ 13,307,579.62	$ 4,554,943.38
2/20/80	17,862,523	13,307,579.62	4,554,943.38
3/14/80	17,862,523	13,307,579.62	4,554,943.38
4/ 8/80	17,862,523	13,307,579.62	4,554,943.38
5/ 7/80	17,862,523	13,307,579.62	4,554,943.38
5/27/80	17,862,523	13,307,579.62	4,554,943.38
6/19/80	17,862,523	13,307,579.62	4,554,943.38
7/ 8/80	17,862,523	13,307,579.66	4,554,943.34
	$142,900,184	$106,460,637.00	$36,439,547.00

If for any reason any Units are settled for other than as assumed above, then such basic lease rates (and the related Casualty Values set forth in Appendix C hereto) payable by the Lessee hereunder in respect of the Units from and after December 30, 1981, shall be increased or decreased, as the case may be, by such amount as shall, in the reasonable opinion of the Lessor, cause the Lessor's after-tax economic and accounting yields and cash flows, computed on the same assumptions used by the Lessor in its original computation of the lease rate, yields and cash flows (as such may have been revised by any change in the tax laws enacted prior to December 31, 1980, and effective prior to the date of the first delivery of a Unit hereunder) to at least equal the after-tax economic and accounting yields and cash flows (such yields and cash flows being hereinafter called the "Net Economic Return") that would have been realized by the Lessor if all Units had been settled for as assumed above. Such basic lease rates have also been calculated on the assumption that there will not be (i) any fees and expenses payable to the Agent by the Vendee pursuant to the last sentence of the second paragraph of Paragraph 9 of the Participation Agreement, (ii) any Investment Deficiency payable by the Vendee to the Agent pursuant to the third paragraph of Paragraph 2 of the Participation Agreement, (iii) any interest payable on the Surplus Deposit pursuant to the last paragraph of Paragraph 9 of the Participation Agreement and on the further assumptions that (iv) no change in the Federal or California state income tax laws will be enacted prior to December 31, 1980, and effective prior to the first delivery and acceptance of a Unit hereunder, which change alters or eliminates the Tax Benefits

(as defined in Paragraph 16 of the Participation Agreement) or which change alters the tax rates in effect on August 14, 1979, (v) the amount of interest (other than interest on the commitment fee) payable to the Investors on December 30, 1980, will not exceed 1.88% of the aggregate Purchase Price of the Units, (vi) the amount of the commitment fee and interest thereon payable to the Investors on December 30, 1980, will not exceed 0.17% of the aggregate Purchase Price of the Units and (vii) the amount of the fees and expenses payable pursuant to Paragraph 12 of the Participation Agreement will not exceed $64,200. If for any reason these assumptions prove to be incorrect, then such basic lease rates (and the related Casualty Values set forth in Appendix C hereto) payable by the Lessee hereunder in respect of the Units from and after December 30, 1981, shall be increased or decreased, as the case may be, by such amount as shall, in the reasonable opinion of the Lessor, cause the Lessor's Net Economic Return to at least equal the Net Economic Return that would have been realized by the Lessor if such assumptions had proved to be correct. The Lessor shall provide a schedule of such rentals and Casualty Values to the Lessee and the Vendor promptly after the facts have been determined and the calculations have been made.

(3) In the event that any dispute should arise as to the calculation of such rentals under §3.1(2) (or the related Casualty Values), the Lessee agrees, pending resolution of such dispute, to pay on account of such rentals (or such Casualty Values), on the dates due hereunder, amounts at least equal to the principal and/or interest payable on each such date under paragraphs 4.3(b), 4.4 and 7.2 of the Conditional Sale Agreement, but no such payment shall, as between the Lessor and the Lessee, prejudice the right of the Lessor to receive from the Lessee any amount in addition thereto, due and payable hereunder.

(4) If and to the extent that the Vendor shall not, pursuant to Paragraph 15 of the Participation Agreement, receive the funds due thereunder on December 30, 1980, or June 30 in each year commencing June 30, 1981, to and including June 30, 1996, the Lessee agrees to pay to the Lessor as additional rental for each Unit subject to this Lease, on each such date an amount equal to the applicable basic lease rate therefor set forth in Appendix B-2 hereto for such date multiplied by the Purchase Price of each such Unit, and the Lessee shall be entitled to an offset against subsequent rental payments due hereunder during the original term and any extended term of this Lease (to the extent such payments are not required to discharge principal and interest on the Conditional Sale Indebtedness) of an amount equal to the amount so paid by the Lessee plus interest thereon from the date of payment by the Lessee to the date of offset at the rate of 10⅞% per annum.

(5) Anything in the foregoing provisions of this §3.1 to the contrary notwithstanding, it is agreed that the aggregate of the rentals payable pursuant to this §3.1 on each rental payment date, when added to the amount theretofore paid by the Lessor in respect of such date pursuant to Paragraph 15 of the Participation Agreement, shall in no event be less than the principal and/or interest payment due on each such date pursuant to paragraphs 4.3(b) and 4.4 of the Conditional Sale Agreement.

3.2. *Payments on Nonbusiness Days.* If any of the rental payment dates referred to in §3.1 is not a business day the rental payment otherwise payable on such date shall be payable on the next business day, and no interest shall be payable thereon for the period from and after the scheduled date for payment thereof to such next 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 New York, New York, San Francisco, California, or Baltimore, Maryland, are authorized or obligated to remain closed.

3.3. *Instructions To Pay Vendor and Lessor.* If the Lease Assignment is executed and delivered, until the Vendor shall have advised the Lessee in writing that all sums due from the Lessor under the Conditional Sale Agreement have been fully satisfied and discharged, the Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease to the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor (a) first to apply such payments to satisfy the obligations of the Lessor under the Conditional Sale Agreement known to the Vendor to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no event of default under the Conditional Sale Agreement shall have occurred and be continuing, to pay any balance promptly to the Lessor or to the order of the Lessor in immediately available funds

at such place as the Lessor shall specify in writing. If the Lease Assignment is not executed and delivered, or if the Lessee shall have been advised by the Vendor in writing that all sums due from the Lessor under the Conditional Sale Agreement have been fully discharged and satisfied, the installments of rental due hereunder and any Casualty Payments thereafter due pursuant to §7 hereof shall be made to the Lessor in immediately available funds in the manner provided in §3.4 hereof.

3.4. *Payment in Immediately Available Funds.* The Lessee agrees to make each payment provided for herein as contemplated by §3.1 in immediately available funds at or prior to 11:00 a.m. in the city where such payment is to be made.

§4. TERM OF LEASE

4.1. *Beginning and Termination; Survival.* The term of this Lease as to each Unit shall begin on the date of delivery of such Unit under the Conditional Sale Agreement and, subject to the provisions of §§7, 13 and 16 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to §3.1 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§6, 7, 10, 11, 12, 14, 17 and 19 hereof) shall survive the expiration of the term of this Lease.

4.2. *Rights and Obligations of Lessee Subject to Conditional Sale Agreement.* 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 Conditional Sale Agreement. If an event of default should occur under the Conditional Sale Agreement, the Vendor may terminate this Lease without affecting the indemnities which by the provisions of this Lease survive the termination of its term (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 as of January 2, 1980, providing for the lease of approximately 235 locomotives (less the number leased hereunder), (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 §15 hereof.

§5. IDENTIFICATION MARKS

5.1. *Identifying Numbers; Legend; Changes.* The Lessee will cause each Unit to be kept numbered with the road number set forth in Appendix A hereto, or in the case of any Unit not there listed such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the rights of the Vendor under the Conditional Sale Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, obliterated, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Conditional Sale Agreement shall have been filed, recorded and deposited 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, recorded and deposited, such filing, recordation and deposit will protect the Vendor's and the Lessor's interests in such Units and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Lessor in such Units.

5.2. *Insignia of Lessee.* The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates, but the Lessee will not allow the name of any other person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§6. TAXES

6.1. *Indemnification for Nonincome Taxes.* Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay, and to indemnify and hold the Lessor and the Vendor harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Lessor, the Vendor, the Lessee or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to, any Unit or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the indebtedness with respect thereto; the rentals, receipts or earnings arising therefrom; or this Lease, the Participation Agreement, the Conditional Sale Agreement, the CSA Assignment, the Lease Assignment, any payment made pursuant to any such agreement, or the property, the income or other proceeds received by the Lessor (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); *excluding, however:* (i) Taxes of the United States or of any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is able to and does actually utilize a credit therefor against its United States Federal income taxes assuming the credit therefor is the last such credit to be so utilized by the person so indemnified or if the sole reason for the failure to utilize the said credit is the failure of the Lessor to timely and properly claim such credit) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Lessor or the Vendor, or franchise taxes to the extent measured by gross receipts or net income based on gross receipts of the Lessor or the Vendor, or gross receipts taxes other than gross receipts taxes in the nature of sales or use taxes; (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by the Lessor not resulting from any default under this Lease by the Lessee or any Casualty Occurrence, or any transfer or disposition by the Lessor resulting from bankruptcy or other proceedings for the relief of debtors in which the Lessor is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease; and (iii) any Taxes imposed on or measured by any fees or compensation for services received by the Vendor or the Lessor; *but not excluding:* (x) Taxes of a state or political subdivision thereof excluded pursuant to the provisions of clause (i) above to the extent that (a) the sum of such Taxes paid with respect to a taxable year exceeds (b) the Taxes which would have been paid had the entire income been apportioned to the city and state in which Lessor's principal place of business is located; (y) any of the foregoing taxes which by the terms of the statute imposing such tax expressly relieve the Lessee from the payment of Taxes which it would otherwise be obligated to pay or indemnify as herein provided; or (z) any Taxes arising out of or imposed in respect of the receipt of any indemnification payments made pursuant to this Lease. Notwithstanding the foregoing, Lessee shall not be required to pay any taxes during the period it may be contesting the same in the manner provided in §6.2 hereof. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee under the laws of the United States or of any state or political subdivision thereof, or of any foreign country or subdivision thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; *provided, however,* that the Lessee shall not be required to pay any such tax during the period it may be contesting the same in good faith and in an appropriate manner.

The Lessee shall pay directly to the indemnified person amounts required to be paid pursuant to this §6, except that, if at any time the Lessee shall pay less than the entire amount of the indemnities at the time owing pursuant to this §6, the Lessee shall not make any payment to any party other than the Vendor or an Investor until such payments owing to the Vendor or the Investors under this §6 shall have been made in full to the Vendor and the Investors.

6.2. *Claims; Contests; Refunds.* If claim is made against the Lessor or the Vendor for any Taxes indemnified against under this §6, such party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, the Lessor or the Vendor, as the case may be, shall, upon receipt of any indemnity satisfactory to it for all its reasonable charges for its services rendered in connection therewith and for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith and in a reasonable manner, the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, or (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Lessor or the Vendor; provided that, no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Lessor or the Vendor in any such proceeding or action) if in the opinion of the Lessor or the Vendor such contest or the nonpayment of the Taxes would adversely affect the title, property or rights of the Lessor hereunder or of the Vendor under the Conditional Sale Agreement. The Lessee agrees to give the Lessor and the Vendor reasonable notice of such contest prior to the commencement thereof. If the Lessor or the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon, the Lessor or the Vendor, as the case may be, shall pay the Lessee the amount of such refund or interest net of expenses; *provided, however,* that no Event of Default and no event which with notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing.

6.3. *Reports or Returns.* In case any report or return is required to be made with respect to any obligation of the Lessee under or arising out of this §6 (except obligations resulting from the last sentence of §6.1), the Lessee will, where permitted to do so under applicable rules and regulations, make and timely file such reports and returns in such manner as to show the interest of the Lessor and the Vendor in the Units as shall be satisfactory to the Lessor and the Vendor or, where not so permitted, will notify the Lessor and the Vendor of such requirement and will prepare and deliver such reports to the Lessor and the Vendor within a reasonable time prior to the time such reports are to be filed. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

6.4. *Survival.* All the obligations of the Lessee under this §6 shall survive and continue, but only with respect to periods included in the term of this Lease, notwithstanding payment in full of all amounts due under the Conditional Sale Agreement or the termination of this Lease. Payments due from the Lessee to the Lessor or the Vendor under this §6 shall be made directly to the party indemnified.

§7. PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE

7.1. *Definitions of Casualty Occurrence; Payments.* In the event that any Unit of Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever during the term of this Lease or any renewal term hereof or until such Unit is returned pursuant to §§14 or 17 hereof, or the Purchase Price of any Unit shall have been refunded by the Builder of such Unit pursuant to the terms of its patent indemnity therefor or any Unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of this Lease or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days during the term of this Lease or during any renewal term hereof (any such occurrence being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the next succeeding thirtieth day of a month occurring at least ten days after such notice from the Lessee has been received or, at the option of the Lessee, on the next succeeding June 30 or December 30 (each such date being hereinafter called a "Casualty Payment Date"), the

Lessee shall pay to the Lessor a sum equal to the Casualty Value (as hereinafter defined) of any such Unit as of such Casualty Payment Date, plus in the case of any Casualty Payment Date coinciding with June 30 or December 30, the rental, if any, in respect of such Unit payable by the Lessee as of such date; *provided, however,* that in the event of a Casualty Occurrence during the period any Unit is required to be returned pursuant to §14 or §17 hereof and the 10 days prior thereto, the Lessee shall make such payment of the Casualty Value, and any earnings or rentals accrued pursuant to §14 or §17 hereof, to the Lessor on a date 30 days after such Casualty Occurrence. 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 return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit.

In addition to the occurrences constituting a Casualty Occurrence under the preceding paragraph, if any Unit shall have been taken or requisitioned by the United States Government or any other governmental entity and such taking or requisition shall not theretofore constitute a Casualty Occurrence as aforesaid, such taking or requisition shall be deemed a Casualty Occurrence if the same shall be continuing at the end of the original or any renewal term of this Lease, in which event the Lessee shall promptly and fully notify the Lessor with respect thereto and pay the Lessor an amount equal to the Casualty Value of such Unit as of the end of such term. Following such payment, the Lessee shall be entitled to receive condemnation payments in respect of such Unit up to an amount equal to such Casualty Value and any balance of such payments shall be the property of the Lessor. In the event such Unit shall be returned by the governmental entity prior to the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, then the Lessee shall dispose of such Unit as agent for the Lessor and shall retain the proceeds of such disposition to the extent that the aggregate of the amounts so retained and the condemnation payments theretofore received by the Lessee shall equal such Casualty Value, and the balance of such proceeds shall be promptly paid to the Lessor. In the event such Unit shall be returned by the governmental entity following the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, such Unit shall be returned by the Lessee to the Lessor in the manner provided in §17 hereof.

7.2. *Requisition by United States Government.* In the event of the requisition for use by the United States Government of any Unit for a period which does not exceed the then remaining term of this Lease (except where deemed a Casualty Occurrence pursuant to the last paragraph of §7.1 hereof), all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred. All payments received by the Lessor or the Lessee from the United States Government for the use of such Unit during the term of this Lease 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.

7.3. *Lessee Agent for Disposal.* The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof before and after expiration of this Lease, at the best price obtainable under the circumstances on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor (i) 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 and (ii) the Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit returned to a Builder pursuant to the patent indemnity provisions of the Conditional Sale Agreement an amount equal to any payment made by such Builder to the Lessor in respect thereof under the Conditional Sale Agreement.

7.4. *Payments After Expiration of Lease.* If the date upon which the making of the payment by the Lessee in §7.1 hereof in respect of any Unit is required as aforesaid shall be after the term of this Lease or any renewal term thereof in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term, except as provided in §17 hereof.

7.5. *Amount of Casualty Value.* The Casualty Value for each Unit as of the Casualty Payment Date on which payment is made shall be:

(a) if the Casualty Payment Date coincides with any June 30 or December 30 on or after December 30, 1980, an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Appendix C hereto opposite such Casualty Payment Date, or

(b) if the Casualty Payment Date is a date other than any June 30 or December 30, the Casualty Value shall be an amount equal to (i) that percentage of the Purchase Price of such Unit as is set forth opposite the date which coincides with the next preceding June 30 or December 30 (or, in case the Casualty Payment Date is prior to December 30, 1980, then December 30, 1980) in Appendix C hereto (the "Rental Casualty Payment Date") plus (ii) 1.28% of the amount described in clause (i) hereof for each month or a portion of a month elapsed from and including such Rental Casualty Payment Date to the Casualty Payment Date upon which payment is to be made,

plus, on any Casualty Payment Date with respect to a Casualty Occurrence occurring before the third, fifth or seventh anniversary of the date of the Certificate of Acceptance for such Unit an amount equal to the percentage of the Purchase Price of such Unit suffering a Casualty Occurrence set forth below:

Anniversary of the date of the Certificate of Acceptance	Percentage of Purchase Price to be added
Third	20.35002%
Fifth	13.56668%
Seventh	6.78334%

7.6. *No Release.* 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.

7.7. *Insurance To Be Maintained.* (1) 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 (i) property insurance in respect of the Units at the time subject hereto; *provided, however*, that the Lessee may self-insure such Units to the extent it self-insures equipment similar to the Units and to the extent such self-insurance is consistent with prudent industry practice, and (ii) public liability insurance with respect to third party personal and property damage and the Lessee will continue to carry such insurance in such amounts and for such risks and with such insurance companies as is consistent with prudent industry practice but in any event at least, not less comprehensive in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Units, in each case satisfactory to the Lessor. The proceeds of any property insurance shall be payable to the Vendor, the Lessor and the Lessee, as their interests may appear, so long as the indebtedness, if any, evidenced by the Conditional Sale Agreement shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior written notice of cancellation or material change in coverage to the Lessor and the Vendor and (ii) name the Lessor and the Vendor as additional named insureds and loss payees as their respective interests may appear and in the event such policies shall contain breach of warranty provisions such policies shall provide that in respect of the interests of the Lessor and the Vendor in such policies the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Lessor and the Vendor, respectively) and shall insure the Lessor and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Lessor or the Vendor, respectively). Prior to the first date of delivery of any Unit pursuant to the Conditional Sale Agreement, and thereafter not less than 15 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to this §7, the Lessee shall

deliver to the Lessor and the Vendor a duplicate original of all policies (or in the case of blanket policies, certificates thereof issued by the insurers thereunder) for the insurance maintained pursuant to this §7; *provided, however,* that if the delivery of a formal policy or certificate, as the case may be, is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the formal policy or certificate, as the case may be, upon receipt thereof.

(2) In the event that the Lessee shall fail to maintain insurance as herein provided, the Lessor may at its option provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand from time to time, reimburse the Lessor for the cost thereof together with interest, on the amount of the cost to the Lessor of such insurance which the Lessee shall have failed to maintain, at the rate per annum specified in §19 hereof.

7.8. *Insurance Proceeds and Condemnation Payments.* If the Lessor shall receive (directly or from the Vendor) any insurance proceeds or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Lessor shall 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; *provided, however,* that no Event of Default shall have occurred and be continuing and the Lessee shall have made payment of the Casualty Value thereof, and accrued rentals in respect of such Units, to the Lessor. All insurance proceeds received by the Lessor (directly or from the Vendor) 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.

§8. REPORTS

On or before May 31 in each year, commencing with the calendar year 1981, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the total number, description and road numbers of all Units then leased hereunder and covered by the Conditional Sale Agreement, the total number, description and road 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 repair (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by §5.1 hereof have been preserved or replaced. The Lessor and the Vendor shall each have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Vendor may request during the continuance of this Lease.

§9. DISCLAIMER OF WARRANTIES

THE LESSOR DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE 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 DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims the Lessor may have against the Builders under the provisions of Items 3 and 4 of Annex A of the Conditional Sale Agreement; *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. 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, 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 or the Vendor based on any of the foregoing matters.

§10. LAWS AND RULES

10.1. *Compliance.* The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units or are necessary to comply with health, safety or environmental standards as more fully described in Section 4(4) of Rev. Proc. 75-21 as modified by Rev. Proc. 79-48, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Lessee will 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 Conditional Sale Agreement.

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

§11. MAINTENANCE

11.1. *Units in Good Operating Order.* The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted. Each Unit shall be maintained in accordance with Lessee's preventive maintenance schedules 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) appropriate and suitable for purchase or lease and use by a Class 1 line-haul railroad (not then or prospectively a debtor in any insolvency or reorganization proceedings). 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 by the Lessee for similar equipment.

11.2. *Additions and Accessions.* (1) Except as set forth in §§10.1 and 11.1 hereof, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units and do not adversely and materially affect the value of the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee if removed from the Units prior to the time such Units are returned as provided

in §§14 and 17, except to the extent such additions, modifications or improvements are made in order to comply with §11.2(2) hereof.

(2) Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of its agreements contained in §11.2(1) hereof, or (ii) the cost of which is included in the Purchase Price of such Unit, or (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Department of Transportation, the Interstate Commerce Commission or any other applicable regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Conditional Sale Agreement and the CSA Assignment) shall immediately be vested in the Lessor.

§12. INDEMNIFICATION

12.1. *Indemnified Persons.* The Lessee shall pay, and shall protect, indemnify and hold the Lessor, the Vendor and any assignee thereof, 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, the Conditional Sale Agreement 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 and other defects whether or not discoverable by the Lessor, the Vendor or the Lessee, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (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; or (vii) any claim arising out of any of the Lessor's obligations under the Lease Assignment or the Vendor's retention of a security interest under the Conditional Sale Agreement or the Lease Assignment or the Participation Agreement (except to the extent such claim arises from an act or omission of the party claiming indemnification). The Lessee shall be obligated under this §12.1, 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 §12.1 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 and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this §12, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason

of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Lessor each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this §12 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 (except against another 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 §12.1 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made. Nothing in this §12.1 shall constitute a guarantee by the Lessee of the Conditional Sale Indebtedness of the Lessor under the Conditional Sale Agreement or a guarantee of the residual value of any Unit.

The Lessee shall pay directly to the Indemnified Person amounts required to be paid pursuant to this §12, except that, if at any time the Lessee shall pay less than the entire amount of the indemnities at the time owing pursuant to this §12, the Lessee shall not make any payment to any party other than the Vendor or an Investor until such payments owing to the Vendor or the Investor under this §12 shall have been made in full to the Vendor and the Investors.

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

12.3. *Survival.* The indemnities contained in this §12 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 §12 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

§13. DEFAULT

13.1. *Events of Default; Remedies.* If, during the continuance of this Lease or any extension or renewal thereof, 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 16 hereof, and such default shall continue for 10 days;

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

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

D. any representation or warranty made by the Lessee herein or in the Participation Agreement (other than in the third paragraph of Paragraph 16 thereof) or in any certificate or

statement furnished to the Lessor pursuant to or in connection with any such agreements proves untrue in any material respect as of the date of issuance or making thereof;

E. a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the 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 proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed in accordance with the provisions of 11 U.S.C. §1168, or any successor provision as the same may hereafter be amended;

F. 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 proceeding 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 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 a trustee or trustees or receiver or receivers, within 60 days after such proceeding shall have been commenced; or

G. an event of default set forth in Article 16 of the Conditional Sale Agreement shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder;

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

(a) proceed by appropriate court action, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee 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 enter upon the premises of the Lessee or other premises, insofar as the Lessee may be lawfully authorized to so permit, where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period, by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts that the Lessor, in its sole discretion shall specify, (i) a sum, with respect to each Unit, which represents (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals 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, such present value to be computed on the basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rental would have been payable hereunder had this Lease not been terminated over the then present value of the rental which the Lessor reasonably estimates to be obtainable for each Unit during such period, such present value to be computed on the basis of a 6% per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or, if such Unit is sold, the net proceeds of the sale plus (y) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value 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 by the Lessee pursuant to the preceding clause (ii) 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 Casualty Payment Date on or next preceding the date of termination over the net proceeds of such sale.

The Lessee will pay all reasonable expenses, including attorneys' fees, incurred by the Lessor in enforcing its remedies under the terms of this Lease.

13.2. *Remedies Not Exclusive; Waiver.* 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 and/or recoupment against the rental payments due hereunder (except as provided in §3.1(4) hereof), and agrees to make such payments regardless of any offset or claim (except as provided in §3.1(4) hereof) which may be asserted by the Lessee or on its behalf.

13.3. *Failure To Exercise Rights Is Not Waiver.* The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

13.4. *Notice of Event of Default.* The Lessee also agrees to furnish the Lessor and the Vendor, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this §13.4, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

§14. RETURN OF UNITS UPON DEFAULT

14.1. *Return of Units.* If this Lease shall terminate pursuant to §13 hereof or pursuant to Article 16 of the Conditional Sale Agreement, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, shall meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction and shall have attached or

affixed thereto any special device considered an accession thereto as provided in §11 and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in §11, is owned by the Lessee. For the purpose of delivering possession of any Unit or Units as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to 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) and at the usual speed place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

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

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

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store, insure and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor.

14.2. *Lessor Appointed Agent of Lessee.* Without in any way limiting the obligation of the Lessee under the foregoing provisions of this §14, 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.

§15. ASSIGNMENT, POSSESSION AND USE

15.1. *Assignment; Consent.* This Lease shall be not assignable by the Lessee or the Lessor without the prior written consent of the other party, except the Lessor, without the consent of the Lessee, may, subject to the provisions of paragraph 15.1 of the Conditional Sale Agreement, assign all but not less than all of its interest hereunder to any corporation which is a member of the "affiliated group" (as defined in section 1504 of the Internal Revenue Code of 1954, as amended) of the Bank of America National Trust and Savings Association or to any banking or financial institution which has a combined capital and surplus of at least $50,000,000 and which has no interlocking relationship with the Lessee within the meaning of Section 10 of the Clayton Act. The Lessee hereby consents to the assignment of this Lease pursuant to the Lease Assignment.

15.2. *Lessee's Rights To Use the Units, To Permit Use Thereof by Others and To Sublease the Units.* (1) So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) 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 the Conditional Sale Agreement. Without the prior written consent of the Lessor and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in any of the Units or sublease any of the Units, except as provided in paragraph (2) below of this §15.2; and the Lessee shall not, without the prior written consent of the Lessor and the Vendor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of paragraph (2) of this §15.2. 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 or any encumbrance on the leasehold estate of the Lessee which is subject and subordinate to the interests of the Lessor and the Vendor) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

(2) 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 as of January 2, 1980, providing for the lease of approximately 235 locomotives (less the number leased hereunder), (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 of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and to assign its rights to the Units or to sublease the Units to any of its affiliates, but only upon and subject to all the terms and conditions of this Lease and the Conditional Sale Agreement; *provided, however,* that the Lessee shall not assign, sublease or permit the assignment, sublease or use of any Unit predominantly outside the United States of America within the meaning of Section 48(a) of the Internal Revenue Code of 1954, as amended to the date hereof, nor shall the Lessee assign or sublease to, or permit the sublease or use of the Units by, any person in whose hands such Units would not qualify as "section 38 property" within the meaning of said Code. The Lessee may receive and retain compensation for the use of any of the Units from other railroads so using such Units. Any sublease permitted by this paragraph may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; *provided, however,* that every such sublease shall be subject and subordinate to the rights and remedies of the Vendor under the Conditional Sale Agreement and the Lessor under this Lease in respect of the Units covered by such sublease upon the occurrence of an event of default or Event of Default thereunder or hereunder.

15.3. *Transfers by Lessee Through Merger, Acquisition or Consolidation.* Nothing in this §15 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease and shall have assumed all of the obligations of the Lessee under this Lease, the Consent and the Participation Agreement by an appropriate instrument in writing.

§16. RENEWAL OPTIONS

16.1. *Renewal for Successive Periods.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the end of the original term, the first extended term or the second extended term of this Lease, elect to extend such original or extended term of this Lease, as the case may be, in respect of all but not less than all the Units then covered by this Lease or the then extended term, as the case may be, for an additional two-year period commencing on the scheduled expiration of such original term or then extended term, as the case may be, of this Lease. The rental payable during each extended term shall be payable annually in arrears on December 30 of each year of such extended term and shall be in an amount equal to the "Fair Market Rental".

16.2. *Determination of Fair Market Rental.* (1) Fair Market Rental shall be determined for each extended term of this Lease on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental and it shall be assumed that all the Units have been assembled in one place on the lines of the Lessee.

(2) If, after 50 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease for any extended term, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance 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 value 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 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 35 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, 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 of the Units subject to the proposed extended term within 90 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 of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto as the Fair Market Rental. 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 and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

§17. RETURN OF UNITS UPON EXPIRATION OF TERM

As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit and in any event not later than 180 days thereafter, 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 reasonably designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding 150 days and transport the same upon disposition of the Units, at any time within such period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of such Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser or user, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this §17 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any

governmental agency or other organization with jurisdiction, (iii) have attached or affixed thereto any special device considered an accession thereto as provided in §11 hereof and have removed therefrom any such device not so considered an accession and (iv) be appropriate and suitable for purchase or lease and use by a Class 1 line-haul railroad (not then or prospectively a debtor in any insolvency or reorganization proceedings). During any such storage period the Lessee shall maintain the Units in such manner as the Lessee normally maintains similar units of railroad equipment owned or leased by it in similar storage circumstances. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If any Unit suffers a Casualty Occurrence during any storage period provided for in this §17, the Lessee shall pay to the Lessor the Casualty Value of such Unit as determined in accordance with §7 hereof. For the period from such expiration of the Lease to the delivery of possession of each such Unit to the Lessor on such storage tracks as aforesaid, the Lessee shall pay to the Lessor a daily rental for each such Unit for the first 30 days at a rate equal to .016667% of the Purchase Price of such Unit per day and for the next 150 days at a rate equal to 1/360th of the last applicable annual lease rental per day which rentals shall be payable monthly commencing 30 days after such expiration of this Lease. If the Lessee shall not deliver possession of any Unit to the Lessor within 180 days from such expiration of the Lease, such Unit shall be deemed to have suffered a Casualty Occurrence on the 180th day from such expiration of the Lease and the provisions of §7 hereof shall apply.

§18. RECORDING

The Lessee, at its own expense, will cause this Lease, the Conditional Sale Agreement, the CSA Assignment and the Lease Assignment to be filed and recorded 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. The Lessee will undertake the filing, registering, deposit and recording required of the Lessor under the Conditional Sale Agreement. The Lessee in addition will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Conditional Sale Agreement, the CSA Assignment and the Lease Assignment; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion 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 Conditional Sale Agreement or the CSA Assignment in Canada. This Lease, the Conditional Sale Agreement, the CSA Assignment and the Lease Assignment shall be filed and recorded 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 will have been made for publication of notice of such deposit in *The Canada Gazette* prior to the delivery and acceptance hereunder of any Unit.

§19. INTEREST ON OVERDUE RENTALS

Anything to the 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 equal to interest at 10⅞% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§20. LESSOR'S RIGHT TO PERFORM FOR THE LESSEE

If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at the rate per annum which Manufacturers Hanover Trust Company, New York, N. Y., charges for unsecured 90-day loans to large corporate borrowers at the time in effect, shall be payable by the Lessee upon demand except as otherwise provided in this Lease. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor or any assignee of the Lessor against the Lessee hereunder or be deemed to cure the default of the Lessee hereunder.

§21. 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 P.O. Box 37009, San Francisco, California 94137, Attention of Leveraged Leasing Department,

(b) if to the Lessee, at 176 East Fifth Street, St. Paul, Minnesota 55101, Attention: Vice President and Treasurer,

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing. Any notice received by the Lessee from the Vendor shall also be furnished by the Lessee to the Lessor.

§22. SEVERABILITY

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

§23. EFFECT AND MODIFICATION OF LEASE

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

§24. THIRD PARTY BENEFICIARIES

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Vendor and the permitted successors and assigns of a party, and, as to §12.2 hereof, the Builders) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

§25. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Lease Assignment shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§26. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota; *provided, however,* that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303 and Section 86 of the Railway Act of Canada.

§27. AGREEMENTS FOR BENEFIT OF LESSOR'S ASSIGNS

All rights of the Lessor hereunder (including, but not limited to, its rights under §§7, 9, 13, 14 and 17 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns including the Vendor.

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

BURLINGTON NORTHERN INC.,

by R C Bu...
Vice President and Treasurer

[CORPORATE SEAL]

ATTEST: J...
Assistant Secretary

BAMERILEASE CAPITAL CORPORATION,

by

by

[CORPORATE SEAL]

ATTEST:
Assistant Vice President

STATE OF MINNESOTA,
COUNTY OF RAMSEY, } ss.:

On this 10th day of Dec., 1979, before me personally appeared R. C. Burton, Jr., to me personally known, who, being by me duly sworn, says that he is the Vice President and Treasurer of BURLINGTON NORTHERN INC., 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.

J. H. McCarthy
Notary Public

J. H. McCARTHY
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Comm. Expires Jan. 6, 1982

[NOTARIAL SEAL]

My Commission expires

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

On this day of , 1979, before me personally appeared and , to me personally known, who, being by me duly sworn, say that they are and , respectively, of BAMERILEASE CAPITAL 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]

My Commission expires

APPENDIX A TO LEASE

Type	Builder	Builder's Specifications	Builder's Plant	Quantity	Lessee's Road Numbers (Both Inclusive)	Estimated† Unit Base Price	Estimated Total Base Price	Estimated Time and Place of Delivery
3,000 h.p. Model SD 40-2 diesel-electric locomotive	EMD	8087	La Grange, Illinois	150	BN 7206-7301 7924-7940 8090-8126	$746,803.36	$112,020,504	January through June 1980, at Fridley, Minnesota
3,000 h.p. Model C30-7 diesel-electric locomotive	GE	3390 G	Erie, Pennsylvania	40	BN 5087-5126	$771,992.00	30,879,680	January through June 1980, F.O.B. Builder's plant at Erie, Pennsylvania
				190			$142,900,184	

†The Estimated Unit Base Price includes prepaid freight to Fridley, Minnesota.

APPENDIX B-1 TO LEASE

Date	Percentage of Purchase Price*
12/30/81	7.863179
12/30/82	7.863179
12/30/83	7.863179
12/30/84	7.863179
12/30/85	7.863179
12/30/86	7.863179
12/30/87	9.610552
12/30/88	9.610552
12/30/89	9.610552
12/30/90	9.610552
12/30/91	9.610552
12/30/92	9.610552
12/30/93	9.610552
12/30/94	9.610552
12/30/95	9.610552
12/30/96	9.610552

* As defined in paragraph 4.1 of the Conditional Sale Agreement.

APPENDIX B-2 TO LEASE

Date	Percentage of Purchase Price*
12/30/80	**
6/30/81	3.678437
6/30/82	3.649399
6/30/83	3.481765
6/30/84	3.297577
6/30/85	3.095200
6/30/86	2.872839
6/30/87	2.685700
6/30/88	2.439219
6/30/89	2.110769
6/30/90	1.925355
6/30/91	1.721632
6/30/92	1.497791
6/30/93	1.251845
6/30/94	.981612
6/30/95	.684694
6/30/96	.358455

*As defined in paragraph 4.1 of the Conditional Sale Agreement.

**Such percentage of Purchase Price as shall be necessary to provide sufficient funds to the Lessor to make the interest and commitment fee payments to the Investors on December 30, 1980, as provided in the last paragraph of Paragraph 9 of the Participation Agreement.

APPENDIX C TO LEASE

Casualty Payment Dates	Percentage of Purchase Price*
6/30/80 and before	91.0342010
12/30/80	88.5042849
6/30/81	93.0248673
12/30/81	89.7039696
6/30/82	93.8480663
12/30/82	90.0972700
6/30/83	93.8621616
12/30/83	89.7791056
6/30/84	93.2222769
12/30/84	88.8329415
6/30/85	92.0022184
12/30/85	87.3491905
6/30/86	90.2885526
12/30/86	85.3975117
6/30/87	88.1515713
12/30/87	81.3194824
6/30/88	83.8325657
12/30/88	76.7565552
6/30/89	78.9473164
12/30/89	71.6667390
6/30/90	73.7033824
12/30/90	66.2026742
6/30/91	68.0346296
12/30/91	60.3402190
6/30/92	61.9568600
12/30/92	54.0961706
6/30/93	55.5346414
12/30/93	47.5469529
6/30/94	48.8691370
12/30/94	40.7700424
6/30/95	41.9839085
12/30/95	33.7815606
6/30/96	34.8951563
12/30/96	26.6002187
6/30/97	27.6167274
12/30/97	25.0291273
6/30/98	26.0153491
12/30/98	23.3663175
6/30/99	24.2887567
12/30/99	21.5734982
6/30/00	22.4271722
12/30/00 and thereafter	20.0000000

*As defined in paragraph 4.1 of the Conditional Sale Agreement.

[CS&M Ref. 4657-003]

LEASE OF RAILROAD EQUIPMENT

Dated as of October 1, 1979

BETWEEN

BURLINGTON NORTHERN INC.,
as Lessee,

AND

BAMERILEASE CAPITAL CORPORATION,
as Lessor.

LEASE OF RAILROAD EQUIPMENT

TABLE OF CONTENTS*

*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.

	Page
PARTIES	L-1
PREAMBLES	L-1
GRANTING CLAUSE	L-1
SECTION 1. NET LEASE	L-1
SECTION 2. DELIVERY	L-2
2.1. Delivery and Acceptance of Units	L-2
SECTION 3. RENTALS	L-2
3.1. Amount and Date of Payment	L-2
3.2. Payments on Nonbusiness Days	L-3
3.3. Instructions to Pay Vendor and Lessor	L-3
3.4. Payment in Immediately Available Funds	L-4
SECTION 4. TERM OF LEASE	L-4
4.1. Beginning and Termination; Survival	L-4
4.2. Rights and Obligations of Lessee Subject to Conditional Sale Agreement	L-4
SECTION 5. IDENTIFICATION MARKS	L-4
5.1. Identifying Numbers; Legend; Changes	L-4
5.2. Insignia of Lessee	L-5
SECTION 6. TAXES	L-5
6.1. Indemnification for Nonincome Taxes	L-5
6.2. Claims; Contests; Refunds	L-5
6.3. Reports or Returns	L-6
6.4. Survival	L-6
SECTION 7. PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE	L-6
7.1. Definitions of Casualty Occurrence; Payments	L-6
7.2. Requisition by United States Government	L-7
7.3. Lessee Agent for Disposal	L-7
7.4. Payments After Expiration of Lease	L-7
7.5. Amount of Casualty Value	L-7
7.6. No Release	L-8
7.7. Insurance To Be Maintained	L-8
7.8. Insurance Proceeds and Condemnation Payments	L-9

Page

SECTION 8. REPORTS L-9

SECTION 9. DISCLAIMER OF WARRANTIES L-9

SECTION 10. LAWS AND RULES L-10
10.1. Compliance L-10
10.2. Reports by Lessor L-10

SECTION 11. MAINTENANCE L-10
11.1. Units in Good Operating Order L-10
11.2. Additions and Accessions L-10

SECTION 12. INDEMNIFICATION L-11
12.1. Indemnified Persons L-11
12.2. Indemnification of Builders L-12
12.3. Survival L-12

SECTION 13. DEFAULT L-12
13.1. Events of Default; Remedies L-12
13.2. Remedies Not Exclusive; Waiver L-14
13.3. Failure to Exercise Rights Is Not Waiver L-14
13.4. Notice of Event of Default L-14

SECTION 14. RETURN OF UNITS UPON DEFAULT L-14
14.1. Return of Units L-14
14.2. Lessor Appointed Agent of Lessee L-15

SECTION 15. ASSIGNMENT, POSSESSION AND USE L-15
15.1. Assignment; Consent L-15
15.2. Lessee's Rights To Use the Units, To Permit Use Thereof by Others and To Sublease the Units L-15
15.3. Transfers by Lessee Through Merger, Acquisition or Consolidation L-16

SECTION 16. RENEWAL OPTIONS L-16
16.1. Renewal for Successive Periods L-16
16.2. Determination of Fair Market Rental L-17

SECTION 17. RETURN OF UNITS UPON EXPIRATION OF TERM L-17

SECTION 18. RECORDING L-18

SECTION 19. INTEREST ON OVERDUE RENTALS L-18

SECTION 20. LESSOR'S RIGHT TO PERFORM FOR THE LESSEE L-19

SECTION 21. NOTICES L-19

Page

SECTION 22. SEVERABILITY L-19

SECTION 23. EFFECT AND MODIFICATION OF LEASE L-19

SECTION 24. THIRD PARTY BENEFICIARIES L-19

SECTION 25. EXECUTION L-19

SECTION 26. LAW GOVERNING L-20

SECTION 27. AGREEMENTS FOR BENEFIT OF LESSOR'S ASSIGNS L-20

TESTIMONIUM L-20

SIGNATURES L-20

ACKNOWLEDGMENTS L-21

APPENDIX A Units Leased

APPENDIX B Rental Rates

APPENDIX C Schedule of Casualty Values

LEASE OF RAILROAD EQUIPMENT dated as of October 1, 1979, between BURLINGTON NORTHERN INC., a Delaware corporation (the "Lessee"), and BAMERILEASE CAPITAL CORPORATION, a California corporation (the "Lessor").

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

WHEREAS each Builder is assigning its interests in the Conditional Sale Agreement pursuant to an Agreement and Assignment dated the date hereof (the "CSA Assignment") to Mercantile-Safe Deposit and Trust Company, acting as agent for certain investors under a Participation Agreement dated as of the date hereof (the "Participation Agreement") among said agent, the Lessee, the Lessor and the investors named in Appendix I thereto (the "Investors") (said agent as so acting, together with the Investors unless the context otherwise requires, being hereinafter, together with its successors and assigns, called the "Vendor");

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

WHEREAS the Lessor will assign certain of its rights under this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement (the "Lease Assignment") dated as of the date hereof and the Lessee will acknowledge and consent thereto pursuant to the Consent and Agreement (the "Consent") in the form attached to the Lease Assignment;

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. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein specifically provided, the Lessee shall not be entitled to any abatement of rent, reduction thereof, recoupment or setoff against rent or such other amounts, including, but not limited to, abatements, reductions, recoupments or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or the Conditional Sale Agreement including the Lessee's rights by subrogation thereunder to the Builders or the Vendor or otherwise (except as provided in §3.1(4) hereof); nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final, and the Lessee shall not seek to recover all or any part of such payment from the Lessor (except as provided in §3.1(4) hereof) or the Vendor for any reason whatsoever.

§2. DELIVERY

2.1. *Delivery and Acceptance of Units.* The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Conditional Sale Agreement. Each delivery of a Unit to the Lessor under the Conditional Sale Agreement shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is so delivered to the Lessor. 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 on behalf of the Lessor under the Conditional Sale Agreement and on behalf of itself hereunder and execute and deliver to the Lessor a certificate of acceptance (the "Certificate of Acceptance") in accordance with the provisions of Article 3 of the Conditional Sale Agreement, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with §5.1 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§3. RENTALS

3.1. *Amount and Date of Payment.* (1) As rental for each Unit subject to this Lease, the Lessee agrees to pay the Lessor 16 consecutive annual payments payable, in arrears, on December 30 in each year, commencing December 30, 1981, to and including December 30, 1996. The 16 annual rental payments shall each be in an amount equal to the basic lease rate set forth in Appendix B-1 hereto for the applicable payment date multiplied by the Purchase Price (as defined in Paragraph 4.1 of the Conditional Sale Agreement) of each Unit.

(2) The basic lease rates set forth in Appendix B-1 hereto have been calculated on the assumption that the Units will have been settled for on the dates, in the amounts and with funds as follows:

Assumed Settlement Date	Assumed Settlement Amount	Assumed Investors' Funds	Assumed Lessor's Funds
1/30/80	$ 17,862,523	$ 13,307,579.62	$ 4,554,943.38
2/20/80	17,862,523	13,307,579.62	4,554,943.38
3/14/80	17,862,523	13,307,579.62	4,554,943.38
4/ 8/80	17,862,523	13,307,579.62	4,554,943.38
5/ 7/80	17,862,523	13,307,579.62	4,554,943.38
5/27/80	17,862,523	13,307,579.62	4,554,943.38
6/19/80	17,862,523	13,307,579.62	4,554,943.38
7/ 8/80	17,862,523	13,307,579.66	4,554,943.34
	$142,900,184	$106,460,637.00	$36,439,547.00

If for any reason any Units are settled for other than as assumed above, then such basic lease rates (and the related Casualty Values set forth in Appendix C hereto) payable by the Lessee hereunder in respect of the Units from and after December 30, 1981, shall be increased or decreased, as the case may be, by such amount as shall, in the reasonable opinion of the Lessor, cause the Lessor's after-tax economic and accounting yields and cash flows, computed on the same assumptions used by the Lessor in its original computation of the lease rate, yields and cash flows (as such may have been revised by any change in the tax laws enacted prior to December 31, 1980, and effective prior to the date of the first delivery of a Unit hereunder) to at least equal the after-tax economic and accounting yields and cash flows (such yields and cash flows being hereinafter called the "Net Economic Return") that would have been realized by the Lessor if all Units had been settled for as assumed above. Such basic lease rates have also been calculated on the assumption that there will not be (i) any fees and expenses payable to the Agent by the Vendee pursuant to the last sentence of the second paragraph of Paragraph 9 of the Participation Agreement, (ii) any Investment Deficiency payable by the Vendee to the Agent pursuant to the third paragraph of Paragraph 2 of the Participation Agreement, (iii) any interest payable on the Surplus Deposit pursuant to the last paragraph of Paragraph 9 of the Participation Agreement and on the further assumptions that (iv) no change in the Federal or California state income tax laws will be enacted prior to December 31, 1980, and effective prior to the first delivery and acceptance of a Unit hereunder, which change alters or eliminates the Tax Benefits

(as defined in Paragraph 16 of the Participation Agreement) or which change alters the tax rates in effect on August 14, 1979, (v) the amount of interest (other than interest on the commitment fee) payable to the Investors on December 30, 1980, will not exceed 1.88% of the aggregate Purchase Price of the Units, (vi) the amount of the commitment fee and interest thereon payable to the Investors on December 30, 1980, will not exceed 0.17% of the aggregate Purchase Price of the Units and (vii) the amount of the fees and expenses payable pursuant to Paragraph 12 of the Participation Agreement will not exceed $64,200. If for any reason these assumptions prove to be incorrect, then such basic lease rates (and the related Casualty Values set forth in Appendix C hereto) payable by the Lessee hereunder in respect of the Units from and after December 30, 1981, shall be increased or decreased, as the case may be, by such amount as shall, in the reasonable opinion of the Lessor, cause the Lessor's Net Economic Return to at least equal the Net Economic Return that would have been realized by the Lessor if such assumptions had proved to be correct. The Lessor shall provide a schedule of such rentals and Casualty Values to the Lessee and the Vendor promptly after the facts have been determined and the calculations have been made.

(3) In the event that any dispute should arise as to the calculation of such rentals under §3.1(2) (or the related Casualty Values), the Lessee agrees, pending resolution of such dispute, to pay on account of such rentals (or such Casualty Values), on the dates due hereunder, amounts at least equal to the principal and/or interest payable on each such date under paragraphs 4.3(b), 4.4 and 7.2 of the Conditional Sale Agreement, but no such payment shall, as between the Lessor and the Lessee, prejudice the right of the Lessor to receive from the Lessee any amount in addition thereto, due and payable hereunder.

(4) If and to the extent that the Vendor shall not, pursuant to Paragraph 15 of the Participation Agreement, receive the funds due thereunder on December 30, 1980, or June 30 in each year commencing June 30, 1981, to and including June 30, 1996, the Lessee agrees to pay to the Lessor as additional rental for each Unit subject to this Lease, on each such date an amount equal to the applicable basic lease rate therefor set forth in Appendix B-2 hereto for such date multiplied by the Purchase Price of each such Unit, and the Lessee shall be entitled to an offset against subsequent rental payments due hereunder during the original term and any extended term of this Lease (to the extent such payments are not required to discharge principal and interest on the Conditional Sale Indebtedness) of an amount equal to the amount so paid by the Lessee plus interest thereon from the date of payment by the Lessee to the date of offset at the rate of 10⅞% per annum.

(5) Anything in the foregoing provisions of this §3.1 to the contrary notwithstanding, it is agreed that the aggregate of the rentals payable pursuant to this §3.1 on each rental payment date, when added to the amount theretofore paid by the Lessor in respect of such date pursuant to Paragraph 15 of the Participation Agreement, shall in no event be less than the principal and/or interest payment due on each such date pursuant to paragraphs 4.3(b) and 4.4 of the Conditional Sale Agreement.

3.2. *Payments on Nonbusiness Days.* If any of the rental payment dates referred to in §3.1 is not a business day the rental payment otherwise payable on such date shall be payable on the next business day, and no interest shall be payable thereon for the period from and after the scheduled date for payment thereof to such next 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 New York, New York, San Francisco, California, or Baltimore, Maryland, are authorized or obligated to remain closed.

3.3. *Instructions To Pay Vendor and Lessor.* If the Lease Assignment is executed and delivered, until the Vendor shall have advised the Lessee in writing that all sums due from the Lessor under the Conditional Sale Agreement have been fully satisfied and discharged, the Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease to the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor (a) first to apply such payments to satisfy the obligations of the Lessor under the Conditional Sale Agreement known to the Vendor to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no event of default under the Conditional Sale Agreement shall have occurred and be continuing, to pay any balance promptly to the Lessor or to the order of the Lessor in immediately available funds

at such place as the Lessor shall specify in writing. If the Lease Assignment is not executed and delivered, or if the Lessee shall have been advised by the Vendor in writing that all sums due from the Lessor under the Conditional Sale Agreement have been fully discharged and satisfied, the installments of rental due hereunder and any Casualty Payments thereafter due pursuant to §7 hereof shall be made to the Lessor in immediately available funds in the manner provided in §3.4 hereof.

3.4. *Payment in Immediately Available Funds.* The Lessee agrees to make each payment provided for herein as contemplated by §3.1 in immediately available funds at or prior to 11:00 a.m. in the city where such payment is to be made.

§4. TERM OF LEASE

4.1. *Beginning and Termination; Survival.* The term of this Lease as to each Unit shall begin on the date of delivery of such Unit under the Conditional Sale Agreement and, subject to the provisions of §§7, 13 and 16 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to §3.1 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§6, 7, 10, 11, 12, 14, 17 and 19 hereof) shall survive the expiration of the term of this Lease.

4.2. *Rights and Obligations of Lessee Subject to Conditional Sale Agreement.* 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 Conditional Sale Agreement. If an event of default should occur under the Conditional Sale Agreement, the Vendor may terminate this Lease without affecting the indemnities which by the provisions of this Lease survive the termination of its term (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 as of January 2, 1980, providing for the lease of approximately 235 locomotives (less the number leased hereunder), (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 §15 hereof.

§5. IDENTIFICATION MARKS

5.1. *Identifying Numbers; Legend; Changes.* The Lessee will cause each Unit to be kept numbered with the road number set forth in Appendix A hereto, or in the case of any Unit not there listed such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the rights of the Vendor under the Conditional Sale Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, obliterated, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Conditional Sale Agreement shall have been filed, recorded and deposited 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, recorded and deposited, such filing, recordation and deposit will protect the Vendor's and the Lessor's interests in such Units and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Lessor in such Units.

5.2. *Insignia of Lessee.* The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates, but the Lessee will not allow the name of any other person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§6. TAXES

6.1. *Indemnification for Nonincome Taxes.* Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay, and to indemnify and hold the Lessor and the Vendor harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Lessor, the Vendor, the Lessee or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to, any Unit or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the indebtedness with respect thereto; the rentals, receipts or earnings arising therefrom; or this Lease, the Participation Agreement, the Conditional Sale Agreement, the CSA Assignment, the Lease Assignment, any payment made pursuant to any such agreement, or the property, the income or other proceeds received by the Lessor (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); *excluding, however:* (i) Taxes of the United States or of any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is able to and does actually utilize a credit therefor against its United States Federal income taxes assuming the credit therefor is the last such credit to be so utilized by the person so indemnified or if the sole reason for the failure to utilize the said credit is the failure of the Lessor to timely and properly claim such credit) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Lessor or the Vendor, or franchise taxes to the extent measured by gross receipts or net income based on gross receipts of the Lessor or the Vendor, or gross receipts taxes other than gross receipts taxes in the nature of sales or use taxes; (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by the Lessor not resulting from any default under this Lease by the Lessee or any Casualty Occurrence, or any transfer or disposition by the Lessor resulting from bankruptcy or other proceedings for the relief of debtors in which the Lessor is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease; and (iii) any Taxes imposed on or measured by any fees or compensation for services received by the Vendor or the Lessor; *but not excluding:* (x) Taxes of a state or political subdivision thereof excluded pursuant to the provisions of clause (i) above to the extent that (a) the sum of such Taxes paid with respect to a taxable year exceeds (b) the Taxes which would have been paid had the entire income been apportioned to the city and state in which Lessor's principal place of business is located; (y) any of the foregoing taxes which by the terms of the statute imposing such tax expressly relieve the Lessee from the payment of Taxes which it would otherwise be obligated to pay or indemnify as herein provided; or (z) any Taxes arising out of or imposed in respect of the receipt of any indemnification payments made pursuant to this Lease. Notwithstanding the foregoing, Lessee shall not be required to pay any taxes during the period it may be contesting the same in the manner provided in §6.2 hereof. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee under the laws of the United States or of any state or political subdivision thereof, or of any foreign country or subdivision thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; *provided, however,* that the Lessee shall not be required to pay any such tax during the period it may be contesting the same in good faith and in an appropriate manner.

The Lessee shall pay directly to the indemnified person amounts required to be paid pursuant to this §6, except that, if at any time the Lessee shall pay less than the entire amount of the indemnities at the time owing pursuant to this §6, the Lessee shall not make any payment to any party other than the Vendor or an Investor until such payments owing to the Vendor or the Investors under this §6 shall have been made in full to the Vendor and the Investors.

6.2. *Claims; Contests; Refunds.* If claim is made against the Lessor or the Vendor for any Taxes indemnified against under this §6, such party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, the Lessor or the Vendor, as the case may be, shall, upon receipt of any indemnity satisfactory to it for all its reasonable charges for its services rendered in connection therewith and for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith and in a reasonable manner, the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, or (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Lessor or the Vendor; provided that, no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Lessor or the Vendor in any such proceeding or action) if in the opinion of the Lessor or the Vendor such contest or the nonpayment of the Taxes would adversely affect the title, property or rights of the Lessor hereunder or of the Vendor under the Conditional Sale Agreement. The Lessee agrees to give the Lessor and the Vendor reasonable notice of such contest prior to the commencement thereof. If the Lessor or the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon, the Lessor or the Vendor, as the case may be, shall pay the Lessee the amount of such refund or interest net of expenses; *provided, however,* that no Event of Default and no event which with notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing.

6.3. *Reports or Returns.* In case any report or return is required to be made with respect to any obligation of the Lessee under or arising out of this §6 (except obligations resulting from the last sentence of §6.1), the Lessee will, where permitted to do so under applicable rules and regulations, make and timely file such reports and returns in such manner as to show the interest of the Lessor and the Vendor in the Units as shall be satisfactory to the Lessor and the Vendor or, where not so permitted, will notify the Lessor and the Vendor of such requirement and will prepare and deliver such reports to the Lessor and the Vendor within a reasonable time prior to the time such reports are to be filed. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

6.4. *Survival.* All the obligations of the Lessee under this §6 shall survive and continue, but only with respect to periods included in the term of this Lease, notwithstanding payment in full of all amounts due under the Conditional Sale Agreement or the termination of this Lease. Payments due from the Lessee to the Lessor or the Vendor under this §6 shall be made directly to the party indemnified.

§7. PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE

7.1. *Definitions of Casualty Occurrence; Payments.* In the event that any Unit of Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever during the term of this Lease or any renewal term hereof or until such Unit is returned pursuant to §§14 or 17 hereof, or the Purchase Price of any Unit shall have been refunded by the Builder of such Unit pursuant to the terms of its patent indemnity therefor or any Unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of this Lease or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days during the term of this Lease or during any renewal term hereof (any such occurrence being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the next succeeding thirtieth day of a month occurring at least ten days after such notice from the Lessee has been received or, at the option of the Lessee, on the next succeeding June 30 or December 30 (each such date being hereinafter called a "Casualty Payment Date"), the

Lessee shall pay to the Lessor a sum equal to the Casualty Value (as hereinafter defined) of any such Unit as of such Casualty Payment Date, plus in the case of any Casualty Payment Date coinciding with June 30 or December 30, the rental, if any, in respect of such Unit payable by the Lessee as of such date; *provided, however,* that in the event of a Casualty Occurrence during the period any Unit is required to be returned pursuant to §14 or §17 hereof and the 10 days prior thereto, the Lessee shall make such payment of the Casualty Value, and any earnings or rentals accrued pursuant to §14 or §17 hereof, to the Lessor on a date 30 days after such Casualty Occurrence. 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 return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit.

In addition to the occurrences constituting a Casualty Occurrence under the preceding paragraph, if any Unit shall have been taken or requisitioned by the United States Government or any other governmental entity and such taking or requisition shall not theretofore constitute a Casualty Occurrence as aforesaid, such taking or requisition shall be deemed a Casualty Occurrence if the same shall be continuing at the end of the original or any renewal term of this Lease, in which event the Lessee shall promptly and fully notify the Lessor with respect thereto and pay the Lessor an amount equal to the Casualty Value of such Unit as of the end of such term. Following such payment, the Lessee shall be entitled to receive condemnation payments in respect of such Unit up to an amount equal to such Casualty Value and any balance of such payments shall be the property of the Lessor. In the event such Unit shall be returned by the governmental entity prior to the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, then the Lessee shall dispose of such Unit as agent for the Lessor and shall retain the proceeds of such disposition to the extent that the aggregate of the amounts so retained and the condemnation payments theretofore received by the Lessee shall equal such Casualty Value, and the balance of such proceeds shall be promptly paid to the Lessor. In the event such Unit shall be returned by the governmental entity following the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, such Unit shall be returned by the Lessee to the Lessor in the manner provided in §17 hereof.

7.2. *Requisition by United States Government.* In the event of the requisition for use by the United States Government of any Unit for a period which does not exceed the then remaining term of this Lease (except where deemed a Casualty Occurrence pursuant to the last paragraph of §7.1 hereof), all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred. All payments received by the Lessor or the Lessee from the United States Government for the use of such Unit during the term of this Lease 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.

7.3. *Lessee Agent for Disposal.* The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof before and after expiration of this Lease, at the best price obtainable under the circumstances on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor (i) 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 and (ii) the Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit returned to a Builder pursuant to the patent indemnity provisions of the Conditional Sale Agreement an amount equal to any payment made by such Builder to the Lessor in respect thereof under the Conditional Sale Agreement.

7.4. *Payments After Expiration of Lease.* If the date upon which the making of the payment by the Lessee in §7.1 hereof in respect of any Unit is required as aforesaid shall be after the term of this Lease or any renewal term thereof in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term, except as provided in §17 hereof.

7.5. *Amount of Casualty Value.* The Casualty Value for each Unit as of the Casualty Payment Date on which payment is made shall be:

(a) if the Casualty Payment Date coincides with any June 30 or December 30 on or after December 30, 1980, an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Appendix C hereto opposite such Casualty Payment Date, or

(b) if the Casualty Payment Date is a date other than any June 30 or December 30, the Casualty Value shall be an amount equal to (i) that percentage of the Purchase Price of such Unit as is set forth opposite the date which coincides with the next preceding June 30 or December 30 (or, in case the Casualty Payment Date is prior to December 30, 1980, then December 30, 1980) in Appendix C hereto (the "Rental Casualty Payment Date") plus (ii) 1.28% of the amount described in clause (i) hereof for each month or a portion of a month elapsed from and including such Rental Casualty Payment Date to the Casualty Payment Date upon which payment is to be made,

plus, on any Casualty Payment Date with respect to a Casualty Occurrence occurring before the third, fifth or seventh anniversary of the date of the Certificate of Acceptance for such Unit an amount equal to the percentage of the Purchase Price of such Unit suffering a Casualty Occurrence set forth below:

Anniversary of the date of the Certificate of Acceptance	Percentage of Purchase Price to be added
Third	20.35002%
Fifth	13.56668%
Seventh	6.78334%

7.6. *No Release.* 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.

7.7. *Insurance To Be Maintained.* (1) 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 (i) property insurance in respect of the Units at the time subject hereto; *provided, however,* that the Lessee may self-insure such Units to the extent it self-insures equipment similar to the Units and to the extent such self-insurance is consistent with prudent industry practice, and (ii) public liability insurance with respect to third party personal and property damage and the Lessee will continue to carry such insurance in such amounts and for such risks and with such insurance companies as is consistent with prudent industry practice but in any event at least, not less comprehensive in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Units, in each case satisfactory to the Lessor. The proceeds of any property insurance shall be payable to the Vendor, the Lessor and the Lessee, as their interests may appear, so long as the indebtedness, if any, evidenced by the Conditional Sale Agreement shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior written notice of cancellation or material change in coverage to the Lessor and the Vendor and (ii) name the Lessor and the Vendor as additional named insureds and loss payees as their respective interests may appear and in the event such policies shall contain breach of warranty provisions such policies shall provide that in respect of the interests of the Lessor and the Vendor in such policies the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Lessor and the Vendor, respectively) and shall insure the Lessor and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Lessor or the Vendor, respectively). Prior to the first date of delivery of any Unit pursuant to the Conditional Sale Agreement, and thereafter not less than 15 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to this §7, the Lessee shall

deliver to the Lessor and the Vendor a duplicate original of all policies (or in the case of blanket policies, certificates thereof issued by the insurers thereunder) for the insurance maintained pursuant to this §7; *provided, however*, that if the delivery of a formal policy or certificate, as the case may be, is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the formal policy or certificate, as the case may be, upon receipt thereof.

(2) In the event that the Lessee shall fail to maintain insurance as herein provided, the Lessor may at its option provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand from time to time, reimburse the Lessor for the cost thereof together with interest, on the amount of the cost to the Lessor of such insurance which the Lessee shall have failed to maintain, at the rate per annum specified in §19 hereof.

7.8. *Insurance Proceeds and Condemnation Payments.* If the Lessor shall receive (directly or from the Vendor) any insurance proceeds or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Lessor shall 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; *provided, however*, that no Event of Default shall have occurred and be continuing and the Lessee shall have made payment of the Casualty Value thereof, and accrued rentals in respect of such Units, to the Lessor. All insurance proceeds received by the Lessor (directly or from the Vendor) 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.

§8. REPORTS

On or before May 31 in each year, commencing with the calendar year 1981, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the total number, description and road numbers of all Units then leased hereunder and covered by the Conditional Sale Agreement, the total number, description and road 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 repair (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by §5.1 hereof have been preserved or replaced. The Lessor and the Vendor shall each have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Vendor may request during the continuance of this Lease.

§9. DISCLAIMER OF WARRANTIES

THE LESSOR DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE 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 DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims the Lessor may have against the Builders under the provisions of Items 3 and 4 of Annex A of the Conditional Sale Agreement; *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. 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, 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 or the Vendor based on any of the foregoing matters.

§10. LAWS AND RULES

10.1. *Compliance.* The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units or are necessary to comply with health, safety or environmental standards as more fully described in Section 4(4) of Rev. Proc. 75-21 as modified by Rev. Proc. 79-48, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Lessee will 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 Conditional Sale Agreement.

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

§11. MAINTENANCE

11.1. *Units in Good Operating Order.* The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted. Each Unit shall be maintained in accordance with Lessee's preventive maintenance schedules 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) appropriate and suitable for purchase or lease and use by a Class 1 line-haul railroad (not then or prospectively a debtor in any insolvency or reorganization proceedings). 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 by the Lessee for similar equipment.

11.2. *Additions and Accessions.* (1) Except as set forth in §§10.1 and 11.1 hereof, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units and do not adversely and materially affect the value of the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee if removed from the Units prior to the time such Units are returned as provided

in §§14 and 17, except to the extent such additions, modifications or improvements are made in order to comply with §11.2(2) hereof.

(2) Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of its agreements contained in §11.2(1) hereof, or (ii) the cost of which is included in the Purchase Price of such Unit, or (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Department of Transportation, the Interstate Commerce Commission or any other applicable regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Conditional Sale Agreement and the CSA Assignment) shall immediately be vested in the Lessor.

§12. INDEMNIFICATION

12.1. *Indemnified Persons.* The Lessee shall pay, and shall protect, indemnify and hold the Lessor, the Vendor and any assignee thereof, 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, the Conditional Sale Agreement 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 and other defects whether or not discoverable by the Lessor, the Vendor or the Lessee, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (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; or (vii) any claim arising out of any of the Lessor's obligations under the Lease Assignment or the Vendor's retention of a security interest under the Conditional Sale Agreement or the Lease Assignment or the Participation Agreement (except to the extent such claim arises from an act or omission of the party claiming indemnification). The Lessee shall be obligated under this §12.1, 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 §12.1 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 and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this §12, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason

of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Lessor each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this §12 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 (except against another 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 §12.1 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made. Nothing in this §12.1 shall constitute a guarantee by the Lessee of the Conditional Sale Indebtedness of the Lessor under the Conditional Sale Agreement or a guarantee of the residual value of any Unit.

The Lessee shall pay directly to the Indemnified Person amounts required to be paid pursuant to this §12, except that, if at any time the Lessee shall pay less than the entire amount of the indemnities at the time owing pursuant to this §12, the Lessee shall not make any payment to any party other than the Vendor or an Investor until such payments owing to the Vendor or the Investor under this §12 shall have been made in full to the Vendor and the Investors.

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

12.3. *Survival.* The indemnities contained in this §12 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 §12 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

§13. DEFAULT

13.1. *Events of Default; Remedies.* If, during the continuance of this Lease or any extension or renewal thereof, 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 16 hereof, and such default shall continue for 10 days;

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

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

D. any representation or warranty made by the Lessee herein or in the Participation Agreement (other than in the third paragraph of Paragraph 16 thereof) or in any certificate or

statement furnished to the Lessor pursuant to or in connection with any such agreements proves untrue in any material respect as of the date of issuance or making thereof;

E. a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the 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 proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed in accordance with the provisions of 11 U.S.C. §1168, or any successor provision as the same may hereafter be amended;

F. 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 proceeding 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 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 a trustee or trustees or receiver or receivers, within 60 days after such proceeding shall have been commenced; or

G. an event of default set forth in Article 16 of the Conditional Sale Agreement shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder;

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

(a) proceed by appropriate court action, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee 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 enter upon the premises of the Lessee or other premises, insofar as the Lessee may be lawfully authorized to so permit, where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period, by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts that the Lessor, in its sole discretion shall specify, (i) a sum, with respect to each Unit, which represents (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals 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, such present value to be computed on the basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rental would have been payable hereunder had this Lease not been terminated over the then present value of the rental which the Lessor reasonably estimates to be obtainable for each Unit during such period, such present value to be computed on the basis of a 6% per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or, if such Unit is sold, the net proceeds of the sale plus (y) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value 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 by the Lessee pursuant to the preceding clause (ii) 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 Casualty Payment Date on or next preceding the date of termination over the net proceeds of such sale.

The Lessee will pay all reasonable expenses, including attorneys' fees, incurred by the Lessor in enforcing its remedies under the terms of this Lease.

13.2. *Remedies Not Exclusive; Waiver.* 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 and/or recoupment against the rental payments due hereunder (except as provided in §3.1(4) hereof), and agrees to make such payments regardless of any offset or claim (except as provided in §3.1(4) hereof) which may be asserted by the Lessee or on its behalf.

13.3. *Failure To Exercise Rights Is Not Waiver.* The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

13.4. *Notice of Event of Default.* The Lessee also agrees to furnish the Lessor and the Vendor, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this §13.4, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

§14. RETURN OF UNITS UPON DEFAULT

14.1. *Return of Units.* If this Lease shall terminate pursuant to §13 hereof or pursuant to Article 16 of the Conditional Sale Agreement, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, shall meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction and shall have attached or

affixed thereto any special device considered an accession thereto as provided in §11 and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in §11, is owned by the Lessee. For the purpose of delivering possession of any Unit or Units as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to 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) and at the usual speed place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

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

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

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store, insure and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor.

14.2. *Lessor Appointed Agent of Lessee.* Without in any way limiting the obligation of the Lessee under the foregoing provisions of this §14, 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.

§15. ASSIGNMENT, POSSESSION AND USE

15.1. *Assignment; Consent.* This Lease shall be not assignable by the Lessee or the Lessor without the prior written consent of the other party, except the Lessor, without the consent of the Lessee, may, subject to the provisions of paragraph 15.1 of the Conditional Sale Agreement, assign all but not less than all of its interest hereunder to any corporation which is a member of the "affiliated group" (as defined in section 1504 of the Internal Revenue Code of 1954, as amended) of the Bank of America National Trust and Savings Association or to any banking or financial institution which has a combined capital and surplus of at least $50,000,000 and which has no interlocking relationship with the Lessee within the meaning of Section 10 of the Clayton Act. The Lessee hereby consents to the assignment of this Lease pursuant to the Lease Assignment.

15.2. *Lessee's Rights To Use the Units, To Permit Use Thereof by Others and To Sublease the Units.* (1) So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) 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 the Conditional Sale Agreement. Without the prior written consent of the Lessor and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in any of the Units or sublease any of the Units, except as provided in paragraph (2) below of this §15.2; and the Lessee shall not, without the prior written consent of the Lessor and the Vendor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of paragraph (2) of this §15.2. 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 or any encumbrance on the leasehold estate of the Lessee which is subject and subordinate to the interests of the Lessor and the Vendor) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

(2) 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 as of January 2, 1980, providing for the lease of approximately 235 locomotives (less the number leased hereunder), (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 of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and to assign its rights to the Units or to sublease the Units to any of its affiliates, but only upon and subject to all the terms and conditions of this Lease and the Conditional Sale Agreement; *provided, however,* that the Lessee shall not assign, sublease or permit the assignment, sublease or use of any Unit predominantly outside the United States of America within the meaning of Section 48(a) of the Internal Revenue Code of 1954, as amended to the date hereof, nor shall the Lessee assign or sublease to, or permit the sublease or use of the Units by, any person in whose hands such Units would not qualify as "section 38 property" within the meaning of said Code. The Lessee may receive and retain compensation for the use of any of the Units from other railroads so using such Units. Any sublease permitted by this paragraph may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; *provided, however,* that every such sublease shall be subject and subordinate to the rights and remedies of the Vendor under the Conditional Sale Agreement and the Lessor under this Lease in respect of the Units covered by such sublease upon the occurrence of an event of default or Event of Default thereunder or hereunder.

15.3. *Transfers by Lessee Through Merger, Acquisition or Consolidation.* Nothing in this §15 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease and shall have assumed all of the obligations of the Lessee under this Lease, the Consent and the Participation Agreement by an appropriate instrument in writing.

§16. RENEWAL OPTIONS

16.1. *Renewal for Successive Periods.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the end of the original term, the first extended term or the second extended term of this Lease, elect to extend such original or extended term of this Lease, as the case may be, in respect of all but not less than all the Units then covered by this Lease or the then extended term, as the case may be, for an additional two-year period commencing on the scheduled expiration of such original term or then extended term, as the case may be, of this Lease. The rental payable during each extended term shall be payable annually in arrears on December 30 of each year of such extended term and shall be in an amount equal to the "Fair Market Rental".

16.2. *Determination of Fair Market Rental.* (1) Fair Market Rental shall be determined for each extended term of this Lease on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental and it shall be assumed that all the Units have been assembled in one place on the lines of the Lessee.

(2) If, after 50 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease for any extended term, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance 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 value 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 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 35 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, 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 of the Units subject to the proposed extended term within 90 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 of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto as the Fair Market Rental. 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 and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

§17. RETURN OF UNITS UPON EXPIRATION OF TERM

As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit and in any event not later than 180 days thereafter, 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 reasonably designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding 150 days and transport the same upon disposition of the Units, at any time within such period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of such Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser or user, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this §17 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any

governmental agency or other organization with jurisdiction, (iii) have attached or affixed thereto any special device considered an accession thereto as provided in §11 hereof and have removed therefrom any such device not so considered an accession and (iv) be appropriate and suitable for purchase or lease and use by a Class 1 line-haul railroad (not then or prospectively a debtor in any insolvency or reorganization proceedings). During any such storage period the Lessee shall maintain the Units in such manner as the Lessee normally maintains similar units of railroad equipment owned or leased by it in similar storage circumstances. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If any Unit suffers a Casualty Occurrence during any storage period provided for in this §17, the Lessee shall pay to the Lessor the Casualty Value of such Unit as determined in accordance with §7 hereof. For the period from such expiration of the Lease to the delivery of possession of each such Unit to the Lessor on such storage tracks as aforesaid, the Lessee shall pay to the Lessor a daily rental for each such Unit for the first 30 days at a rate equal to .016667% of the Purchase Price of such Unit per day and for the next 150 days at a rate equal to 1/360th of the last applicable annual lease rental per day which rentals shall be payable monthly commencing 30 days after such expiration of this Lease. If the Lessee shall not deliver possession of any Unit to the Lessor within 180 days from such expiration of the Lease, such Unit shall be deemed to have suffered a Casualty Occurrence on the 180th day from such expiration of the Lease and the provisions of §7 hereof shall apply.

§18. RECORDING

The Lessee, at its own expense, will cause this Lease, the Conditional Sale Agreement, the CSA Assignment and the Lease Assignment to be filed and recorded 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. The Lessee will undertake the filing, registering, deposit and recording required of the Lessor under the Conditional Sale Agreement. The Lessee in addition will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Conditional Sale Agreement, the CSA Assignment and the Lease Assignment; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion 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 Conditional Sale Agreement or the CSA Assignment in Canada. This Lease, the Conditional Sale Agreement, the CSA Assignment and the Lease Assignment shall be filed and recorded 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 will have been made for publication of notice of such deposit in *The Canada Gazette* prior to the delivery and acceptance hereunder of any Unit.

§19. INTEREST ON OVERDUE RENTALS

Anything to the 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 equal to interest at 10⅞% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§20. LESSOR'S RIGHT TO PERFORM FOR THE LESSEE

If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at the rate per annum which Manufacturers Hanover Trust Company, New York, N. Y., charges for unsecured 90-day loans to large corporate borrowers at the time in effect, shall be payable by the Lessee upon demand except as otherwise provided in this Lease. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor or any assignee of the Lessor against the Lessee hereunder or be deemed to cure the default of the Lessee hereunder.

§21. 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 P.O. Box 37009, San Francisco, California 94137, Attention of Leveraged Leasing Department,

(b) if to the Lessee, at 176 East Fifth Street, St. Paul, Minnesota 55101, Attention: Vice President and Treasurer,

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing. Any notice received by the Lessee from the Vendor shall also be furnished by the Lessee to the Lessor.

§22. SEVERABILITY

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

§23. EFFECT AND MODIFICATION OF LEASE

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

§24. THIRD PARTY BENEFICIARIES

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Vendor and the permitted successors and assigns of a party, and, as to §12.2 hereof, the Builders) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

§25. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Lease Assignment shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§26. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota; *provided, however,* that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303 and Section 86 of the Railway Act of Canada.

§27. AGREEMENTS FOR BENEFIT OF LESSOR'S ASSIGNS

All rights of the Lessor hereunder (including, but not limited to, its rights under §§7, 9, 13, 14 and 17 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns including the Vendor.

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

BURLINGTON NORTHERN INC.,

by
Vice President and Treasurer

[CORPORATE SEAL]

ATTEST:
Assistant Secretary

BAMERILEASE CAPITAL CORPORATION,

by Madeleine Weigel
ASSISTANT TREASURER

by
VICE PRESIDENT

[CORPORATE SEAL]

ATTEST: John H Cassidy
Assistant Vice President

STATE OF MINNESOTA, }
COUNTY OF RAMSEY, } ss.:

On this day of , 1979, before me personally appeared R. C. Burton, Jr., to me personally known, who, being by me duly sworn, says that he is the Vice President and Treasurer of BURLINGTON NORTHERN INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[NOTARIAL SEAL]

My Commission expires

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

On this 4th day of Dec., 1979, before me personally appeared Madeleine Weigel and Walter H. Buck, to me personally known, who, being by me duly sworn, say that they are Assistant Treasurer and Vice President, respectively, of BAMERILEASE CAPITAL 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.

Grace Borgia
Notary Public

[NOTARIAL SEAL]

My Commission expires

GRACE BORGIA
Notary Public, State of New York
No. 24-4525210
Qualified in Kings County
Certificate Filed in New York County
Commission Expires March 30, 1980

APPENDIX A TO LEASE

Type	Builder	Builder's Specifications	Builder's Plant	Quantity	Lessee's Road Numbers (Both Inclusive)	Estimated† Unit Base Price	Estimated Total Base Price	Estimated Time and Place of Delivery
3,000 h.p. Model SD 40-2 diesel-electric locomotive	EMD	8087	La Grange, Illinois	150	BN 7206-7301 7924-7940 8090-8126	$746,803.36	$112,020,504	January through June 1980, at Fridley, Minnesota
3,000 h.p. Model C30-7 diesel-electric locomotive	GE	3390 G	Erie, Pennsylvania	40	BN 5087-5126	$771,992.00	30,879,680	January through June 1980, F.O.B. Builder's plant at Erie, Pennsylvania
				190			$142,900,184	

†The Estimated Unit Base Price includes prepaid freight to Fridley, Minnesota.

APPENDIX B-1 TO LEASE

Date	Percentage of Purchase Price*
12/30/81	7.863179
12/30/82	7.863179
12/30/83	7.863179
12/30/84	7.863179
12/30/85	7.863179
12/30/86	7.863179
12/30/87	9.610552
12/30/88	9.610552
12/30/89	9.610552
12/30/90	9.610552
12/30/91	9.610552
12/30/92	9.610552
12/30/93	9.610552
12/30/94	9.610552
12/30/95	9.610552
12/30/96	9.610552

* As defined in paragraph 4.1 of the Conditional Sale Agreement.

APPENDIX B-2 TO LEASE

Date	Percentage of Purchase Price*
12/30/80	**
6/30/81	3.678437
6/30/82	3.649399
6/30/83	3.481765
6/30/84	3.297577
6/30/85	3.095200
6/30/86	2.872839
6/30/87	2.685700
6/30/88	2.439219
6/30/89	2.110769
6/30/90	1.925355
6/30/91	1.721632
6/30/92	1.497791
6/30/93	1.251845
6/30/94	.981612
6/30/95	.684694
6/30/96	.358455

*As defined in paragraph 4.1 of the Conditional Sale Agreement.

**Such percentage of Purchase Price as shall be necessary to provide sufficient funds to the Lessor to make the interest and commitment fee payments to the Investors on December 30, 1980, as provided in the last paragraph of Paragraph 9 of the Participation Agreement.

APPENDIX C TO LEASE

Casualty Payment Dates	Percentage of Purchase Price*
6/30/80 and before	91.0342010
12/30/80	88.5042849
6/30/81	93.0248673
12/30/81	89.7039696
6/30/82	93.8480663
12/30/82	90.0972700
6/30/83	93.8621616
12/30/83	89.7791056
6/30/84	93.2222769
12/30/84	88.8329415
6/30/85	92.0022184
12/30/85	87.3491905
6/30/86	90.2885526
12/30/86	85.3975117
6/30/87	88.1515713
12/30/87	81.3194824
6/30/88	83.8325657
12/30/88	76.7565552
6/30/89	78.9473164
12/30/89	71.6667390
6/30/90	73.7033824
12/30/90	66.2026742
6/30/91	68.0346296
12/30/91	60.3402190
6/30/92	61.9568600
12/30/92	54.0961706
6/30/93	55.5346414
12/30/93	47.5469529
6/30/94	48.8691370
12/30/94	40.7700424
6/30/95	41.9839085
12/30/95	33.7815606
6/30/96	34.8951563
12/30/96	26.6002187
6/30/97	27.6167274
12/30/97	25.0291273
6/30/98	26.0153491
12/30/98	23.3663175
6/30/99	24.2887567
12/30/99	21.5734982
6/30/00	22.4271722
12/30/00 and thereafter	20.0000000

*As defined in paragraph 4.1 of the Conditional Sale Agreement.