
RECORDATION NO. 7723 Filed & Recd. **CONDITIONAL SALE AGREEMENT**

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INTERSTATE COMMERCE COMMISSION

Dated as of November 15, 1974

among

GENERAL MOTORS CORPORATION,

FIRST PENNSYLVANIA BANK N.A.

as Trustee

and

FIRST PENNSYLVANIA BANK N.A.

as Trustee

**Filed and recorded with the Interstate Commerce Commission pursuant
to Section 20c of the Interstate Commerce Act on , 1974
at , recordation number .**

CONDITIONAL SALE AGREEMENT

CONDITIONAL SALE AGREEMENT dated as of November 15, 1974, between GENERAL MOTORS CORPORATION, (hereinafter called the "Vendor" or "Builder" as more particularly set forth in Article 23 hereof), and First Pennsylvania Bank N.A., as trustee under a trust agreement dated as of the date hereof with The Philadelphia National Bank and First Pennsylvania Bank N.A., as trustee under a trust agreement dated as of the date hereof with Fidelity Union Trust Company (each such trustee being hereinafter individually called a "Vendee" and such trustees collectively being called the "Vendees", each such trust agreement being hereinafter individually called a "Trust Agreement" and such Trust Agreements collectively being called the "Trust Agreements" and The Philadelphia National Bank and Fidelity Union Trust Company being hereinafter individually called a "Trustor" or collectively called the "Trustors").

WHEREAS, the Builder will construct, sell and deliver to the Vendees, and the Vendees will purchase, the railroad equipment described in Annex A hereto (hereinafter called the "Equipment");

WHEREAS, the Vendees simultaneously with the execution of this Agreement, will lease the Equipment to Andrew L. Lewis, Jr. and Joseph L. Castle, Trustees of the property of the Reading Company, Debtor (hereinafter called the "Debtor" and such Trustees together with their successors and assigns being hereinafter sometimes collectively called the "Lessee") pursuant to a lease of railroad equipment dated as of the date hereof in substantially the form annexed hereto as Annex C (hereinafter called the "Lease"); and

WHEREAS, the Builder, simultaneously with the execution of this Agreement, will assign certain rights under this Agreement to Girard Trust Bank, as Agent, (hereinafter called the "Agent") for New England Life Insurance Company, Great American Insurance Company and Security Mutual Life Insurance Company of New York (such corporations being hereinafter called the "Investors") under a finance agreement dated as of the date hereof;

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

ARTICLE 1. *Construction and Sale.* The Builder shall construct the Equipment and will sell and deliver the Equipment to the Vendees, and the Vendees will purchase the Equipment as co-owners, each with an undivided interest in the Equipment to the extent set forth in Annex B hereto (such respective undivided ownership interests being hereinafter called the "Ownership Interests") and will accept delivery of and pay for the Equipment as hereinafter provided. Each unit of the Equipment shall be constructed in accordance with the specifications referred to in Annex A hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendees and the Lessee (which specifications and modifications, if any, are hereinafter called the "Specifications").

ARTICLE 2. *Design and Quality.* The design, quality and component parts of each unit of the Equipment shall conform, on the date of delivery

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and acceptance of each unit, to all Department of Transportation, Interstate Commerce Commission and any other applicable regulatory body requirements and specifications for new equipment and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such units of the Equipment. Each unit of the Equipment will be new railroad equipment.

Notwithstanding anything to the contrary contained in this Agreement, it is understood and agreed that there may be incorporated in each unit of the Equipment a limited number of used components which will be remanufactured by the Builder and will be the equivalent of new components.

ARTICLE 3. *Inspection and Delivery.* The Builder will deliver the units of the Equipment to the Vendees at EMD Plant, La Grange, Illinois transportation costs, if any, prepaid.

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

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered and accepted by the Lessee on or before December 31, 1974, shall be excluded herefrom. If any Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the parties to this Agreement shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendees (who may be employees of the Lessee) and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendees for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendees (who may be an employee of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Vendees on the date of such Certificate of Acceptance and are marked in accordance with Article 9 hereof; *provided, however*, that the Builder shall not thereby be relieved of its warranties set forth or referred to in Article 13 hereof or its representations in Article 2 hereof.

On delivery and acceptance of each unit of Equipment hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such

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unit; *provided, however*, that the Builder shall not thereby be relieved of its warranties set forth or referred to in Article 13 hereof or its representations in Article 2 hereof. The Builder represents and warrants to, and agrees with, the Vendees that no unit of the Equipment will be delivered to or used by the Lessee or any other persons unless the same shall first be duly subjected to this Agreement and the Lease.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Annex A hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Vendees and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If on the Closing Date (as hereinafter defined in this Article 4) the aggregate of the Purchase Prices for which settlement has theretofore been and is then being made under this Agreement, would, but for the provisions of this sentence, exceed \$8,548,620 (or such higher amount as the Vendees may at their option agree to), the Builder (and any assignee of the Builder) will, upon request of the Vendees, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendees as will, after giving effect to such exclusion, reduce such aggregate Purchase Prices under this Agreement to not more than \$8,548,620 (or such higher amounts as aforesaid).

The Equipment shall be settled for in one group after delivery to and acceptance by the Vendees. The term "Closing Date" with respect to the Equipment shall mean such date (not earlier than December 15, 1974 and not later than December 31, 1974), occurring not more than ten business days following presentation by the Builder to the Vendees of the invoice and the Certificate or Certificates of Acceptance for the Equipment and written notice thereof by the Builder to the Lessee, as shall be fixed by the Lessee by written notice delivered to the Vendees and the Vendor at least three business days prior to the Closing Date. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Philadelphia, Pennsylvania, are authorized or obligated to remain closed.

Each of the Vendees hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, its pro rata share of the Purchase Price of the Equipment, as follows:

(a) On the Closing Date with respect to the Equipment an amount equal to 40.6922% of the aggregate Purchase Price of such Equipment multiplied by the percentage of such Vendee's Ownership Interest in the Equipment as set forth in Annex B.

(b) In 59 consecutive quarterly instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph multiplied by the percentage of such Vendee's Ownership Interest in the Equipment as set forth in Annex B.

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The instalments of the portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (said portion of the aggregate Purchase Price for such Equipment being herein called the "Conditional Sale Indebtedness") shall be payable on each January 1, April 1, July 1 and October 1, commencing April 1, 1975, to and including October 1, 1989 (or if any such date is not a business day on the next preceding business day), each such date being hereinafter called a "Payment Date." The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date at the rate of 10.5% per annum. Such interest shall be payable, to the extent accrued, on January 1, 1975, and on each Payment Date thereafter. The principal amount of Conditional Sale Indebtedness payable on each of the Payment Dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each of such Payment Dates shall be substantially equal and such instalments of principal will completely amortize the Conditional Sale Indebtedness.

The Vendees will furnish to the Vendor promptly after the Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the aggregate respective amounts of principal and interest payable on each Payment Date.

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

The Vendees will pay interest, to the extent legally enforceable, at the rate of 12.5% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

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

The parties hereto contemplate (subject to the limitations set forth in the first paragraph of this Article 4) that the Vendees will furnish that portion of the Purchase Price for the Equipment as is required under subparagraph (a) of the third paragraph of this Article 4 and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by an assignee of the Builder's right, title and interest under this Agreement pursuant to an agreement and assignment between the Builder and the Agent (such agreement and assignment being hereinafter called the "Assignment" and such assignee being herein called the "Assignee" or the "Vendor" as indicated in Article 23 hereof).

It is agreed that the respective obligations of the Vendees to pay to the Vendor any amount required to be paid pursuant to the third paragraph of this Article 4 with respect to the Equipment is specifically subject to the fulfillment, on or before the Closing Date, of the following conditions, any of which may be waived by the Vendees:

- (1) the Assignee shall concurrently pay or cause to be paid to the Builder the amounts contemplated to be paid by it as provided in the pre-

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ceding paragraph of this Article 4 and in Section 6 of the Assignment and the documents required by Section 6 of the Assignment shall have been executed and delivered;

(2) No event which with or without the passage of time or the giving of notice or both would constitute an Event of Default of the Lessee under the Lease or event of default specified herein by reason of an Event of Default of the Lessee under the Lease, shall have occurred and be continuing; and

(3) the Vendees shall have received (i) the opinion of counsel required by § 15 of the Lease and (ii) such other documents as the Vendees may reasonably request.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof), it is understood and agreed by the Vendor that the liability of either of the Vendees for all payments to be made by it under and pursuant to this Agreement, with the exception only of the payments to be made pursuant to subparagraph (a) of the third paragraph of this Article 4, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment" (as herein defined in this Article 4), and such payments shall be made by such Vendee only to the extent that such Vendee or any assignee of such Vendee shall have actually received sufficient "income or proceeds from the Equipment" to make such payments; provided, however, that the failure to make any such payment shall nonetheless constitute an event of default under Article 15(a) hereof. Except as provided in the next preceding sentence, the Vendor agrees that neither Vendee shall have personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by either Vendee or any assignee of such Vendee as above provided. In addition, the Vendor agrees and understands that the Vendees (i) make no representation, and are not responsible for, the due execution, validity, sufficiency or enforceability of the Lease in so far as it relates to the Lessee (or any document relative thereto) or of any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights as assignee of the Lease against the Lessee and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean with respect to either of the Vendees (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by such Vendee or any assignee of such Vendee at any time after any such event and during the continuance thereof: (x) all amounts of rental and amounts in respect of Casualty Occurrences (as hereinafter defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease, (y) any and all payments or proceeds received by such Vendee or any assignee of such Vendee for or with respect to the Equipment as the result of the sale, lease or other disposition thereof and after deducting all costs and

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expenses of such sale, lease or other disposition, and (z) any and all other payments received by such Vendee or any assignee of such Vendee under § 10 of the Lease, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (x), (y) and (z) as are indefeasibly received by such Vendee or any assignee of such Vendee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on, or within 15 days after, the date such amounts received by such Vendee or any assignee of such Vendee were required to be paid to it pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (x), (y) and (z) which were received by such Vendee or any assignee of such Vendee prior to the existence of such an event of default and which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on, or within 15 days after, the date on which amounts with respect thereto received by such Vendee or any assignee of such Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. It being further understood that the "income and proceeds of the Equipment" shall in no event include any amount paid to the Vendees or their assignees by the Builder or its assignees pursuant to the Builder's Agreement dated as of the date hereof between the Vendees and the Builder (in consideration for the Vendee's transfer of all rights in and to this agreement). It is further specifically understood and agreed that the failure to make any of the payments under (b) of the third paragraph of this article or any other payments hereunder for the reasons enumerated in this paragraph constitutes an event of default as defined in Article 15(a). It is further specifically understood and agreed that nothing contained herein limiting the liability of the Vendees shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Article 15 hereof, the Vendor agrees that in the event it shall obtain a judgment against either of the Vendees for an amount in excess of the amounts payable by such Vendee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph and shall mark or otherwise indicate full payment of such judgment upon receipt of all amounts payable pursuant to the limitations set forth in this paragraph; provided, that the foregoing sentence shall evidence a release of claims solely against the Vendees (and the Trustors) and not any other entities which may be liable to the Vendor for such claims.

ARTICLE 5. Title to the Equipment. The Vendor shall and hereby does retain the full security title to the Equipment until the Vendees shall have made all their payments under this Agreement and shall have kept and performed all their agreements herein contained, notwithstand-

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ing any provision of this Agreement limiting the liability of the Vendees and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendees and the Lessee as provided in this Agreement. Any and all additions to the Equipment (except communications, signal and automatic control equipment or devices having a similar use which have been added to such unit by the Lessee, the cost of which is not included in the Purchase Price of such unit and which are not required for the operation or use of such unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body), and any and all parts installed on and additions and replacements made to any unit of the Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement (all such security title to the Equipment and any such accessions hereinafter called the "Security Title").

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, and all the Vendees' obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendees without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendees at that time, will (a) execute a bill or bills of sale for the Equipment transferring its Security Title therein to the Vendees, or upon their order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendees at their addresses referred to in Article 20 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendees to the Equipment, and (c) pay to the Vendees any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendees hereby waive and release any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand to the Vendor from the Vendees.

ARTICLE 6. *Taxes.* All payments to be made by the Vendees hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income taxes, gross receipts taxes [except gross receipt taxes in the nature of or in lieu of sales, use or rental taxes], franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines, and penalties being hereinafter called the "Impo-

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sitions”) hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof. Each of the Vendees, to the extent of such Vendee’s percentage Ownership Interest, assumes and agrees to pay all of such Impositions on demand. Each such Vendee will also pay promptly such Vendee’s share of all Impositions which may be imposed upon the Equipment or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all Impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; *provided, however*, that such Vendee shall be under no obligation to pay any Impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title, property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any Impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, each of the Vendees shall reimburse the Vendor, to the extent of such Vendee’s percentage Ownership Interest upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; *provided, however*, that neither Vendee shall not be obligated to reimburse the Vendor for any Impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendees shall have approved the payment thereof.

ARTICLE 7. *Maintenance and Repair; Casualty Occurrences.* The Vendees agree that, at their own cost and expense, they will maintain and keep each unit of the Equipment in good order and repair.

In the event that any unit of the Equipment shall be or become lost, stolen, destroyed, or, in the opinion of the Vendees or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being herein called the “Casualty Occurrences”); the Vendees shall, promptly after they shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding Payment Date, each of the Vendees shall pay to the Vendor a sum equal to such Vendee’s percentage Ownership Interest of the Casualty Value (as hereinafter defined in this Article 7) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay the Conditional Sale Indebtedness and the Vendees will, at their own expense, promptly furnish the Vendor a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor may request, calculated as provided in the fourth paragraph of Article 4 hereof, so that the remaining payments shall be substantially equal.

Upon payment by both of the Vendees to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occur-

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rence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendees, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendees, will execute and deliver to the Vendees, at the expense of the Vendees, an appropriate instrument confirming such passage to the Vendees of all the Vendor's right, title and interest in such unit, in recordable form, in order that the Vendees may make clear upon the public records the title of the Vendees to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price attributable to such unit remaining unpaid on the date as of which such Casualty Value shall be determined, plus interest accrued thereon but unpaid as of such date; *provided, however*, that in determining the portion of the original Purchase Price of such unit, no effect shall be given for any prepayment or prepayments previously made under this Article 7 with respect to any other Casualty Occurrence or Casualty Occurrences. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

ARTICLE 8. Reports and Inspections. On or before March 31 in each year, commencing with March 31, 1976, the Vendees shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 9 hereof have been preserved or replaced. Pursuant to the Lease, the Vendees shall reserve for the Vendor the right, by its agents, to inspect the Equipment and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 9. Marking of Equipment. The Vendees will cause each unit of the Equipment to be kept numbered with the identifying number as set forth in Annex A hereto, or, in the case of Equipment, not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on both sides of each unit, in letters not less than one inch in height, the following "First Pennsylvania Bank N.A., as Trustees—Owner/Lessor: Girard Trust Bank—Security Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's Security Title in the Equipment and its rights under this Agreement. The Vendees will not permit any such unit to be placed in operation or exercise any control or dominion over the

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same until such words shall have been so marked on both sides thereof and will replace or will cause to be replaced promptly any such words which may be removed, defaced or destroyed. The Vendees will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendees in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendees will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Vendees may allow the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of the rights of the Lessee or its affiliates to use the Equipment as permitted under the Lease.

ARTICLE 10. *Compliance with Laws and Rules.* During the term of this Agreement, the Vendees will comply, and will require every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessees' operations involving the Equipment 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 Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration of any unit of the Equipment, or in the event that any equipment or appliance on any such unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such unit in order to comply with such laws or rules, the Vendees will make such alterations, changes, replacements and additions at its own expense; *provided, however*, that the Vendees may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. *Possession and Use.* The Vendees, so long as they shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendees, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Vendees may lease the Equipment to the Lessee as permitted by, and for use as provided in, the Lease, but the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement; *provided, however*, anything to the contrary herein notwithstanding, that so long as the Lessee shall not be in default under the Lease, the Lessee shall be entitled to the possession and use of the Equip-

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ment. The Vendees hereby agree that they will not exercise any of the remedies permitted in the case of an Event of Default under and as defined in the Lease until the Vendor shall have received notice in writing of their intended exercise thereof, and hereby further agree to furnish to the Vendor copies of all summons, writs, processes and other documents served by them upon the Lessee or served by the Lessee upon them in connection therewith.

So long as an event of default specified in Article 15 hereof shall not have occurred and be continuing, the Vendees shall be entitled to the possession and use of the Equipment, and the Equipment may be used upon the lines of railroad owned or operated by the Debtor or any affiliate of the Debtor (or any other railroad company approved by the Vendor), or upon lines of railroad over which the Debtor or any such affiliate has trackage or other operating rights, or over which railroad equipment of the Debtor or any such affiliate is regularly operated pursuant to contract, and the Equipment may be used upon connecting and other carriers in the usual interchange of traffic or in the transportation thereof from the place of delivery to the Lessee, but only upon and subject to all the terms and conditions of this Agreement; *provided, however*, that the Vendees shall not assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America. The Vendees may also lease the Equipment to any other railroad company with the prior written consent of the Vendor; *provided, however*, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and (iii) a copy of such lease shall be furnished to the Vendor.

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

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

ARTICLE 13. *Indemnities and Warranties.* The Vendees agree to indemnify, protect and hold harmless the Vendor from and against all losses,

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damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of Security Title to the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when Security Title thereto remains in the Vendor, or the transfer of Security Title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the conveyance of Security Title to, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendees will bear the responsibility for and risk of and shall, subject to the provisions of Article 7 hereof, not be released from their obligations hereunder in the event of any damage to or the destruction or loss of any unit of or all the Equipment.

Builder warrants to the Vendees and Lessee that each unit of the Equipment is of the kind and quality prescribed in the Specifications and is suitable for the ordinary purposes for which such equipment is used.

Builder further warrants to the Vendee and Lessee each unit of the Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery or before each unit of Equipment has been operated 250,000 miles whichever event shall first occur. Builder agrees to correct any such defects, which examination shall disclose to Builder's reasonable satisfaction to exist, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of Builder's obligation with respect to such defect under this warranty.

Builder warrants to the Vendees and Lessee specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to Builder.

THERE ARE NO WARRANTIES, EXPRESSED OR IMPLIED, MADE BY BUILDER EXCEPT THE WARRANTIES SET OUT ABOVE.

The Builder shall defend any suit or proceeding brought against the Vendees or the Lessee so far as based on a claim that the Equipment or any part thereof, furnished under this Agreement, constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at Builder's expense) for the defense of same and the Builder shall pay all damages and costs awarded therein against the Vendees or the Lessee.

In case the Equipment, or any part thereof, is in such suit held to constitute infringement and the use of the Equipment or part is enjoined, the Builder shall, at its option and at its own expense, either procure for the

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Vendees the right to continue using the Equipment or part, or replace same with non-infringing equipment or part, or modify it so it becomes non-infringing, or remove the infringing equipment or infringing part and refund the purchase price for such infringing equipment or infringing part and the transportation and installation costs thereof.

The Builder will not assume liability for patent infringement by reason of purchase, manufacture, sale, or use of devices not included in and covered by the Specifications.

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

ARTICLE 14. *Assignments.* The Vendees will not (a) except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Vendees and the Lessee) and (ii) provides that the Vendees shall remain liable for all the obligations of the Vendees under this Agreement. Subject to the preceding sentence, any such sale, assignment, transfer or disposition may be made by the Vendees without the vendee, assignee or transferee assuming any of the obligations of the Vendees hereunder.

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

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

The Vendees recognize that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understand that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Vendees expressly

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represent, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendees or the Lessee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendees against and only against the Builder.

In the event of any such assignment or successive assignments by the Vendor of Security Title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Vendees will, whenever requested by the assignee, change the markings on each side of each unit of the Equipment so as to indicate the Security Title of such assignee to the Equipment such markings to be specified by such assignee, subject to any requirements of the laws of the jurisdictions in which the equipment shall be operated. The cost of such markings in the event of an assignment of not less than all the Equipment at the time covered by this Agreement shall be borne by the Vendees and, in the event of an assignment of less than all such Equipment, such cost shall be borne by such assignee.

The Vendees will (a) in connection with settlement for the Equipment, deliver to the assignee, at the time of delivery of notice fixing the Closing Date with respect to such Equipment, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counter-parts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts or copies of any other certificate or paper required by the Vendor as may reasonably be requested.

If the Builder shall not receive on the Closing Date the aggregate Purchase Price in respect of all of the Equipment, the Builder will promptly notify the Vendees of such event and, if such amount shall not have been previously paid, the Vendees will, upon the request of the Builder, enter into an appropriate written agreement with the Builder excluding from this Agreement those units of Equipment whose aggregate Purchase Price shall not have been received.

ARTICLE 15. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing (without regard to the limitations provided for in the last paragraph of Article 4 hereof or in Article 21 hereof), to wit:

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(a) Either of the Vendees shall fail to pay in full any sum payable by such Vendee when payment thereof shall be due hereunder and such default shall continue for 15 days; or

(b) The Vendees, or either of them, shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment; or

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

(d) An Event of Default shall occur under the Lease; or

(e) Either of the Vendees shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendees upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the rights of the Lessee set forth in Article 11 hereof, cause the Vendees to terminate the Lease immediately and/or (ii) declare (hereinafter called a "Declaration of Default") the entire unpaid indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of the Equipment, or, subject to the provisions of Article 4 hereof, out of any property of the Vendees wherever situated. The Ven-

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dees shall promptly notify the Vendor of any event which has come to their attention which constitutes, or with the giving of notice and/or lapse of time would constitute, an event of default under this Agreement.

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

ARTICLE 16. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to the rights of the Lessee set forth in Article 11 hereof, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendees any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendees, the Lessee or any other person. For such purpose, the Vendees will obtain for the Vendor from the Lessee the rights to enter upon the premises of the Vendees or the Lessee or any other premises where the Equipment may be located and to use and employ in connection with such removal any supplies, services and aids, including but not limited to diesel fuel or other necessary petroleum products, and any available trackage and other facilities or means of the Vendees or the Lessee, with or without process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points on the lines or premises of the Lessee for the delivery of the Equipment to the Vendor, the Vendees shall (subject to the rights of the Lessee set forth in Article 11 hereof), at their own cost, expense and risk, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on lines of the Lessee and shall there deliver the Equipment or cause it to be delivered to the Vendor. The Vendees shall obtain for the Vendor from the Lessee the right to elect, at the option of the Vendor, to keep the Equipment on any of the lines or premises of the Lessee until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Vendees agree to cause the Lessee to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Lessee. This agreement to deliver the Equipment and to secure the right to utilize facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction

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in the premises, the Vendor shall be entitled to a decree against the Vendees requiring specific performance hereof. The Vendees hereby expressly waive, and agree to obtain from the Lessee a waiver of, any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendees, the Builder and the Lessee by telegram or registered mail, addressed as provided in Article 20 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendees' rights in the Equipment shall thereupon terminate and all payments made by the Vendees may be retained by the Vendor as compensation for the use of the Equipment; *provided, however,* that if the Vendees, before the expiration of the 30-day period described in the proviso below, pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storage, holding and otherwise maintaining the Equipment after such Declaration of Default, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendees; *provided, further,* that if the Vendees, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell it or continue to hold it pending sale as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendees, the Lessee, Builder and any other persons to whom the law may require notice of the time and place, may, subject to the rights of the Lessee set forth in Article 11 hereof, sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendees or any other party claiming from, through or under the Vendees at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however,* that if, prior to such sale and prior to the making of a contract for such sale, the Vendees should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment,

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together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendees subject to the rights, if any, of the Lessee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at Philadelphia, Pennsylvania, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Builder, the Vendees and the Lessee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 20 hereof. If such sale shall be a private sale, it shall be subject to the rights of the Builder, the Vendees and the Lessee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendees or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

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

If, after applying all sums of money realized by the Vendor under the

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remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendees shall pay the amount of such deficiency to the Vendor upon demand, and, if the Vendees shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendees. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendees to the extent of their respective interests in the Equipment.

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

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

ARTICLE 17. *Applicable State Laws.* Any provision of this Agreement prohibited by an applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendees to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

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

ARTICLE 18. *Recording.* The Vendees will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; and the Vendees will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its Security Title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendees will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

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

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

ARTICLE 20. *Notice.* Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Vendees, 15th and Chestnut, Philadelphia, Pennsylvania, attention Corporate Trust Department,

(b) to the Builder, at Electro-Motive Division, LaGrange, Illinois 60525, attention of Division Comptroller,

(c) to any assignee of the Vendor, or of either of the Vendees at such address as may have been furnished in writing to the Vendees, or the Vendor and the other Vendee, as the case may be.

(d) to the Lessee, at Reading Terminal, 12th and Market Streets, Philadelphia, Pennsylvania 19107, attention Secretary and Treasurer, or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 21. *Immunities; Satisfaction of Undertakings.* No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Vendees or the Builder (or Vendor), whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement.

No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against either of the Trustors or any incorporator, stockholder, director or officer, past, present or future, thereof.

The obligations of the Vendees under the first paragraph of Article 7 and under Articles 6, 8, 9, 10, 12, 13 and 18 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in §§ 5, 6, 8, 9, 12 and 16 of the Lease. The Vendees shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 15 hereof.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of each of the Vendees, while in form purporting to be the representations, undertakings and agreements of such Vendee are nevertheless each and

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every one of them, made and intended not as personal representations, undertakings and agreements by such Vendee or for the purpose or with the intention of binding such Vendee personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in each of the respective Trust Agreements for which such Vendee is trustee and this Agreement is executed and delivered by each of the Vendees not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under its respective Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against either of the Vendees, or any beneficiary of the trust under which such Vendee is acting as trustee on account of this Agreement or on account of any representation, undertaking or agreement of such Vendee or any beneficiary under the respective Trust Agreement to which such Vendee is a party either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; *provided, however,* that the Vendor or any person claiming by, through or under it, making claim hereunder, may look to the respective Trust Estate of which such Vendee is the trustee for satisfaction of the same.

The Vendees shall not waive or agree to any amendment of the Lessee's undertakings under the Lease without the written consent of the Vendor.

ARTICLE 22. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of Pennsylvania; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 23. *Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 24. *Execution.* This Agreement may be executed in any number of counterparts, but the counterpart delivered to the Interstate Commerce Commission for recordation and subsequently redelivered to the Agent shall be deemed to be the original counterpart. Although this Agreement is dated as of the date first above written for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

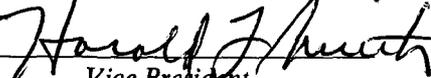
GENERAL MOTORS CORPORATION

[CORPORATE SEAL]

Attest:


Assistant Secretary

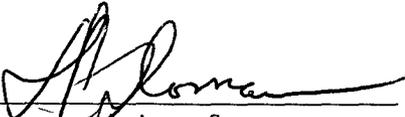
by


Vice President

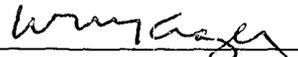
FIRST PENNSYLVANIA BANK N.A.

[CORPORATE SEAL]

Attest:


Assistant Secretary

by


Vice President

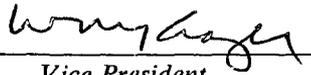
FIRST PENNSYLVANIA BANK N.A.

[CORPORATE SEAL]

Attest:


Assistant Secretary

by


Vice President

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STATE OF ~~MICHIGAN~~ } ILLINOIS
COUNTY OF ~~WAYNE~~ } COOK
SS.:

On this 19TH day of November, 1974, before me personally appeared HAROLD L. SMITH, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Agnes L. Laphe
Notary Public

Notary Public, ~~Wayne County~~ COOK COUNTY
My Commission Expires FEBRUARY 10, 1978

[NOTARIAL SEAL]

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } SS.:

On this 14th day of November, 1974, before me personally appeared *A. M. Krayer*, to me personally known, who, being by me duly sworn, says that he is a Vice President of First Pennsylvania Bank N.A. 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.

Elizabeth J. Salsedo
Notary Public

Notary Public, Phila. Co.
My Commission Expires 3/1/76

[NOTARIAL SEAL]

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } SS.:

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Elizabeth J. Salsedo
Notary Public

Notary Public, Phila. Co.
My Commission Expires 3/1/76

[NOTARIAL SEAL]

CONDITIONAL SALE AGREEMENT

ANNEX C

<u>Company</u>	<u>Ownership Interest</u>
Fidelity Union Trust Company	33.333%
The Philadelphia National Bank	66.667%

ANNEX A

Type	Builder's Specifications	Quantity	Debtor's Road Numbers (Inclusive)	Average Unit Base Price	Total Base Price	Delivery
GP-39-2 2300 h.p. General Purpose Diesel Electric Locomotives	8075	20	3401-3420	\$299,912	\$5,998,240	EMD Plant, LaGrange, Illinois
MP-15 1500 h.p. Multi-Purpose Diesel Electric Locomotives	8097	10	2771-2780	\$255,038	2,550,380	Same
Total					<u><u>\$8,548,620</u></u>	

ANNEX C
To Conditional Sale Agreement
LEASE OF RAILROAD EQUIPMENT

LEASE OF RAILROAD EQUIPMENT

Dated as of November 15, 1974

among

ANDREW L. LEWIS, JR.

and

JOSEPH L. CASTLE

Trustees of the Property of

Reading Company, Debtor,

FIRST PENNSYLVANIA BANK N.A.,

as Trustee

and

FIRST PENNSYLVANIA BANK N.A.,

as Trustee

Covering 30 Diesel Electric Locomotives

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

LEASE OF RAILROAD EQUIPMENT

LEASE OF RAILROAD EQUIPMENT dated as of November 15, 1974, between Andrew L. Lewis, Jr. and Joseph L. Castle, Trustees of the property of Reading Company, Debtor, (hereinafter called the "Debtor" and such Trustees together with their successors and assigns being hereinafter called the "Trustees" or collectively called the "Lessee"), and FIRST PENNSYLVANIA BANK N.A., as trustee under a trust agreement dated as of the date hereof with THE PHILADELPHIA NATIONAL BANK and FIRST PENNSYLVANIA BANK N.A., as trustee under a trust agreement dated as of the date hereof with FIDELITY UNION TRUST COMPANY (each such trustee being hereinafter individually called a "Lessor" and such trustees collectively being called the "Lessors", each such trust agreement being hereinafter individually called a "Trust Agreement" and such Trust Agreements collectively being called the "Trust Agreements" and THE PHILADELPHIA NATIONAL BANK and FIDELITY UNION TRUST COMPANY being hereinafter individually called a "Trustor" or collectively called the "Trustors").

WHEREAS, on the 23rd day of November, 1971, the Debtor filed a petition for reorganization under Section 77 of the Bankruptcy Act in the United States District Court for the Eastern District of Pennsylvania and such petition was duly approved as properly filed by order entered on said date by said Court (the proceedings with respect thereto being hereinafter called the "Reorganization Proceedings"), and Andrew L. Lewis, Jr. and Joseph L. Castle were duly qualified as trustees of the property of the Debtor on January 24, 1972 and May 7, 1974 respectively;

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

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

WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number as are delivered and accepted by it on or before December 31, 1974 (hereinafter being called individually a "Unit" and collectively the "Units"), at the rentals and for the terms and upon the conditions hereinafter provided;

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

LEASE OF RAILROAD EQUIPMENT

§ 1. *Financing.* This Lease provides for the lease by the Lessee from the Lessors of Units delivered to the Lessors prior to December 31, 1974, such Units to be financed pursuant to a finance agreement among the Agent and Great American Insurance Company, New England Mutual Life Insurance Company and Security Mutual Life Insurance Company of New York (hereinafter called the "Investors") dated as of the date hereof.

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

§ 3. *Rentals.* The Lessee agrees to pay to the Lessors as rental for each Unit subject to this Lease (i) a payment on January 1, 1975 in an amount equal to 2.8697% of the Purchase Price (as defined in the Conditional Sale Agreement and hereinafter called the "Purchase Price") of each Unit settled for under the Conditional Sale Agreement plus an amount equal to .027096% of the Purchase Price of each Unit settled for under the Conditional Sale Agreement for each day elapsed from and including the Closing Date (as said term is defined in the Conditional Sale Agreement) with respect to such Unit to and including December 31, 1974, and (ii) 59 consecutive quarterly payments payable January 1, April 1, July 1, October 1 in each year commencing April 1, 1975, in an amount equal to 2.8697% of the Purchase Price of each Unit subject to the Lease on each such date.

All payments provided for in this Lease shall be made for the account of the Lessors, in care of the Agent, at Broad and Chestnut Sts., Philadelphia, Pa. 19101 in immediately available funds in Philadelphia.

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

LEASE OF RAILROAD EQUIPMENT

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 Lessors for any reason whatsoever.

The obligations to make rental and other payments under this Lease will constitute expenses of administration of the Lessee and will rank equally and ratably in priority of payment with all other expenses of administration of the Lessee, except the obligations of the Lessee under that certain Refinancing Agreement between it and the United States of America dated as of October 1, 1973 with respect to 57 diesel locomotives and except trustees' certificates heretofore or hereafter issued by the Lessee.

§ 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on December 31, 1989.

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

§ 5. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on both sides of each Unit, in letters not less than one inch in height, the following: "First Pennsylvania Bank N.A., as Trustees—Owner/Lessor: Girard Trust Bank—Security Owner," or other appropriate words designated by the Lessors, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessors' title to and property interest in such Units, the Agent's Security Title (as defined in The Conditional Sale Agreement) to such Unit and the rights of the Lessor under this Lease and of the Agent under the Conditional Sale Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked

LEASE OF RAILROAD EQUIPMENT

on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Agent and the Lessors 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.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may allow the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

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

LEASE OF RAILROAD EQUIPMENT

In the event that the Lessors shall become obligated to make any payment to the Builder or the Agent or otherwise pursuant to Article 6 of the Conditional Sale Agreement not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed Impositions hereunder) to the Lessors as will enable the Lessors to fulfill completely their obligations pursuant to said Article 6.

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

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

§ 7. *Payment for Casualty Occurrences.* In the event that any Unit shall be or become lost, stolen, destroyed, or, in the opinion of the Lessors or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "Casualty Occurrences") during the term of this Lease, the Lessee shall promptly and fully notify the Lessors and the Agent with respect thereto. On the rental payment date next succeeding such notice, the Lessee shall pay to the Lessors with respect to such Unit the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and the Lessee shall be vested with title to such Unit.

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

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1	103.593	15	97.444
2	103.771	16	96.687
3	104.313	17	95.850
4	104.204	18	95.284
5	104.008	19	94.642
6	104.236	20	93.631
7	104.386	21	89.392
8	104.164	22	87.241
9	103.862	23	86.354
10	103.816	24	85.100
11	103.694	25	83.767
12	103.201	26	82.721
13	100.448	27	81.602
14	97.830	28	80.116

LEASE OF RAILROAD EQUIPMENT

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
29	76.159	45	51.192
30	72.800	46	50.602
31	71.463	47	46.319
32	70.821	48	43.836
33	70.495	49	41.322
34	70.217	50	40.605
35	69.001	51	35.906
36	68.220	52	33.147
37	67.415	53	30.353
38	67.042	54	29.497
39	63.793	55	24.889
40	61.944	56	22.535
41	60.068	57	20.102
42	59.592	58	17.816
43	55.687	59	15.449
44	53.454	60	12.997
		Thereafter	10.000

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

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

§ 8. *Annual Reports.* On or before March 31 in each year, commencing March 31, 1976, the Lessee will furnish to each of the Lessors and the Agent an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Conditional Sale Agreement, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Lease in the case of the first such statement) and such other information regarding the

LEASE OF RAILROAD EQUIPMENT

condition and state of repair of the Units as either of the Lessors or the Agent 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 the markings required by § 5 hereof and Article 9 of the Conditional Sale Agreement have been preserved or replaced. The Lessors and the Agent shall have the right, by their agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessors or the Agent may request during the continuance of this Lease.

§ 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.* **The Lessors make no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessors make no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof, it being agreed that all such risks, as between the Lessors and the Lessee, are to be borne by the Lessee; but the Lessors hereby irrevocably appoint and constitute the Lessee their agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessors and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessors may have under the provisions of Article 13 of the Conditional Sale Agreement. The Lessee's delivery of a Certificate of Delivery shall be conclusive evidence as between the Lessee and the Lessors that all Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessors based on any of the foregoing matters.**

The Lessee agrees, for the benefit of the Lessors and the Agent, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration of any Unit, or in the event that any equipment or appliance on any such Unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such Unit in order to comply with such laws or rules, the Lessee will make such alterations, changes, replacements and additions at its own expense; *provided, however,* that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Agent, adversely affect the property or rights of the Lessors or the Agent under this Lease or under the Conditional Sale Agreement.

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

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Any and all additions to any Unit (except communications, signal and automatic control equipment or devices having a similar use which have been added to such Unit by the Lessee, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body), and any and all parts installed on and additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Conditional Sale Agreement) shall immediately be vested in the Lessors and the Agent as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify, protect and hold harmless the Lessors and the Agent from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Conditional Sale Agreement or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

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

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

A. default shall be made in payment of any part of the rental provided in § 3 hereof and such default shall continue for ten days;

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

C. 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 and such default shall continue for 30 days after written notice from the Lessors or either of them to the Lessee specifying the default and demanding that the same be remedied;

D. a decree or order is entered in the Reorganization Proceedings preventing or disabling the Trustees from performing any of their obligations under this Agreement; or

LEASE OF RAILROAD EQUIPMENT

E. if the obligations of the Trustees hereunder are assumed by a corporation or by the Debtor's successor pursuant to a plan of reorganization for the Debtor approved in the Reorganization Proceedings or by an assignee under Section 12 hereof, as provided herein (such corporation, successor or assignee, being hereinafter called the "Successor") and either:

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

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

then, in any such case, the Lessors, at their option, may:

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

(b) by notice in writing to the Lessee 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 hereinafter provided; and thereupon the Lessors may by their agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all

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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 Lessors 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 90, and also to recover forthwith from the Lessee (i) that percentage of the Purchase Price of the Equipment (as defined in the Conditional Sale Agreement) as set forth on Schedule I hereto opposite the last quarterly period with respect to which the lease rental was paid by Lessee under this Lease, plus any interest which has accrued pursuant to the provisions of Article 16 of the Conditional Sale Agreement subsequent to the Declaration of Default as defined in the Conditional Sale Agreement, said total to be reduced by the total net proceeds, if any, paid to Vendor and Vendees as defined in the Conditional Sale Agreement following any sale of the Equipment under the Conditional Sale Agreement or, if there is no sale, the fair market value of the Equipment on the date of the Declaration of Default (as defined in the Conditional Sale Agreement) said fair market value to be determined by agreement of the parties, including any assignee of this Lease, or, in the event agreement cannot be reached, in the same manner as set forth in § 13 hereof; provided, however, that in the event that sale of the Equipment is prevented by the order of a court of competent jurisdiction or by any other governmental action, no reduction in the amount owing shall be made until such time as the Vendor as defined in the Conditional Sale Agreement receives any "income or proceeds of the Equipment" as that term is defined in the Conditional Sale Agreement; plus (ii) any damages, expenses, including reasonable attorney's fees, in addition thereto which the Lessors shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental.

The remedies in this Lease provided in favor of the Lessors shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

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

§11. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 10 hereof, the Lessors may take, or cause to be taken or demand from the Lessee, immediate possession of Equipment, or one or more of the Units thereof, and may remove the same from possession and

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use of the Lessee. For such purpose, the Lessors may enter upon the premises of the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids, including but not limited to diesel fuel or other necessary petroleum products, and any available trackage and other facilities or means of the Lessee, with or without process of law.

In case the Lessors shall demand possession of the Equipment pursuant to this paragraph and shall designate a reasonable point or points on the lines or premises of the Lessee for the delivery of Equipment to the Lessors, the Lessee shall at its own cost, expense and risk, forthwith and in usual manner, cause the Equipment to be moved to such point or points on its lines and shall there deliver the Equipment or cause it to be delivered to the Lessors. At the option of the Lessors, the Lessors may keep the Equipment on any of the lines or premises of the Lessee until the Lessors shall have leased, sold or otherwise disposed of the same, and for such purpose, the Lessee agrees to furnish, without charge or rent or storage, the necessary facilities at any point or points selected by the Lessors reasonably convenient to the Lessee. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Unit, to inspect the same. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessors as agent and attorney of the Lessee with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessors to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time. This Agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and upon application to any court of equity having jurisdiction in the premises, the Lessors shall be entitled to a decree against the Lessee requiring specific performance hereof.

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

§ 12. *Assignment; Prohibition Against Liens; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessors without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessors except upon written notice of such assignment from the Lessors. All the rights of the Lessors hereunder, except the provisions of § 17 hereof and the rights to enforce said provisions under the remedies provided in § 10 hereof, shall inure to the benefit of the Lessors' assigns. Whenever the terms Lessor or Lessors are used in this Lease they shall include the assignees of the Lessors.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Lessors, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them except as hereinafter pro-

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vided in this § 12. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against either of the Lessors or the Agent not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessors, the Agent or the Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises; *provided, however*, that the Lessee shall be under no obligation to pay any Impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the opinion of the Lessors adversely affect the title, property or rights of the Lessors hereunder or under the Conditional Sale Agreement. If any Impositions shall have been charged or levied against the Lessors directly and paid by the Lessors, the Lessee shall reimburse the Lessors on presentation of an invoice therefor. The Lessee shall not, without the prior written consent of the Lessors, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by this Section 12. The accrual of any of the Lessee's rights in the leasehold interest under this Lease to the Manufacturers Hanover Trust Company as successor to the Central Union Trust Company as Mortgagee under a Mortgage and Deed of Trust dated January 2, 1924 between the Debtor and the said mortgagee, as amended and supplemented, shall not constitute a violation of the provisions of this paragraph.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it, the Debtor or any affiliate upon lines of railroad owned or operated by it or the Debtor 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 the Debtor or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or in the transportation thereof from the place of delivery to the Lessee but only upon and subject to all the terms and conditions of this Lease and the Conditional Sale Agreement; *provided, however*, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

The rights of Lessee under this Lease may not be assigned by the Lessee, except that, with the prior written consent of the Lessors and the Agent (which consent shall not be unreasonably withheld), the Lessee may assign all of its rights under this Lease to a third party of reliable standing with the financial community which shall have duly assumed Lessee's obligations hereunder. The obligations of the Lessee hereunder shall terminate upon the assignment of the Lessee's rights and obligations pursuant to this paragraph except as to obligations and claims arising prior to such assignments.

Nothing in this Section 12 shall be deemed to restrict the right of the

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Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad or federal corporation (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Debtor shall have become merged or consolidated or which shall have acquired or leased all or substantially all of the lines of railroad of the Debtor.

The Reorganization Proceedings shall not be dismissed or terminated nor shall the property of the Debtor be surrendered by the Trustees or their successor or successors, unless, (a) as a condition of such dismissal or termination or such surrender, all of the obligations then existing or to accrue of the Trustees under this Lease shall be assumed as a general obligation by the Debtor's successor pursuant to a plan of reorganization approved in the Reorganization Proceedings or by any other railroad corporation acquiring all or substantially all of the lines of railroad of the Debtor or as an obligation, having the same status and priorities as those of the Trustees under this Lease, by any receiver or receivers in equity, or trustee or trustees, that shall succeed the Trustees, or (b) payment in full in cash (or provision therefor satisfactory to the Lessors) is made to the Lessors of the Casualty Value of the Equipment and all damages, claims, or any other moneys payable to or in favor of the Lessors pursuant to this Lease, together with interest thereon as herein provided to the date of payment thereof.

In case of any sale or conveyance of all or substantially all of the lines of railroad of the Debtor, the purchaser, or transferee of the purchaser, shall not be at liberty to refuse to accept performance of this Lease or to disaffirm it and any such purchaser and any such transferee shall assume and agree to perform each and all of the obligations of the Trustees hereunder, unless provision is made for the payment to the Lessors as provided above in clause (b) of the next preceding paragraph.

The provisions of this Section 12 shall not be construed to limit or prevent any action required to be taken by the Lessee under the Regional Rail Reorganization Act of 1973.

Whenever used in this Lease, the term "Trustees" shall be deemed to mean any corporation (including the Debtor), receiver or receivers in equity, trustee or trustees, purchaser or transferee of any purchaser which shall have assumed and agreed to perform each and all of the obligations and covenants of the Trustees hereunder.

§ 13. *Purchase and Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessors not less than six months prior to the end of the term of this Lease or any extended term hereof, as the case may be, elect (a) to extend the term of this Lease in respect of all, but not fewer than all, of such Units then covered by this Lease, for one or two additional five-year periods commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, at a rental payable in 20 quarterly payments, each in an amount equal to the Fair Market Rental as hereinafter defined; such quarterly payments to be made on January 1, April 1, July 1 and October 1 in each year of the applicable extended term or (b) to purchase all, but not fewer than all, the Units covered by this Lease for a purchase price equal to the Fair Market Value as hereinafter defined of such Units as

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of the end of such term.

Fair Market Value or Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user or lessee, as the case may be (other than (i) a lessee currently in possession and (ii) a used equipment dealer), and an informed and willing seller or lessor, as the case may be, under no compulsion to sell or lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the term of this Lease or any extended term, the Lessors and the Lessee are unable to agree upon a determination of the Fair Market Value or Fair Market Rental, as the case may be, of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessors and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessors, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessors and the Lessee. The determination so made shall be conclusively binding upon both the Lessors and the Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

In the event the Lessee elects to purchase the Equipment, upon payment of the purchase price, the Lessors shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under either of the Lessors) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

§ 14. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will (unless the Unit is sold to the Lessee), at its own cost and expense, at the request of the Lessors, deliver possession of such Unit to the Lessors upon such storage tracks of the Lessee as the Lessors may reasonably designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessors to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessors; the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessors or any person designated by them, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessors or any prospective

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purchaser, the rights of inspection granted under this sentence. The movement, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessors shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to move, deliver, store and transport the Units, *provided, however*, that if the Court in the Reorganization Proceedings shall have ordered the liquidation of the Debtor's railroad property, the Lessee shall be required to perform such movement, delivery, storage and transportation only to the extent it is not prevented from doing so by an order of the Court. If Lessors shall elect to abandon any Unit which has suffered a Casualty Occurrence the Lessors may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessors harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessors shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessors' title to and property in any Unit abandoned by them pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessors in respect of any Unit abandoned by the Lessors after termination of the Lease; *provided, however*, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 7 hereof to make payments equal to the Casualty Value of the Unit experiencing a Casualty Occurrence while this Lease is in effect.

§ 15. *Opinion of Counsel.* On the Closing Date (as defined in the Conditional Sale Agreement), the Trustees will deliver to the Lessors a counterpart of the written opinion of counsel for the Trustees, addressed to the Lessors and the Agent, in scope and substance satisfactory to the Lessors, to the effect set forth in Section 6(f) of the Assignment and to the further effect that:

A. the Lease has been duly authorized by the Court upon due notice and duly executed and delivered by the Trustees and constitutes a valid, legal and binding agreement of the Trustees, enforceable in accordance with its terms;

B. this Lease has been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Lessors' interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Lessors in and to the Units; and

C. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease by the Trustees.

§ 16. *Recording; Expenses.* The Lessee will cause this Lease, the Conditional Sale Agreement and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessors under the Conditional Sale Agreement and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably

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requested by the Lessors or the Agent for the purpose of proper protection, to their satisfaction, of the Agent's and the Lessors' respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Conditional Sale Agreement or the assignment thereof to the Agent; and the Lessee will promptly furnish to the Agent and the Lessors evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Agent and the Lessors. This Lease and the Conditional Sale Agreement shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

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

§ 17. *Federal Income Taxes.* It is the intent of the parties to this Lease that for federal income tax purposes, each of the Trust Agreements will create a "Grantor Trust" of which one of the Trustors is the owner and, in determining such Trustor's federal income tax, such Trustor shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof or subsequently (hereinafter called the Code), to an owner of property, including (without limitation) any investment tax credit with respect to the Units. It is agreed by the parties that this Section 17 is for the benefit of the Trustors and that each of the Lessors or the Trustors is vested with all the right, power and authority to enforce this Section 17. As of the Closing Date, it is contemplated that each of the Trustors will join in the filing of a consolidated federal income tax return. Nevertheless, this Section 17 shall be operative whether either Trustor files a separate return or is a member of an affiliated group which files a consolidated income tax return. (The term "Lessors" when used hereafter in this § 17 shall mean the Lessors and/or the Trustors as the context requires.)

The Lessee agrees that it will not at any time take any action or file any returns or other documents inconsistent with the foregoing. Lessee agrees to keep and make available for inspection and copying by Lessors such records as will enable Lessors to determine whether they are entitled to the benefit of any amortization or depreciation deduction or tax credit which may be available from time to time with respect to the Units.

If (other than for the reasons set forth in the fourth paragraph of this § 17) either of the Lessors shall lose, or shall not have or shall lose the right to claim, or if (other than for such reasons) there shall be disallowed with respect to either of the Lessors, all or any portion of the tax credits or amortization or depreciation deductions based on a depreciable life of not more than 12 years with respect to any Unit and based on the original use of such Unit having commenced with the Lessors, the rental rate set forth in § 3 and the Casualty Values set forth in § 7 of this Lease applicable to such Unit shall, on and after the next succeeding rental payment date after written notice to the Lessee by such Lessor that such

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credits or amortization or depreciation deductions have not been claimed, or if claimed and then disallowed on and after the next succeeding rental payment date after payment of the tax attributable thereto, be increased by such amount for such Unit which, in the reasonable opinion of such Lessor, will cause such Lessor's net return [after all income taxes, calculated on the assumption that such Lessor's Federal, state and local taxes computed by reference to net income or excess profits are based on a 48% effective Federal tax rate and the highest effective state and local income tax and/or excess profit tax rates generally applicable to such Lessor, including therein the effect of any applicable surtax, surcharge and/or other tax or charge related thereto, and deducting (to the extent at that time permitted by Federal Law) from any such Federal tax 48% of the amount of any such state and local tax, (such rates as so calculated being hereinafter in this Lease called the "Assumed Rates"), including any penalties thereon] in respect of such Unit under this Lease to equal the net return (after all income taxes at the Assumed Rates, including any penalties thereon) that would have been available if such Lessor had been entitled to utilization of all or such portion of such credits or amortization or depreciation deductions which were not claimed or were disallowed and the Lessee shall forthwith pay to such Lessor the amount of any interest which may be assessed by the United States against such Lessor attributable to the loss of all or any portion of such credits or amortization or depreciation deductions. "Lessor's net return", as used herein with respect to each of the Lessors shall be determined on the basis of, and consistent with, the after-tax yield calculations in fact utilized by each respective Lessor in determining the acceptability to it of the rental rate set forth in § 3 hereof.

The rental rate and Casualty Values shall not be increased as hereinabove provided in this § 17 to the extent that either of the Lessors shall have lost, or shall not have, or shall have lost the right to claim, or if there shall have been disallowed with respect to such Lessor, all or any portion of such credits or amortization or depreciation deductions with respect to such Unit as a direct result of the occurrence of any of the following events:

- (i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessors the amounts stipulated under § 7 hereof;
- (ii) a voluntary transfer by either of the Lessors of legal title to such Unit, the disposition by either of the Lessors of any interest in such Unit or the reduction by either of the Lessors of its interest in the rentals from such Unit under the Lease, unless, in each case, an Event of Default shall have occurred and be continuing;
- (iii) the amendment of the Conditional Sale Agreement prior to an event of default thereunder without the prior written consent of the Lessee;
- (iv) the failure of either of the Lessors to claim the same in its income tax return for the appropriate year or the failure of either of the Lessors to follow proper procedure in claiming the same; or
- (v) the failure of either of the Lessors to have sufficient income or income tax to benefit from such credits or depreciation.

If, in the opinion of either of Lessors' tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of such credits or amorti-

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zation or depreciation deductions on any Unit exists in respect of which the Lessee is required to pay increased rental and interest as aforesaid to a Lessor as above provided, such Lessor shall upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to sustain such claim. Such Lessor may take such action prior to making payment of the amounts claimed pursuant to a notice of disallowance or may make such payment and then sue for a refund. In the latter event, the Lessee shall advance to such Lessor, without interest, sufficient funds to make such payment. Such Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified such Lessor for all liabilities and expenses which may be incurred therein and shall have furnished such Lessor with such reasonable security therefor as may be requested. Such Lessor shall have the right to direct Counsel not to take, or to cease taking, any legal or other action deemed reasonable by Counsel in order to sustain any bona fide claim made hereunder, and such action by such Lessor shall relieve Lessee of its obligations under this § 17 in respect to such claim not so contested.

Upon receipt by such Lessor and/or the Lessee of any questions or issues with respect to any credits, deductions or other benefits as provided by the Code with regard to this Lease and/or the Equipment leased hereunder, such Lessor or the Lessee, as the case may be, shall give the other prompt notice of the questions or issues so raised and shall keep the other informed as to the status and progress of any proceedings regarding such questions or issues.

The Lessee's agreement to pay any sums which may become payable pursuant to this § 17 shall survive the expiration or other termination of this Lease, and there shall be made all necessary retroactive adjustments in the rentals and Casualty Values theretofore paid in order to carry out the intent of this § 17, which adjustments shall, forthwith following the determination of the amounts thereof, be paid by the Lessee by means of one lump sum payment.

§18. *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 as additional rental, to the extent legally enforceable, an amount equal to 12.5% per annum of the overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

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

(a) if to the Lessors, at 1500 Building, 15th and Chestnut Sts., Philadelphia, Pennsylvania, attention Corporate Trust Department; and

(b) if to the Lessee, at Reading Terminal, 12th and Market Streets, Philadelphia, Pennsylvania 19107, attention of Secretary and Treasurer;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

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

This lease exclusively and completely states the rights of the Lessors and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessors and of the Lessee or its duly authorized representative and consented to in writing by the Agent.

§ 21. *Insurance.* The Lessee will maintain, at its sole cost and expense, at all times during the term of this Lease (and thereafter during the first three (3) month period in which the Units are being assembled and delivered to the locations specified in Section § 14 hereof), with reputable insurers acceptable to the Lessors and the Agent, insurance in an amount not less than the Casualty Value of each Unit leased hereunder, insuring against loss and destruction of, and damage to, such Unit arising out of fire, windstorm, explosion, and all other hazards and risks ordinarily subject to extended coverage insurance, and against such other hazards and risks as are customarily insured against by companies owning or leasing property of a similar character and engaged in a business similar to that engaged in by Lessee with a deductible amount not in excess of \$25,000. All such insurance policies shall (i) name the Lessors and Agent as additional insureds, with losses to be payable to the Lessors, the Agent and the Lessee as their respective interests may appear, (ii) provide that the policies will not be invalidated as against the Lessors or the Agent because of any violation of a condition or warranty of the policy or application therefor by Lessee, and (iii) provide that the policies may be materially altered or cancelled by the insurer only after thirty (30) days prior written notice to the Lessors and the Agent. The Lessee shall deliver to the Lessors or the Agent, prior to the commencement of the lease term for any Unit (or at such other time or times as the Lessors may request) a certificate or other evidence of the maintenance of all such insurance satisfactory to the Lessors and the Agent provided, however, that the Lessors and the Agent shall be under no duty to examine such certificate or other evidence of insurance, or to advise the Lessee in the event that its insurance is not in compliance with this Lease. In the event of failure on the part of the Lessee to provide and furnish any of the aforesaid insurance, the Lessors or the Agent may procure such insurance and the Lessee shall, upon demand, reimburse the Lessors and the Agent for all expenditures made by the Lessor for such insurance, together with interest thereon computed at the maximum rate of interest permitted by law, but not more than 12.5%, from the date of the Lessors' or the Agent's payment until reimbursed by the Lessee. The insurance policies shall also provide that upon receipt by the insurer from the Lessors or the Agent of any written notice of the occurrence of an Event of Default hereunder, any proceeds payable by said insurer with respect to any loss

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or destruction of, or damage to, any Unit, shall be payable solely to the Lessors or the Agent from the date of said insurer's receipt of such written notice, up to the date said insurer receives written notice from the Lessors that said Event of Default is no longer continuing hereunder.

§ 22. *Other Obligations.* Lessee agrees that, during the term of this Lease, Lessee will not assume or enter into any other leases of equipment, equipment trust agreements, conditional sale agreements or other liabilities or obligations in connection with the leasing or financing of the future acquisition of equipment or other tangible personal property other than that certain refinancing agreement between it and the United States dated October 1, 1973, with respect to 57 diesel locomotives, (i) if such liabilities or obligations would be entitled, directly or indirectly, to any priority in right of payment over the obligations of the Lessee under this Lease, or (ii) if such liabilities or obligations would be secured, directly or indirectly, by any mortgage, lien or other security interest in property of the Debtor or Lessee (except the equipment or other property involved in the particular transaction) unless the obligations of the Lessee under this Lease are equally and ratably secured thereby; provided that nothing herein shall restrict the right of the Trustees to issue and sell trustees' certificates for any proper purpose.

§ 23. *Execution.* This Lease may be executed in several counterparts, but the counterpart delivered to the Interstate Commerce Commission for recordation and subsequently redelivered to the Agent shall be deemed the original counterpart. Although this Lease is dated as of 1974, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 24. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania, *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

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

FIRST PENNSYLVANIA BANK N.A.,
as Trustee,

by _____
Vice President

[CORPORATE SEAL]

Attest:

Assistant Secretary

LEASE OF RAILROAD EQUIPMENT

FIRST PENNSYLVANIA BANK N.A.,
as Trustee,

by _____
Vice President

[CORPORATE SEAL]

Attest:

Assistant Secretary

ANDREW L. LEWIS, JR.

Witness: _____

[SEAL]

Trustee

JOSEPH L. CASTLE

Witness: _____

[SEAL]

Trustee

*As Trustees of the property
of Reading Company, Debtor
and not individually.*

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

On this _____ day of _____, 1974, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is a Vice President of First Pennsylvania Bank N.A., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

Notary Public, Phila. Co.
My Commission Expires

[NOTARIAL SEAL]

SCHEDULE A

Type	Builder's Specifications	Quantity	Debtor's Road Numbers (Inclusive)	Average Unit Base Price	Total Base Price	Delivery
GP-39-2 2300 h.p. General Purpose Diesel Electric Locomotives	8075	20	3401- 3420	\$299,912	\$5,998,240	EMD Plant, LaGrange, Illinois
MP-15 1500 h.p. Multi- Purpose Diesel Electric Locomotives	8097	10	2771- 2780	\$255,038	\$2,550,380	Same
Total					<u>\$8,548,620</u>	

LEASE OF RAILROAD EQUIPMENT

SCHEDULE I

<u>Last Lease Payment Month/Year</u>	<u>Percent of Purchase Price</u>
01/75	103.478
04/75	103.120
07/75	103.479
10/75	103.767
01/76	103.328
04/76	102.801
07/76	102.708
10/76	102.535
01/77	101.990
04/77	101.361
07/77	100.997
10/77	100.554
01/78	96.692
04/78	94.353
07/78	93.726
10/78	93.020
01/79	91.943
04/79	90.783
07/79	89.902
10/79	88.944
01/80	83.310
04/80	81.717
07/80	80.593
10/80	79.392
01/81	77.822
04/81	76.172
07/81	74.817
10/81	73.388
01/82	67.103
04/82	65.227
07/82	63.656
10/82	62.013
01/83	60.016
04/83	57.962
07/83	56.237
10/83	54.455
01/84	52.322
04/84	50.129
07/84	48.605
10/84	46.396
01/85	44.132
04/85	41.810
07/85	39.704
10/85	37.540
01/86	35.316
04/86	33.030
07/86	30.811

LEASE OF RAILROAD EQUIPMENT

SCHEDULE I (Continued)

<u>Last Lease Payment Month/Year</u>	<u>Percent of Purchase Price</u>
10/86	28.528
01/87	26.179
04/87	23.763
07/87	21.421
10/87	19.010
01/88	16.526
04/88	13.968
07/88	11.495
10/88	8.944
01/89	6.315
04/89	3.604
07/89	1.045
10/89	—

NOTICE OF ASSIGNMENT

This is to advise that, effective April 1, 1976,
12:01 a.m., the Financing Agreement described below has
been assigned to the Consolidated Rail Corporation by the
Trustees of: Reading Company
1 Plymouth Meeting
Plymouth Meeting, PA 19452

The Financing Agreement is a Lease
, dated November 15, 1974
bearing the ICC recordation number 7723
The payee's name and address is: First Pennsylvania Bank, N.A.
1500 Chestnut Street
Philadelphia, PA 19102

This Notice of Assignment has been placed in the
file of the ICC recordation number listed above and the entire
assignment is contained in the ICC recordation file stamped
in the margin of this assignment. A copy hereof will be
promptly mailed to the payee listed above for distribution
to the beneficial holder(s) of the Financing Agreement described
in this Notice of Assignment.

Consolidated Rail Corporation