

HOUSTON BELT & TERMINAL RAILWAY COMPANY

UNION STATION BUILDING
OPERATING THE TERMINALS OF

MISSOURI PACIFIC RAILROAD CO.
FORT WORTH AND DENVER RAILWAY CO.

L. B. GRIFFIN
PRESIDENT AND GENERAL MANAGER

ATCHISON, TOPEKA AND SANTA FE RAILWAY CO.,
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD CO.
HOUSTON, TEXAS 77002

11036

RECORDATION NO. Filed 1425

November 6, 1979

NOV 8 1979 - 3 00 PM

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission
I.C.C. Building
12th Street & Constitution Ave., N.W.
Washington, D. C. 20423

9-312A085

Date NOV 8 1979

Fee \$ 50.00

ICC Washington, D. C.

NOV 8 2 59 PM '79

RECEIVED

Gentlemen:

There are enclosed for filing with the Interstate Commerce Commission under the provisions of Section 11303a of the Revised Interstate Commerce Act the original and two counterparts of that certain Equipment Lease Agreement executed as of November 7, 1979, between Texas Commerce Bank National Association, Lessor, with address 712 Main St., Houston, Texas 77002, and Houston Belt & Terminal Railway Company, Lessee, with address Union Station Building, 501 Crawford, St., Houston, Texas 77002.

The aforesaid document covers the following described railroad equipment:

Five (5) Model MP-15-1500 HP Diesel Electric Locomotives, General Motors Corporation, Manufacturer; Serial Nos. 786236-1 through 786236-5.

The filing fee of \$50.00 is attached hereto.

The original, after recordation, should be returned to the undersigned in car of Houston Belt & Terminal Railway Company, Union Station Building, 501 Crawford St., Houston, Texas 77002.

Yours very truly,



att/

Steve Wood
Clarence

Interstate Commerce Commission
Washington, D.C. 20423

11/8/79

OFFICE OF THE SECRETARY

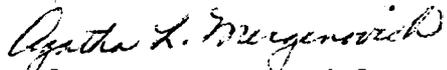
L.L. Griffin
President and General Manager
Houston Belt & Terminal RYW. Co.
Union Station Building
501 Crawford St. Houston, Texas 77002

Dear

Sir:

The enclosed document (s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/8/79 at 11036, and assigned re-
recording number (s).

Sincerely yours,


Agatha L. Mergenovich
Secretary

Enclosure (s)

11036

RECORDATION NO.....Filed 1425

NOV 8 1979 -3 00 PM

INTERSTATE COMMERCE COMMISSION

EQUIPMENT LEASE AGREEMENT

THIS LEASE, entered into this 7th day of November, 1979, by and between TEXAS COMMERCE BANK NATIONAL ASSOCIATION (hereinafter called "Lessor") and HOUSTON BELT & TERMINAL RAILWAY COMPANY, a Texas corporation, with its principal office located at 501 Crawford Street, Houston, Texas (hereinafter called "Lessee");

WITNESSETH:

(1) LEASE. For and in consideration of the covenants and agreements to be kept and performed by Lessee, Lessor agrees to lease to Lessee and Lessee agrees to hire from Lessor on the terms and conditions herein stated, all equipment, personal property, and other property described in the schedule executed by the parties concurrently herewith or hereafter and made a part hereof. All said equipment, personal property, and other property described in all said schedules, together with any replacement parts, additions, repairs and accessories incorporated therein and/or affixed thereto, is herein collectively called "Equipment"; and all said schedules are hereinafter collectively called "Equipment Schedule". Lessor hereby agrees to lease to Lessee from time to time on or after the date hereof, items of Equipment which shall have an aggregate Equipment Cost (as set forth in the Equipment Schedule attached hereto) of up to \$2,500,000.00 and which shall have been accepted by Lessee pursuant to Paragraph 6 of this lease prior December 31, 1979.

(2) TERM. The lease of and rent for each item of Equipment shall commence on the day specified on the Equipment Schedule pertaining thereto and shall continue for the period specified as the "term" in said Equipment Schedule. If any term be extended or any renewal option or options be exercised, the word "term" as used herein shall be deemed to refer to all extended and renewal terms, and all provisions of this lease shall apply during any extended and renewal terms, except as may be otherwise specifically provided in this lease or in any subsequent written agreement of the parties.

(3) RENT. The rent for any and every item of Equipment described in the Equipment Schedule shall be the amount designated in the Equipment Schedule. Lessee shall pay Lessor rent in the amounts and at the times set forth in the Equipment Schedule, at the office of Lessor, 712 Main

Street, Houston, Texas 77002, or to such person and/or at such other place as Lessor may from time to time designate in writing. All rent shall be absolutely net to Lessor and shall be paid without notice or demand and without abatement, set-off or deduction of any amount whatsoever, and despite any defense or counterclaim that Lessee may have against Lessor, manufacturer, or supplier, or any one or more others. Any delinquent rental payments shall bear interest at the highest lawful rate thereon from the due date to the date when paid.

(4) DISCLAIMER. Lessor is not a manufacturer of the Equipment, nor a manufacturer's agent. Accordingly, LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, AS TO FITNESS, DESIGN, CONDITION, MERCHANTABILITY, TITLE, OPERATION, FITNESS FOR ANY PARTICULAR PURPOSE OF THE EQUIPMENT, AS TO THE QUALITY OR CAPACITY OF THE MATERIALS IN THE EQUIPMENT, OR AS TO THE WORKMANSHIP IN THE EQUIPMENT OR WITH RESPECT TO PATENT OR OTHER PROPRIETARY RIGHT INFRINGEMENT, OR THAT THE EQUIPMENT WILL SATISFY THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT WHICH PROVIDES FOR SPECIFIC MACHINERY OR OPERATORS OR FOR SPECIAL METHODS. Responsibility for all such matters, as between Lessor and Lessee, is to be borne by Lessee at its sole risk and expense. Nothing herein contained shall be construed as depriving Lessee of whatever rights, if any, Lessee may have against any person or persons other than Lessor or its assignee. Lessor hereby assigns to Lessee any and all assignable Equipment manufacturer's warranties, and Lessor agrees to provide such assistance as Lessee may reasonably request in order to obtain the benefits of such Equipment manufacturer's warranties, all at the expense of Lessee.

(5) DELIVERY AND INSTALLATION. Equipment shall be shipped directly from the supplier thereof to the Lessee. Lessor shall have no obligation to install, erect, test, adjust, service or maintain the Equipment. Lessee agrees to accept such shipments and the parties agree that their rights and obligations under this lease shall not be affected by any delay in shipment by suppliers caused by circumstances beyond their control, including, without limiting the generality of the foregoing, acts of God, flood, war, Government regulations, directions or requests, accidents or labor trouble. Lessee further agrees that Lessor shall not be liable for any loss or damage by reason

of delay in shipment or delivery caused by any of the foregoing or any other circumstances. Lessor shall have no liability to Lessee in the event that any supplier, manufacturer or one or more others fail to perform any obligations at any time due Lessor, Lessee, persons in privity with Lessor or Lessee and other persons, or any one or more of the foregoing. Lessee shall not, without Lessor's prior written consent, affix or permit to be affixed the Equipment or any parts thereof to any realty or other property. If following such written consent of the Lessor the Equipment is to be affixed or becomes affixed to realty or other property, Lessee shall furnish Lessor with waivers, satisfactory to Lessor, from any persons who might claim an interest in the Equipment.

(6) INSPECTION: CONCLUSIVE PRESUMPTIONS. Lessee warrants, upon acceptance of delivery of each item of Equipment, that it is in proper operating order and appearance. Upon receipt of each item of Equipment by Lessee and acceptance thereof, Lessee agrees to forward to Lessor an Acceptance Letter in the form of Exhibit 1 hereto. In any case, unless Lessee gives Lessor written notice of each defect or other irregularity in an item of Equipment within ten (10) business days after receipt thereof it shall be conclusively presumed, as between Lessee and Lessor, that the item was delivered in good condition and repair and that Lessee accepts it as an item of Equipment described in this lease or Equipment Schedule hereof, in full compliance with the provisions hereof.

(7) USE. The Equipment shall be the exclusive property of Lessor, and Lessee shall have no rights therein except the right to use it so long as Lessee is not in default hereunder. Lessee shall use the Equipment in a careful and proper manner and shall comply with and conform to all federal, state, municipal and other laws, ordinances and regulations. If at any time during the term hereof Lessor supplies Lessee with labels, plates or other markings, stating that the Equipment is owned by Lessor, Lessee shall affix and keep the same upon a prominent place on the Equipment. Lessor or its representatives may, for purposes of inspection, at all reasonable times enter upon any job, building, or place where the Equipment may be. If the Equipment is, in the opinion of Lessor, being abused or improperly cared for, Lessor may demand that Lessee remedy any such condition, and if Lessee fails to do so, Lessor may

consider such failure an Event of Default under Paragraph 11 hereof. Lessee shall not move the Equipment from the location specified in the Equipment Schedule to another location without the written consent of Lessor, which consent shall not be unreasonably withheld.

(8) SERVICE AND REPAIR.

(a) Lessee shall, at its expense during the term of this lease, keep the Equipment in good operating condition, repair, and appearance, and shall furnish all supplies and parts necessary for its operation.

(b) No accessory, equipment or device will be installed in or on the Equipment by Lessee if such installation will impair the originally intended function or use of the Equipment. All such accessories, equipment or devices including parts and supplies shall become the property of Lessor unless otherwise agreed in writing.

(c) Any alterations or modifications of the Equipment that may be required during the term of the lease to comply with any applicable law or any governmental rule or regulation shall be made at the expense of Lessee.

(9) INDEMNIFICATION. Lessee shall and does assume all risks, responsibility, and liability arising from Lessee's use or possession of the Equipment and agrees to indemnify, reimburse, and hold harmless Lessor from any and all claims, demands, suits, judgments or causes of action for or on account of injury to, or death of any person or persons, loss or damage to property, including the Equipment, which may result from or grow out of the management, control, use or operation of such Equipment during the term hereof, or which may be attributable to any defect in the Equipment arising from the material or any article used therein, or in the design, workmanship or any installation, maintenance, service, repair or use thereof, or for any other cause during the terms hereof with respect to such Equipment, regardless of when such defects shall be discovered. Each party agrees that it will give the other prompt notice of any such action, suit or proceeding. Lessee hereby waives any claim against Lessor on account of any and all such claims, demands, suits, judgments, or causes of action. Lessee further covenants and agrees with Lessor that it will never sue or prosecute any legal action

or proceeding whatsoever against Lessor for or on account of any of the aforesaid claims or causes of action and that this Agreement may be pleaded as a complete defense of any such action or proceeding which may be brought as a consequence thereof. Lessee further covenants and agrees that it will, at its own cost and expense, defend any and all suits which may be brought against Lessor either alone or in conjunction with others, upon any such liability, claim or claims. However, nothing contained in this Paragraph 9 or elsewhere in this lease shall constitute or be deemed or construed as, a waiver, release or discharge, in whole or in part, of any claim, demand, suit, judgment or cause of action that Lessor or Lessee may have against the manufacturer of the Equipment, including without limitation liability arising from product defects or negligence. Lessor hereby transfers and assigns to Lessee any and all claims and causes of actions relating to the Equipment which it may now or hereafter have against the manufacturer or other supplier of the Equipment. To the extent that Lessee shall indemnify, reimburse or hold harmless Lessor from any claims, demands, suits, judgments or causes of action relating to the Equipment or this lease, for whatever reason, Lessee shall be subrogated to any and all rights and interests of Lessor with respect thereto, including without limitation, any rights of recovery therefor, and Lessor agrees to provide such assistance as Lessee may reasonably request in pursuing any such rights or interests, all at the expense of Lessee. Lessee shall be entitled to retain any recoveries realized as a result of the exercise or enforcement of such rights or interests.

(10) LESSEE'S REPRESENTATIONS AND WARRANTIES. In addition to other representations and warranties of Lessee set forth herein, Lessee represents and warrants that:

a. Lessee is a corporation duly organized and existing in good standing under the laws of the State of Texas and Lessee has no subsidiaries.

b. Lessee is duly authorized to execute and deliver this lease, and is and will continue to be duly authorized to lease the Equipment hereunder and to perform its obligations hereunder.

c. The execution and delivery of this lease by Lessee, and the performance by Lessee of its obligations

hereunder do not and will not conflict with any provision of law (including without limitation the provisions of 15 U.S.C. §20) or of the charter or bylaws of Lessee or of any indenture, mortgage, deed of trust or agreement or instrument binding upon Lessee or to which Lessee is a party.

d. The execution, delivery and performance of this lease by Lessee and the consummation by Lessee of the transactions contemplated hereby do not require the consent, approval or authorization of, or notice to, any federal or state governmental authority or public regulatory body.

e. Lessee's financial statement as at July 31, 1979, a copy of which has been furnished to Lessor, has been prepared in conformity with the Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission (the "ICC") applied on a basis consistent with that of the preceding fiscal year and presents fairly the financial condition of Lessee as at the date thereof, and the results of its operations for the period then ended, and since such date there has been no material adverse change in its financial condition.

f. This lease as a legal, valid, and binding obligation of Lessee enforceable in accordance with its terms except as may be affected by bankruptcy, reorganization, insolvency and similar laws affecting the rights of creditors generally and subject to the qualification that general equitable principles may limit the availability of the remedy of specific performance.

g. There are no pending or threatened actions or proceedings before any court or administrative agency which will to a material extent adversely affect the financial condition or continued operation of Lessee (except as previously disclosed in writing by Lessee to Lessor).

h. Except for the existing mortgage of Lessor and other interests which may be created or granted by Lessor, upon the purchase by the Lessor of the Equipment, no mortgage, deed of trust, indenture, lease or other lien or security interest of any nature whatsoever which now covers or affects any property or interest will attach or thereafter will attach to the Equipment or in any manner affect or will affect adversely Lessor's right, title and

interest herein other than interests created or granted by Lessor.

(11) DEFAULT. Lessee shall be in default under this lease upon the happening of any of the following events or conditions (herein called an "Event of Default"): (a) Lessee fails to pay when due any rent hereunder; (b) Lessee fails punctually to perform any of the other obligations, covenants, terms or provisions contained or referred to in this lease and such failure shall have not been remedied within thirty (30) days after written notice thereof from Lessor; (c) any warranty, representation, or statement contained in this lease or made or furnished to Lessor by or on behalf of Lessee in connection with this lease or to induce Lessor to enter into this lease proves to have been false in any material respect when made or furnished; (d) the Equipment becomes subject to any levy, seizure, attachment, encumbrance, or other process for or by any creditor or governmental agency, or Lessee attempts to remove, sell, transfer, encumber, or part with possession of the Equipment or to perform any act tending to impair Lessor's title to the Equipment; (e) the dissolution, termination of existence, insolvency or business failure of Lessee or any guarantor or surety of any obligation of Lessee to Lessor; the appointment of a receiver of all or any part of the property of Lessee; the making of a general assignment for the benefit of creditors of Lessee; the calling of a meeting of creditors of Lessee or any guarantor or surety of any obligation of Lessee to Lessor; the commencement of any proceeding under any bankruptcy or insolvency laws by or against Lessee or any guarantor or surety of any obligation of Lessee to Lessor; or a substantial part of the property of Lessee or any guarantor or surety of any obligation of Lessee to Lessor becomes subject to any levy, seizure, attachment or other process for or by any creditor or governmental agency; (f) any statement of the financial condition of Lessee or of any guarantor or surety of any obligation of Lessee to Lessor submitted to Lessor by Lessee or by any such guarantor or surety proves to be false in any material respect; or (g) any guarantor or surety of any obligation of Lessee to Lessor defaults in any obligation or liability to Lessor. Upon the occurrence of an Event of Default and so long as the same shall be continuing, Lessor may, at its option, declare this lease to be in default by written notice to such effect given to Lessee, and at any time thereafter

Lessor may exercise one or more of the following remedies, as Lessor in its sole discretion shall lawfully elect: (x) proceed by appropriate court action, either at law or in equity, to enforce performance by Lessee of the applicable covenants of this lease or to recover damages for the breach thereof; (y) by notice in writing terminate this lease (whereupon all right, title and interest of Lessee to the Equipment shall absolutely cease and terminate), but Lessee shall remain liable hereunder as hereinafter provided; and thereupon Lessor may cause Lessee at its sole cost and expense promptly to return the Equipment to the possession of Lessor in the condition required upon the return thereof pursuant to and in accordance with the terms and provisions of Paragraph 12 hereof, or Lessor, at its sole option, may, with or without legal process, and employing all such reasonable force as may be necessary (but without breach of the peace), enter the premises where the Equipment is located and remove the same in any convenient manner, whether or not such Equipment is attached to real estate or other property, all without being guilty of any manner of trespass and without liability for or obligation to repair damage to property of Lessee and others reasonably occasioned thereby. Lessee will furnish at its expense all aid and assistance in connection with such entry, repossession and removal as Lessor may request and will indemnify and save Lessor harmless from all claims, whether of Lessee or others, for damage resulting from such entry, repossession and removal. Lessee shall, without further demand, forthwith pay to Lessor any and all amounts, including rents, under the terms of this lease which may then be due and unpaid, together with interest thereon, at the highest rate permitted by applicable law from termination or Event of Default until such amount is paid in full, plus an amount, paid as liquidated damages for loss of a bargain and not as penalty, equal to the Stipulated Value (calculated pursuant to the Stipulated Value Schedule attached hereto utilizing the Percentage of Equipment Cost opposite the Rent Payment due on or most immediately succeeding the date of such Event of Default, herein referred to as "Stipulated Value"), together with interest thereon, at the highest rate permitted by applicable law from termination or Event of Default until such amount is paid in full. Following the return of the Equipment to or the repossession of the Equipment by Lessor pursuant to this clause (y), Lessor shall proceed with reasonable dispatch and diligence to sell the Equipment. The proceeds of such

sale shall be applied by Lessor (i) first, to all costs, charges and expenses, including reasonable attorneys' fees, incurred by Lessor as a result of the default and the exercise by Lessor of its rights and remedies with respect thereto, and (ii) then, to the extent but only to the extent that sale proceeds remain available for such purpose, to reimburse Lessee for the Stipulated Value previously paid by Lessee. Any surplus shall be retained by Lessor. Lessee shall forthwith following such sale pay to Lessor the deficiency, if any, between the sale price of the Equipment and the sum of item (i) above and the Stipulated Value (to the extent not previously paid by Lessee), together with the interest thereon, at the highest rate permitted by applicable law from the date the Stipulated Value is payable until such amount is paid in full by Lessee.

Lessee shall be liable for all reasonable and necessary costs and expenses, including reasonable attorneys' fees and disbursements, incurred by reason of the occurrence of any Event of Default or the exercise by Lessor of any of its rights or remedies with respect thereto.

No right or remedy referred to in this Paragraph 11 is intended to be exclusive, but each shall be cumulative and in addition to any other right or remedy referred to above or otherwise available to Lessor at law or in equity. No express or implied waiver by Lessor of any default or Event of Default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent default or Event of Default. The failure or delay of Lessor in exercising any rights or remedies granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right or remedy upon the continuation or recurrence of any such contingencies or similar contingencies, and any single or partial exercise of any particular right or remedy by Lessor shall not exhaust the same or constitute a waiver of any other right or remedy provided herein.

(12) RETURN OF EQUIPMENT. Unless Lessee purchases the Equipment pursuant to Paragraph 18 hereof, at the expiration of this lease for any cause, Lessee shall return the Equipment to Lessor, prepaying all transportation charges, at a location within the continental United States designated by Lessor, in the same repair and condition as at the time of its delivery to Lessee, reasonable wear and tear

excepted. Lessee will pay for any repairs necessary to place the Equipment in such condition.

(13) RISK OF LOSS. Lessee hereby assumes and shall bear the entire risk of loss and damage to the Equipment from any and every cause whatsoever. No loss or damage to the Equipment or any part thereof shall impair any obligation of Lessee under this lease which shall continue in full force and effect.

In the event of loss or damage of any kind whatsoever to the Equipment, Lessee shall:

(a) Promptly place the same in good repair, condition and working order, or promptly replace the same with like Equipment in good repair, condition and working order; or

(b) If in the reasonable judgment of Lessor same is determined by Lessor to be lost, stolen, destroyed or damaged beyond repair, pay Lessor therefor in cash upon such determination the sum of (i) the "Stipulated Value" as set forth in the Stipulated Value Schedule utilizing the percentage of Equipment Cost opposite the Rent Payment which is due on, or most immediately following, the date of such determination, and (ii) the rent with respect to such Rent Payment, and (iii) all other amounts which may be owing the Lessor on such date pursuant to this lease. Upon such payment this lease shall terminate with respect to all such Equipment so paid for and Lessee thereupon shall become entitled to such Equipment as-is-where-is without warranty, express or implied, with respect to any matter whatsoever.

(14) INSURANCE. Lessee shall at its own expense from point of delivery keep the Equipment insured, with such carriers as Lessor shall approve, for such risks, in such amounts and against such hazards as specified in paragraph (E) of the Equipment Schedule and as Lessor may otherwise require in writing, including, without limiting the

generality of the foregoing, insurance for damage to the Equipment itself, public liability, property damage, collision fire, theft and such other risks as are covered by endorsement commonly known as supplemental or extended coverage. All such insurance shall name Lessor and Lessee as insureds as their interest may appear and name Lessor as loss payee, and the policies shall provide that they may not be cancelled or altered without twenty (20) days' prior written notice to Lessor. Lessee hereby appoints Lessor as Lessee's attorney-in-fact to make proof of loss, and claim for, insurance, and to make adjustments with insurers, and to receive payment of and execute or endorse all documents, checks or drafts in connection with payments made as a result of such insurance policies. The proceeds of such insurance, at Lessor's option, shall be applied toward payment of the obligations of Lessee under this lease. Lessee will promptly deliver to Lessor satisfactory evidence of such insurance. In default of Lessee's providing such insurance, Lessor, without impairment of its rights or remedies by reason of such default, may purchase such insurance (but shall not be required to do so), and Lessee shall upon demand forthwith pay to Lessor any premium so paid, plus interest thereon at the highest rate permitted by applicable law. All risk of loss, theft or destruction of or damage to the Equipment shall be on Lessee whether or not insurance has been provided.

(15) TAXES; LIENS. Lessee shall keep the Equipment free and clear of all levies, liens (except for liens for taxes not yet due and payable) and encumbrances and shall during the term of this lease, in addition to the rent provided herein to be paid, properly render the Equipment to all appropriate governmental authorities and pay all personal property taxes, license fees, assessments, sales, use, income and other taxes (including any income tax payable by Lessor in respect of such tax payments) now or hereinafter imposed by any governmental authority upon the Equipment or any rental payments hereunder, together with any penalties or interest in connection therewith (excluding, however, Federal taxes measured by the net income of Lessor and taxes imposed by the jurisdiction in which the principal office of Lessor is located, which are measured by the net income of Lessor). Lessee may, at its expense, contest any such fee, assessment or tax, in good faith, provided that Lessee shall have taken steps satisfactory to Lessor to protect Lessor from any liability,

actual or potential, which may be imposed upon Lessor upon an adverse determination of such contest. In default of Lessee's obligation therefor, Lessor, without impairment of its rights or remedies on said default, may pay such obligations (but shall not be required to do so), and when notified, Lessee shall forthwith pay to Lessor such obligation so incurred on demand, plus interest thereon at the highest rate permitted by applicable law. Upon request by Lessor, Lessee shall provide Lessor with evidence of rendition of the Equipment reasonably satisfactory to Lessor or with a copy of a tax receipt evidencing payment of personal property taxes with respect to the Equipment. Lessee shall also furnish to Lessor such evidence of payment of other taxes, fees and assessments as Lessor may from time to time request.

(16) TITLE. Title to the Equipment shall at all times remain in Lessor. Replacements, additions, repairs or alterations made to or placed in or upon the Equipment shall become a component part thereof and title therein shall immediately vest in Lessor and shall be included under the terms and provisions of this lease. The Equipment shall always remain and shall be admitted to be personal property even though attached to realty.

(17) ASSIGNMENT. This lease and Lessor's interest herein may be assigned by Lessor, either in whole or in part, without notice to Lessee, and Lessor's interest in the Equipment may be made subject to a security interest or otherwise transferred without notice to Lessee. Any such assignee or secured party may assign the same. In such event, such assignee's or secured party's right, title and interest in and to this lease, including, but not limited to, the right to the rental payments provided herein and in and to the Equipment, shall be free from all defenses, set-offs and counterclaims of any kind or character which Lessee may be entitled to assert against Lessor. Neither this lease nor Lessee's interest therein may be assigned by Lessee, either in whole or in part, nor may Lessee sublease the Equipment or any portion thereof, without the written consent of Lessor.

(18) OPTION. Provided that the Lessee is not then in default, Lessee shall have the right after the expiration of the term of this lease, at Lessee's option (a) to purchase all (but not less than all) the Equipment, on an

AS-IS-WHERE-IS basis for cash, at a price equal to the "fair market value" (as defined) or (b) to renew and extend this lease as to all (but not less than all) the Equipment for a period of not less than one year at a rental equal to the "fair rental value" (as defined). Lessee shall give Lessor written notice 180 days prior to the end of the original lease term of its election to exercise the purchase or renewal option provided for in this Paragraph.

The fair market value and the fair rental value shall be such amounts as are mutually agreed upon by Lessor and Lessee; provided, however, if Lessor and Lessee are unable to agree upon the fair market value or the fair rental value of the Equipment within thirty (30) days after receipt by Lessor of notice of the Lessee's election to exercise Lessee's option, the Equipment then leased hereunder shall be returned to Lessor in accordance with Paragraph 12.

(19) INVESTMENT TAX CREDIT AND DEPRECIATION.

Lessee agrees that if Lessor shall not be entitled to a ten percent (10%) investment tax credit based on 100% of Lessor's Equipment Cost of the Equipment subject to the Lease pursuant to Paragraph A of the Equipment Schedule attached hereto, or such credit is lost, disallowed, eliminated, reduced, recaptured or otherwise unavailable for any reason (the "ITC Loss"), then Lessee shall pay Lessor within thirty (30) days after the date of such ITC Loss (as defined herein), an amount (the "ITC Indemnity Amount") which is equal to the sum of (i) such ITC Loss, (ii) the amount of all taxes required to be paid by Lessor in respect of the receipt of such ITC Loss under the laws of any federal, state or local government or taxing authority, which taxes are attributable to the inclusion in Lessor's income of any payment or reimbursement made or payable by Lessee under this Paragraph 19 (including any payment or reimbursement made or payable pursuant to this clause (ii) of Paragraph 19); and (iii) the amount of any interest, penalties or additions to tax payable by Lessor as a result of such ITC Loss. The amount of such ITC Loss shall be determined by mutual agreement of Lessor and Lessee or, failing such agreement, by an independent firm of certified public accountants or independent tax counsel, selected by Lessor and paid at Lessee's expense.

Lessee further agrees that if Lessor shall not be entitled to depreciation based upon the double-declining balance method of depreciation switching to the straight-line method of depreciation at a time determined by Lessor as provided in Section 167(b) of the Internal Revenue Code of 1954, as amended, in amounts based upon a tax basis equal to Lessor's Equipment Cost, or such deductions are lost, disallowed, eliminated, reduced, recaptured or otherwise unavailable for any reason (the "Depreciation Loss"), then Lessee shall pay to Lessor from time to time such amounts (the "Depreciation Indemnity Amounts") as are necessary to maintain Lessor's after-tax cash flow stream from this lease. The amount of such Depreciation Loss shall include any interest, penalties or additions to tax payable by Lessor as a result of such Depreciation Loss and shall be determined by mutual agreement of Lessor and Lessee or, failing such agreement, by an independent firm of certified public accountants or independent tax counsel, selected by Lessor and paid at Lessee's expense.

For the purposes of this lease, the date of any such ITC Loss or Depreciation Loss shall be the earliest of (i) the occurrence of any event (such as disposition or change in use of the Equipment) which may cause such ITC Loss or Depreciation Loss, or (ii) the payment by Lessor (or the consolidated federal taxpayer group of which Lessor is a part) to the Internal Revenue Service of the tax increase resulting from such ITC Loss or Depreciation Loss, or (iii) receipt by Lessor from the appropriate taxing authority of any notice of proposed deficiency, statutory notice of deficiency or assessment relating to the ITC Loss or Depreciation Loss, or (iv) a determination by an independent tax counsel chosen by Lessor to the effect that Lessor (or the consolidated federal taxpayer group of which Lessor is a part) is not entitled to such credits or deductions, or (v) the adjustment of the tax return of Lessor (or the consolidated federal taxpayer group of which Lessor is a part) to reflect such ITC Loss or Depreciation Loss. Lessee shall not be required to pay such ITC Indemnity Amount or Depreciation Indemnity Amount if the ITC Loss or Depreciation Loss results from the occurrence of any of the following events: (w) a change in tax law or regulations enacted and effective prior to January 1, 1980, which alters or eliminates the benefits presently anticipated by Lessor from the ten percent (10%) investment tax credit and/or the deductions for accelerated depreciation as described above;

or (x) a disqualifying disposition due to sale of the Equipment or the lease thereof by Lessor prior to any default by Lessee; or (y) a failure of Lessor to timely claim investment tax credit or depreciation for any item of Equipment in the appropriate tax return of Lessor (or the consolidated federal taxpayer group of which Lessor is a part); or (z) a disqualifying change in the nature of Lessor's business or liquidation thereof. Furthermore, Lessee shall not be required to pay such ITC Indemnity Amount or Depreciation Indemnity Amounts to the extent that the investment tax credit or depreciation deduction, the loss of which is herein indemnified against, would not have resulted in a reduction of federal, state or local income taxes of Lessor (or the consolidated federal taxpayer group of which Lessor is a part) for any applicable taxable period of Lessor.

All of Lessor's rights and privileges arising from the indemnities contained in this Paragraph 19, shall survive the expiration or other termination of this lease and said indemnities are expressly made for the benefit of and shall be enforceable by Lessor, its successors, and assigns.

(20) RECORDING; FURTHER ASSURANCES. Lessee will, at its expense, prior to the delivery and acceptance hereunder of any unit of Equipment (i) execute and file such Uniform Commercial Code financing statements as Lessor may reasonably request from time to time, (ii) cause this lease and any assignment hereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 11303(a) of the Revised Interstate Commerce Act, and (iii) provide to Lessor such Uniform Commercial Code searches and Interstate Commerce Commission searches with respect to Lessee and/or the manufacturer of the Equipment, as Lessor may reasonably request. Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by Lessor for the purpose of proper protection, to Lessor's satisfaction, of Lessor's interest in the Equipment, or for the purpose of carrying out the intention of this lease or any assignment thereof by Lessor; and Lessee will promptly furnish to Lessor evidences of all such filing, registering, recording or depositing, and an

opinion or opinions of counsel for Lessee with respect thereto satisfactory to Lessor.

(21) CONDITIONS TO LESSOR'S OBLIGATIONS. Lessor shall not be obligated to lease to Lessee any unit of Equipment hereunder unless on the date of acceptance by Lessee of each item of Equipment pursuant to Paragraph 6 hereof:

a. All of Lessee's representations and warranties in Section 10 of this lease shall be true and correct as though made as of such date;

b. No litigation or governmental proceedings shall be threatened or pending against Lessee or any subsidiary of Lessee which in Lessor's reasonable opinion will to a material extent adversely affect the financial condition or continued operation of Lessee and its subsidiaries on a consolidated basis;

c. No Event of Default, or event which might mature into an Event of Default, shall have occurred or be continuing hereunder;

d. Lessee shall have furnished to Lessor, in form and substance satisfactory to Lessor, the following on or prior to the date of acceptance by Lessee of the first item of Equipment pursuant to Paragraph 6 hereof:

i. Resolutions of the Board of Directors of Lessee, certified by its Secretary or an Assistant Secretary, authorizing the lease of such Equipment hereunder, the execution, delivery and performance by Lessee of this lease, and the execution and delivery of Acceptance Letters in the form of Exhibit 1 attached hereto, designating the title of the officers of Lessee authorized to execute and deliver the Acceptance Letters pursuant to Paragraph 6 hereof;

ii. The opinion of Messrs. Fulbright & Jaworski, counsel for Lessee, acceptable to Lessor, to the effect that:

(a) Lessee is a corporation duly organized and existing in good standing under the laws of the State of Texas.

(b) Lessee is duly authorized to execute and deliver this lease and is duly authorized to lease Equipment hereunder and to perform its obligations hereunder.

(c) The execution and delivery of this lease and the performance by Lessee hereunder do not and will not under present law conflict with any provision of law (including without limitation the provisions of 15 U.S.C §20) or of the charter or bylaws of Lessee or of any indenture, mortgage, deed of trust or agreement or instrument binding upon Lessee or to which Lessee is a party and of which such counsel has knowledge after due inquiry.

(d) The execution, delivery and performance of this lease and the consummation by Lessee of the transactions contemplated hereby does not require the consent, approval or authorization of, or notice to, any federal or state governmental authority or public regulatory body other than the filing required by Section 11303(a) of the Revised Interstate Commerce Commission Act.

(e) This lease is a legal, valid, and binding obligation of Lessee enforceable in accordance with its terms except as may be affected by bankruptcy, reorganization, insolvency and similar laws affecting the rights of creditors generally and subject to the qualification that general equitable principles may limit the availability of the remedy of specific performance.

(f) There are to the knowledge of such counsel no pending or threatened actions or proceedings before any court or administrative agency which will, in the opinion of such counsel, to a material extent adversely affect the financial condition or continued operation of Lessee and its subsidiaries on a consolidated basis.

(g) Uniform Commercial Code financing statements have been executed and filed as required under the laws of Texas, and such financing statements perfect, to the extent applicable, any security interest of Lessor in and to the units of Equipment; this lease has been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 11303(a) of the Revised Interstate Commerce Act, and such filing and recording constitutes this lease as notice to, and enforceable against, all persons (subject, however, to those exceptions specified in clause (e), above); and no

further filing or recording (or giving of notice) with any other federal, state or local government is necessary in order to perfect any security interest of Lessor in and to the units of the Equipment.

(22) TIME. Time is of the essence in this lease and in each and all of its provisions.

(23) NON WAIVER. No delay or omission to exercise any right, power or remedy accruing to Lessor upon any breach or default by Lessee under this lease shall impair any such right, power or remedy of Lessor nor be construed as a waiver of any such breach or default nor of any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any subsequent breach or default. All waivers under this lease must be in writing. All remedies afforded to Lessor either under this lease or by law shall be cumulative and not alternate.

(24) GENDER; NUMBER. Whenever the context of this lease requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural. If there is more than one Lessee named in this lease, the liability of each shall be joint and several.

(25) NOTICE. Service of all notices under this lease to Lessor shall be sufficient if given personally or mailed to Lessor at 712 Main Street, Houston, Texas 77002, Attention: Equipment Leasing Division or at such other address as Lessor shall have previously designated by written notice to Lessee, and to Lessee at 501 Crawford Street, Houston, Texas 77002, Attention: President, or at such other address as Lessee shall have previously designated by written notice to Lessor. Any such notice if mailed by registered or certified mail to such addressee shall be effective when deposited in the United States mail, duly addressed with postage prepaid.

(26) LESSEE'S DELIVERY OF INSTRUMENTS. Lessee shall execute and deliver to Lessor, upon Lessor's request, such instruments and assurances as Lessor deems necessary and advisable for the confirmation or perfection of this lease and Lessor's rights hereunder and Lessor's title to the Equipment.

(27) FINANCIAL STATEMENTS. Lessor may require from time to time, and Lessee agrees to furnish, such statements as are routinely prepared by Lessee, audits prepared by Lessee and other information as Lessor reasonably requests concerning the financial condition and operations of Lessee.

(28) ENTIRE AGREEMENTS. This lease constitutes the entire understanding of the parties and shall not be altered or amended except by an agreement in writing signed by the parties hereto or their successors or assigns. No oral agreement, guarantee, promise, condition, representation or warranty, nor any oral modification hereof, shall be binding. All prior conversations, agreements or representations related to this lease or to the Equipment are integrated herein. No supplier or agent of Lessor is authorized to bind Lessor or to waive or modify any term hereof.

(29) EXPENSES. Lessee agrees to pay all out-of-pocket expenses arising in connection with this transaction except the fees and expenses of Lessor's counsel. Lessee agrees to pay the reasonable fees and expenses of Lessor's counsel to the extent such fees and expenses of Lessor's counsel exceed an amount equal to 0.2 percent of the aggregate Equipment Cost as set forth in the Equipment Schedule attached hereto.

(30) SECTION TITLES. The titles to the paragraphs of this lease are solely for the convenience of the parties, and are not an aid in the interpretation of this lease.

(31) SEVERABILITY. If any term or provision of this lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this lease shall be valid and be enforced to the fullest extent permitted by law.

(32) APPLICABLE LAW. This lease shall be construed in accordance with and governed by the laws of the State of Texas and the United States of America.

33. COUNTERPARTS. This lease may be executed in multiple counterparts, each of which shall be deemed an original for all purposes.

IN WITNESS WHEREOF, this lease is executed on the day and year first above written.

LESSOR: TEXAS COMMERCE BANK NATIONAL
ASSOCIATION

By Carol Cody Herder
~~Assistant Vice President~~

LESSEE: HOUSTON BELT & TERMINAL
RAILWAY COMPANY

By L. B. Guzman
President

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Carol Cody Herder, ~~Assistant Vice~~ President of Texas Commerce Bank National Association, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said Texas Commerce Bank National Association, a national banking association, and that she executed the same as the act and deed of such association for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 7th day of November, 1979.


Patricia A. McNulty
Notary Public in and for
Harris County, Texas

PATRICIA A. McNULTY
Notary Public in and for Harris County, Texas

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared L. B. Griffin, President of Houston Belt & Terminal Railway Company, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said Houston Belt & Terminal Railway Company, a Texas corporation, and that he executed the same as the act and deed of such corporation for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 7th day of November, 1979.


[Signature]
Notary Public in and for
Harris County, Texas

EQUIPMENT SCHEDULE

Lease Number 167,
Dated November 7, 1979,
between Texas Commerce Bank National
Association, as Lessor, and
Houston Belt & Terminal Railway Company,
as Lessee.

A. EQUIPMENT LEASED: The lease applies only to those items of Equipment listed below which are leased by Lessor and accepted by Lessee pursuant to Paragraphs 1 and 6 of the lease ("Accepted Equipment"), and items of Equipment listed below which are not so leased and accepted shall be deemed excluded from the lease for all purposes. The Equipment Cost column below reflects estimated costs based upon information provided by Lessee. If the actual cost of such Equipment (including, without limitation, charges for transportation, delivery and service) varies from the amount set forth below, such Equipment Cost shall be adjusted to reflect such actual cost. Under no circumstances shall Lessor be obligated to lease to Lessee any item of Equipment which after giving effect thereto (i) would result in an aggregate Equipment Cost in excess of \$2,500,000.00 or (ii) would violate the commitment of Lessor as set forth in Paragraph 1 of the lease.

Quantity	Description	Serial Numbers	Per Item Equipment Cost	Aggregate Equipment Cost
Five (5)	General Motors locomotives	786236-1 786236-2 786236-3 786236-4 786236-5	\$500,000.00	\$2,500,000.00

- B. TERM: The term of the lease to which this Schedule is attached, with respect to each item of Accepted Equipment shall begin upon acceptance of such item by Lessee pursuant to Paragraph 6 of the lease and shall continue for a period of fifteen (15) years from that date on or before December 31, 1979, when all such items of Equipment shall have been so accepted (the "Final Delivery Date").
- C. LEASE PAYMENTS: Lessee shall pay Lessor thirty (30) successive semi-annual rental payments, each of which shall be 5.088% of the Equipment Cost of the Equipment subject to the lease pursuant to Paragraph A above. Such rental payments shall be payable in arrears in equal successive semi-annual rental payments, plus applicable sales or use taxes. The payments shall be due six (6) months following the Final Delivery Date and upon the same day of every sixth (6th) month thereafter until each such payment has been fully and timely paid. With respect to each item of Equipment and during the period ("Interim Rental Period") between (x) the time when the Equipment is accepted by Lessee pursuant to Paragraph 6 of the lease and (y) the Final Delivery Date, Lessee agrees to pay Lessor on said Final Delivery Date rent for each day of such Interim Rental Period based upon the Equipment Cost incurred by Lessor and at a rate per annum which shall be equal to one and one-half percent (1-1/2%) above the large business prime interest rate on 90-day loans to large businesses with the highest credit standing in effect at Texas Commerce Bank National Association from time to time ("Prime Rate"), such rate to change automatically from time to time effective as of the date of each change in such Prime Rate. All rental payments shall be addressed or directed to Texas Commerce Bank National Association, Attention: Equipment Leasing Division, P. O. Box 200546, Houston, Texas 77216.
- D. PLACE OF DELIVERY AND USE: The Equipment shall be kept and used at the railroad lines on which Lessee is permitted to operate in Harris County, Texas, and shall not be removed therefrom without the prior written

consent of Lessor which consent shall not be unreasonably withheld.

- E. INSURANCE: Lessee shall obtain and maintain at all times during the term of this lease, physical damage, theft, liability and other customary insurance covering all the Equipment in such amounts and in such forms as is commonly maintained on comparable equipment by companies similarly situated, such insurance to be in an amount at least equal to the Stipulated Value hereunder protecting Lessor's interest from the time of delivery.

This schedule is attached to and made a part of that certain Equipment Lease Agreement dated November 7, 1979, between the parties hereto, and all terms and conditions of said Equipment Lease Agreement are made a part hereof.

Dated: November 7, 1979.

LESSOR:

TEXAS COMMERCE BANK NATIONAL
ASSOCIATION

By Carol Cody Herder
Assistant Vice President

LESSEE:

HOUSTON BELT & TERMINAL
RAILWAY COMPANY

By L. R. Guzman
President

EXHIBIT 1

(Lessee's Letterhead)

[Date]

Equipment Leasing Division
Texas Commerce Bank
National Association
P. O. Box 2558
Houston, Texas 77001

Gentlemen:

Reference is made to the Equipment Lease Agreement dated _____, between your Bank and the undersigned.

The undersigned has received delivery of the equipment described in _____'s attached invoice number _____, the same is in good condition and is hereby unconditionally accepted by the undersigned as meeting all of the requirements of said Equipment Lease Agreement.

Very truly yours,

HOUSTON BELT & TERMINAL
RAILWAY COMPANY

By _____
President

STIPULATED VALUE SCHEDULE

<u>Rent Payment No.</u>	<u>% of Equipment Cost</u>	<u>Rent Payment No.</u>	<u>% of Equipment Cost</u>
Prior to 1	100.443	16	64.416
1	100.443	17	61.862
2	100.728	18	59.152
3	100.169	19	56.280
4	99.829	20	53.397
5	99.431	21	50.466
6	98.866	22	47.423
7	91.923	23	44.288
8	90.975	24	41.032
9	89.824	25	37.676
10	88.499	26	34.190
11	80.807	27	30.597
12	79.167	28	26.867
13	77.239	29	23.020
14	75.195	30 and	19.027
15	66.800	Thereafter	

The Stipulated Value of Equipment represents the amount due if termination of the lease or an Event of Default occurs on the date a rent payment is due. No rent payment shall be due then except rent in arrears. The Stipulated Value arising out of the termination or an Event of Default occurring between rent payment dates shall be the product of (a) the percentage of Equipment Cost as of the rent payment date next succeeding such date of termination or Event of Default as set forth above multiplied by (b) the Equipment Cost specified in paragraph A of the Equipment Schedule.