

CRAVATH, SWAINE & MOORE

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INTERSTATE COMMERCE COMMISSION

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INTERSTATE COMMERCE COMMISSION

ICC Washington, D. C.

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July 25, 1978

Consolidated Rail Corporation
Participation Agreement Dated as of July 1, 1978
8.50% Conditional Sale Indebtedness

Dear Sir:

Pursuant to Section 20c of the Interstate Commerce Act and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Consolidated Rail Corporation for filing and recordation counterparts of the following documents:

1(a) Conditional Sale Agreement dated as of July 1, 1978, between United States Trust Company of New York, as trustee, vendee, and General Electric Company, as builder, vendor;

(b) Agreement and Assignment dated as of July 1, 1978, between General Electric Company, as builder, and Mellon Bank, N.A., as agent, assignee;

2(a) Lease of Railroad Equipment dated as of July 1, 1978, between Consolidated Rail Corporation, as lessee, and United States Trust Company of New York, as trustee, lessor;

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I.C.C.
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Consent of William F. ...

(b) Assignment of Lease and Agreement dated as of July 1, 1978, between United States Trust Company of New York, as trustee, lessor, and Mellon Bank, N.A., as agent, vendor.

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

(1) Agent-Vendor-Assignee:

Mellon Bank, N.A.
Mellon Square
Pittsburgh, Pennsylvania 15230

(2) Trustee-Vendee-Lessor:

United States Trust Company
of New York
130 John Street
New York, N.Y. 10038

(3) Builder-Vendor:

General Electric Company
2901 East Lake Road
Erie, Pennsylvania 16531

(4) Lessee:

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

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

The equipment covered by the aforementioned documents consists of the following:

Twenty-seven (27) 2,250 h.p. Model B23-7 diesel-electric locomotives bearing identifying numbers CR1940 through CR1966, both inclusive.

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

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

Very truly yours,

J. Barclay Collins CEW
J. Barclay Collins
As Agent for Consolidated
Rail Corporation

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

Encls.

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BY HAND

9600

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[CS&M Ref. 2043-849]

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of July 1, 1978

between

GENERAL ELECTRIC COMPANY

and

UNITED STATES TRUST COMPANY OF NEW YORK,
as Trustee under
a Trust Agreement

8-1/2% Conditional Sale Indebtedness due 1993

Conditional Sale Agreement

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* This Table of Contents has been included in this document for convenience only and does not form a part of or affect any construction or interpretation of this document.

CONDITIONAL SALE AGREEMENT dated as of July 1, 1978, between the corporation named in Item 1 of Annex A hereto (said corporation being hereinafter called the "Builder" or the "Vendor", as the context may require, all as more particularly set forth in Article 1 hereof) and UNITED STATES TRUST COMPANY OF NEW YORK, acting as Trustee (the "Vendee") under Trust Agreement No. 1978-3 dated as of January 3, 1978, as amended by Amendment No. 1 dated as of the date hereof (the "Trust Agreement") with J. P. Morgan Interfunding Corp. and GMAC Leasing Corporation (the "Beneficiaries").

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

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

WHEREAS Mellon Bank, N.A. (hereinafter called the "Assignee" or the "Vendor" as more particularly set forth in Article 1 hereof), is acting as Agent for investors pursuant to a Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Assignee, the Lessee, the Vendee, the Beneficiaries and the party named in Schedule A thereto, and all obligations of the Vendee to the Builder under the Purchase Order (as defined in the Participation Agreement) will be superseded by this Agreement; and

WHEREAS the Builder will guarantee to the Vendee and the Assignee certain obligations under this Agreement and the Lease pursuant to a Guaranty Agreement dated as of the date hereof (the "Guaranty Agreement", and the Builder in its capacity as guarantor thereunder is hereinafter sometimes called the "Guarantor").

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

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

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the Builder 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 Builder and any successor or successors for the time being to its manufacturing properties and business.

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

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the units of Equipment and will conditionally sell and deliver to the Vendee, and the Vendee will conditionally purchase from the Builder and accept delivery of and pay for (as hereinafter provided and subject to the limitations hereinafter set forth), the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design, quality and component parts of each unit of the Equipment shall conform, on the date of

completion of manufacture thereof, to all United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and each such unit will be new railroad equipment, will not incorporate any used components (or, if such components are incorporated, their aggregate cost will not be more than 20% of the cost of material and parts used in constructing such unit) and will not have been used by any person so as to preclude the "original use" of such unit, within the meaning of Sections 48(b)(2) and 167(c)(2) of the Internal Revenue Code of 1954, as amended, from commencing with the Vendee.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee at the place or places specified in Annex B hereto, freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of the Equipment shall not be made (i) until this Agreement, the Lease, the CSA Assignment and the Lease Assignment have been filed pursuant to Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision shall have been made for publication of notice of such deposit in The Canada Gazette; (ii) subsequent to the commencement of any proceedings or the occurrence of any event specified in clauses (c), (d) or (f) of Article 15 hereof or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default (any such commencement, occurrence, event of default or event being hereinafter in this Agreement called a "Default"); or (iii) if the Purchase Price for such unit when added to the aggregate Purchase Price of (A) all units theretofore delivered and accepted under and made subject to this Agreement and (B) all other units proposed to be delivered and accepted under and made subject to this Agreement concurrently with such unit would exceed the Maximum Purchase Price for the Equipment specified in Item 5 of Annex A hereto. The Builder agrees not to deliver any unit of the Equipment hereunder (a) following receipt of written notice from the Vendee or the Assignee (i) of a Default, or (ii) that the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as the Vendee may have agreed to pursuant to Article 4) would be exceeded by any subsequent delivery of a unit, or (iii) of its determination that there

has been a material adverse change in the business prospects or financial condition of the Lessee since the date of the most recent financial statements referred to in Paragraph 4(b) of the Participation Agreement, other than as set forth in the Memorandum referred to in the Participation Agreement, and (b) until it receives notice from the Vendee and the Assignee that the conditions contained in Paragraphs 7 and 8 of the Participation Agreement have been met.

Any unit of Equipment not delivered at the time of receipt by the Builder of the notice specified in clause (a) of the last sentence of the first paragraph of this Article 3 and any unit of Equipment not delivered and accepted hereunder on or prior to December 15, 1978, by reason of noncompliance with the conditions referred to in the next preceding paragraph or causes set forth in the next succeeding paragraph or otherwise shall be excluded from this Agreement and the Vendee shall be relieved of its obligation to purchase and pay for such unit of Equipment. If any unit of Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the Vendee and the Builder (and any assignee of the Builder) shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. Pursuant to the Participation Agreement the Lessee has agreed to purchase such excluded Equipment and any Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof from the Builder, upon the satisfaction or waiver of any conditions of the Purchase Order, all as provided in Paragraph 1 of the Participation Agreement. The Vendee agrees, upon any such exclusion, to take such steps, including the execution of instruments of transfer, as may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting the interest of the Lessee in any unit of Equipment so excluded from this Agreement, and the Vendee shall have no further obligation or liability in respect of units so excluded.

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

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

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

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

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Lessee, including prepaid freight charges, if any. The term "Purchase Price" as used herein shall mean the base price or prices per unit of the Equipment as so increased or decreased as set forth in the Builder's invoice

or invoices delivered to the Vendee (the "Invoices") and, if the Purchase Price is other than the base price or prices set forth in Annex B, the Invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the Vendee. If on any Closing Date the aggregate Purchase Price of the Equipment for which settlement has theretofore been or is then being made would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as the Vendee may at its option agree to prior to delivery of any unit or units of Equipment that, but for such agreement, would be excluded from this Agreement), the Builder (and any assignee of the Builder) and the Vendee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price to not more than such Maximum Purchase Price (or such higher amount as aforesaid).

The Equipment shall be settled for in such number of groups of units of the Equipment as is provided in Item 2 of Annex A hereto (each such group being hereinafter called a "Group"). The term "Closing Date" with respect to any Group shall mean such date (which shall be a business day not earlier than July 14, 1978, and not later than December 15, 1978, such later date being hereinafter called the "Cut-Off Date"), occurring not more than ten business days following presentation by the Builder to the Vendee of the Invoices and Certificates of Acceptance for such Group and written notice thereof by the Builder to the Lessee, as shall be fixed by the Lessee by written notice delivered to the Vendee and the Vendor at least six business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York or Pittsburgh, Pennsylvania are authorized or obligated to remain closed.

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

- (a) on the Closing Date with respect to each Group
 - (i) an amount equal to 33.086235% of the aggregate Purchase Price of such Group plus
 - (ii) the amount, if any,

by which (x) the Purchase Price (not paid pursuant to clause (i)) of all units of Equipment for which settlement has theretofore or is then being made, as set forth in the Invoices therefor exceeds (y) the Maximum CSA Indebtedness specified in Item 6 of Annex A hereto and any amount or amounts previously paid or payable with respect to prior Invoices pursuant to this clause (ii); and

(b) in 30 semiannual installments, 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.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (the "CSA Indebtedness") shall be payable on the 30 consecutive dates occurring semiannually following December 15, 1978 (or, if any such date is not a business day, on the next preceding business day), each such date being hereinafter called a "Payment Date". The unpaid balance of the CSA Indebtedness from time to time outstanding shall bear interest at the rate of 8.50% per annum payable, to the extent accrued, on December 15, 1978, and on each Payment Date. The installments of principal payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the allocation set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal will completely amortize the CSA Indebtedness. The Vendee will furnish to the Vendor and the Lessee promptly after the last Closing Date a schedule showing the respective amounts of principal and interest payable on each Payment Date.

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

The Vendee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at a rate per annum (the "Overdue Rate") equal to the greater of (i) 9.50% or (ii) 1.25 times the "prime" or "base" rate of interest announced from time to time by a majority (or if there shall not be a majority, by a plurality) of the 12 largest commercial banks (measured by deposits) operating in the United States for borrowers of the highest credit rating.

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. If at any time an Event of Default under the Lease shall have occurred and be continuing, the Vendee may prepay in whole without penalty or premium the CSA Indebtedness, together with accrued interest thereon to the date of such prepayment, and thereupon absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee as provided in Article 5 hereof and the Vendee shall have the right to give the instructions to the Agent provided for in the fourth sentence of the fifth paragraph and the first sentence of the eleventh paragraph of Paragraph 10 of the Participation Agreement. Except as provided in the immediately preceding sentence and in Article 7 hereof, the Vendee shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to the date it becomes due.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof), but not limiting the effect of Article 21 hereof, the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under this Agreement, including any liability arising out of or in connection with the performance of its obligations hereunder and excluding only the obligations set forth in the proviso in the third paragraph of Article 12 hereof and the payments to be made pursuant to subparagraph (a) of the third paragraph of this Article, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment" (as hereinafter defined), and such payments shall be made by the Vendee only to the extent that the Vendee (or any such assignee) shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the next preceding sentence, the Vendee (and any such assignee) shall have no personal liability to make any payments under this Agreement except from the "income and proceeds from the Equipment". In addition, it is agreed that the Vendee (and such assignee) (i) make no representation or warranty with respect to, and are not responsible for, the execution, validity, sufficiency or enforceability of the Lease (or any document relative thereto) in so far as it relates to the Lessee or of any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities,

obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights under the Lease against the Lessee and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee (or any such assignee) at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 10 or any other provision of the Lease, other than amounts paid by the Lessee by way of indemnity pursuant to § 6, 9 or 16 of the Lease, except to the extent such indemnity under such § 6 or 9 is required to be paid to the Builder or the Vendor pursuant to Article 6 or 13 hereof, and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee (or any such assignee) and as shall equal the portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) received by the Vendee (or any such assignee) prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including such prepayments) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee (or any such assignee) were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Notwithstanding anything to the contrary contained in this Agreement, in the event the Vendor shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee

pursuant to the limitations set forth in this paragraph, the Vendor will limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment for the full unpaid Purchase Price of the Equipment and accrued interest thereon and all other payments and obligations hereunder.

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

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

law requiring the filing of the same, except for failure so to do within a reasonable time after written demand by the Vendee.

ARTICLE 6. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than gross receipts taxes [except gross receipt taxes in the nature of or in lieu of sales or use or rental taxes], taxes measured by net income, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or the Equipment or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions"), all of which impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Vendor solely by reason of its ownership thereof (except as provided above) and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title or interests of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the title or interests or property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved in writing the payment thereof.

ARTICLE 7. Maintenance; Casualty Occurrences. The Vendee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order, repair and condition.

In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, permanently returned to the Builder pursuant to any patent indemnity provision hereof, or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term of the Lease, or by any other government or governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days, or if a "Default", under and as defined in Section 2 of the Maintenance Agreement (as defined in the Lease), shall have occurred with respect to such unit (such occurrences being herein called "Casualty Occurrences"), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the earlier of (i) the 60th day following notice by the Lessee to the Vendee of a Casualty Occurrence under the Lease (but not earlier than the first Payment Date pursuant to Article 4 hereof) and (ii) the Payment Date next succeeding such notice (hereinafter called a "Casualty Payment Date"), the Vendee shall pay to the Vendor an amount equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of such Casualty Payment Date and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal, if any, on and of the CSA Indebtedness due on such date) to prepay without penalty or premium the instalments of the CSA Indebtedness (ratably in accordance with the unpaid balance of each such instalment) and the Vendee will promptly furnish to the Vendor and the Lessee a revised schedule of payments of principal and interest with respect to the CSA Indebtedness thereafter to be made. In the event of the requisition for use by the United States Government or any other government or governmental entity of any unit of the Equipment not constituting a Casualty Occurrence, all of the Vendee's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

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

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

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall, subject to having received payment of the Casualty Value and provided no Default shall have occurred and be continuing, pay such insurance proceeds or condemnation payments to the Vendee. All insurance proceeds or condemnation payments received by the Vendor in respect of any unit of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon reasonable proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired, provided no Default shall have occurred and be continuing.

ARTICLE 8. Reports and Inspections. On or before April 30 in each year, commencing with the year 1979, the Vendee shall cause to be furnished to the Vendor an accurate statement to the effect set forth in § 8 of the Lease.

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

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

ARTICLE 10. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all applicable laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement, addition or modification of or to any part on any unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee or the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

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

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

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

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

The foregoing provisions of this Article 12 shall be subject to the limitations set forth in the last paragraph of Article 4 hereof and the provisions of Article 21 hereof; provided, however, that the Vendee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Vendee or

its successors or assigns, not arising out of the transactions contemplated hereby (but including tax liens arising out of the receipt of the income and proceeds from the Equipment), equal or superior to the Vendor's security interest therein, which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's interest in the Lease and the payments to be made thereunder, but the Vendee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments to be made thereunder.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to or a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any claim for patent, trademark or copyright infringement, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, in the case of the Builder, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any 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 release of the Vendor's security interest in, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and

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

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

The Builder represents that it is not entering into this Agreement, or into any other transaction contemplated by the Participation Agreement, directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which it, or, in so far as is known to it, any party to the Participation Agreement is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974, as amended.

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

ARTICLE 14. Assignments. The Vendee will not, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment, or sell, assign or otherwise dispose of any of its rights under this Agreement, except as provided in the Trust Agreement.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve 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 referred to in Article 13 hereof, or relieve the Vendee of its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any

other obligation which, according to its terms or context, is intended to survive an assignment.

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

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

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

- (a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4

or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) and such default shall continue for ten business days after the date such payment is due and payable; or

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

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

(d) any other proceeding shall be commenced by or against the Vendee or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Vendee hereunder or of the Lessee under the Lease under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law

which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee under this Agreement or of the Lessee under the Lease, as the case may be, shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee or the Lessee, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

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

(f) the occurrence of any of the following:

(i) Involuntary Bankruptcy Proceedings--a receiver, liquidator or trustee of the Vendee or the Lessee, or of any of the property of either, is appointed by court order and such order remains in effect for more than 30 days; or the Vendee, or the Lessee, is adjudicated bankrupt or insolvent; or any of the property of either is sequestered by court order and such order remains in effect for more than 30 days; or a petition is filed against the Vendee or the Lessee under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within 30 days after such filing;

(ii) Voluntary Petitions--the Vendee, or the Lessee, files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or

(iii) Assignments for Benefit of Creditors, etc.--the Vendee or the Lessee makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due, or consents to the appointment of a receiver, trustee or liquidator of the Vendee, or the Lessee, or of all or any part of the property of either;

followed by a good faith determination by the Assignee and notification thereof to the Vendee, the Beneficiaries and the Lessee within 45 days following knowledge by the Assignee of any such occurrence that, as a result, it deems itself inadequately secured; or

(g) an Event of Default shall have occurred under the Lease; provided, however, that any Event of Default under the Lease caused by the failure of the Lessee to make any payment due thereunder shall not be deemed to be an event of default hereunder if, prior to a Declaration of Default (as hereinafter defined), the Vendee pays to the Vendor an amount equal to (a) the amount which the Lessee failed to pay minus (b) any portion of such amount which the Vendor would have been required to pay over to the Vendee pursuant to the Lease Assignment, or the Guarantor pays to the Vendor an amount equal to the amount which the Lessee failed to pay plus any interest on overdue rentals;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the proviso in the second paragraph of § 4 of the Lease relating to termination and to the Lessee's rights of possession, use and assignment under §§ 4 and 12 of the Lease, cause the Lease immediately upon such notice to terminate, but the Lessee shall remain liable

as therein provided and/or (ii) declare (herein called a "Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the Overdue Rate, to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, subject to the provisions of Articles 4 and 21 hereof, and to collect such judgment out of the "income and proceeds of the Equipment" wherever situated.

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

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

facilities or means of the Vendee, subject to all mandatory requirements of due process of law.

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

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

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

(c) cause the Equipment to be transported to any reasonable place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Vendor.

During any storage period, the Vendee will, at its own cost and expense, insure, maintain and keep each such unit in good order and repair and will permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction, the Vendor shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee, the Beneficiaries, the Guarantor and the

Lessee by telegram or registered mail, 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 Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee or for its account may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided, further, that if the Vendee, the Lessee, the Guarantor 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, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

Subject to the Lessee's rights of possession, use and assignment under §§ 4 and 12 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Lessee or any other party claiming from, through or under the Vendee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise

arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment shall be credited on the amount due to the Vendor under the provisions of this Agreement.

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

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and may be exercised from time

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

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Overdue Rate, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of the last paragraph of Article 4 hereof, be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee.

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

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

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement.

Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

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

ARTICLE 18. Recording. The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto, to be filed in accordance with Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

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

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

The parties hereto acknowledge that the Guaranty Agreement contains certain provisions regarding the consent of the Guarantor in the event of any modification of this Agreement or any waiver of any of its provisions or conditions which would either individually or cumulatively have a material adverse effect upon the Guarantor.

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

(a) to the Vendee, at 130 John Street, 4th Floor, New York, New York 10038, Attention of Corporate Trust and Agency Division, with copies to the Beneficiaries at their respective addresses specified below,

(b) to the Lessee, at 1310 Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, Attention of Vice President & Treasurer,

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

(d) to the Assignee, at its address at Mellon Square, Pittsburgh, Pennsylvania 15230, Attention of Corporate Trust Division,

(e) to GMAC Leasing Corporation, at its address at 767 Fifth Avenue, New York, New York 10022, Attention of Director of Special Financing,

(f) to J. P. Morgan Interfunding Corp., at its address at 522 Fifth Avenue, New York, New York 10022, Attention of Lease Administration,

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

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

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

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

Anything in this Agreement to the contrary notwithstanding, each and all of the representations, undertakings and agreements herein made on the part of the Vendee are made and intended not as personal representations, undertakings and agreements by United States Trust Company of New York or for the purpose or with the intention of binding it personally but are made and intended for the purpose of binding only the Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by the said trust company solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or responsibility hereunder is assumed by or shall at any time be enforceable against the said trust company (except liability under the proviso contained in the last paragraph of Article 12 hereof) or the Beneficiaries (except as provided in the Trust Agreement) on account of any representation, undertaking or agreement hereunder of the Vendee or the Beneficiaries, either expressed or implied, all such personal liability, if any, being expressly waived 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 the Vendor, making claim hereunder, may look to said Estate for satisfaction of the same.

ARTICLE 22. Law Governing. The Vendee warrants that its chief place of business is located in the state specified in clause (a) of Article 20 hereof. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of such state; 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. Execution. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee pursuant to the CSA Assignment shall be deemed the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

GENERAL ELECTRIC COMPANY,
by

[Corporate Seal]

General Manager--
Domestic Locomotive
Marketing Department

Attest:

Attesting Secretary

UNITED STATES TRUST COMPANY
OF NEW YORK, as Trustee,
by

[Corporate Seal]

Assistant Vice President

Attest:

Amos J. Jankowski

Assistant Secretary

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

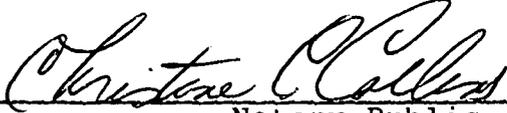
On this day of July 1978, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a General Manager--Domestic Locomotive Marketing Department of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

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

On this ²⁵ day of July 1978, before me personally appeared ^{IRENE R. SCOCCA} , to me personally known, who, being by me duly sworn, says that he/she is an Assistant Vice President of UNITED STATES TRUST COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Trustees, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Notary Public

[Notarial Seal]

CHRISTINE C. COLLINS
Notary Public, State of New York
No. 31-4624735
Qualified in New York County
Certificate filed in New York County
Commission Expires March 30, 1980

SCHEDULE I

Allocation Schedule of Each \$1,000,000 of
CSA Indebtedness Payable in Installments
on the 30 consecutive semiannual
dates following December 15, 1978

<u>Payment Date</u>	<u>Interest Payment</u>	<u>Principal Repayment</u>	<u>Debt Service</u>	<u>Ending Principal Balance</u>
0	\$ 0.0	\$ 0.0	\$ 0.0	\$1,000,000.00
1	42,500.00	24,953.73	67,453.73	975,046.27
2	41,439.47	26,014.26	67,453.73	949,032.01
3	40,333.87	27,119.86	67,453.73	921,912.15
4	39,181.27	28,272.46	67,453.73	893,639.69
5	37,979.69	29,474.04	67,453.73	864,165.65
6	36,727.05	30,726.68	67,453.73	833,438.97
7	35,421.16	32,032.57	67,453.73	801,406.40
8	34,059.78	33,393.95	67,453.73	768,012.45
9	32,640.53	34,813.20	67,453.73	733,199.25
10	31,160.97	36,292.76	67,453.73	696,906.49
11	29,618.53	37,835.20	67,453.73	659,071.29
12	28,010.53	39,443.20	67,453.73	619,628.09
13	26,334.20	41,119.53	67,453.73	578,508.56
14	24,586.62	42,867.11	67,453.73	535,641.45
15	22,764.77	44,688.96	67,453.73	490,952.49
16	20,865.49	24,067.35	44,932.84	466,885.14
17	19,842.62	25,090.22	44,932.84	441,794.92
18	18,776.29	26,156.55	44,932.84	415,638.37
19	17,664.64	27,268.20	44,932.84	388,370.17
20	16,505.74	28,427.10	44,932.84	359,943.07
21	15,297.59	29,635.25	44,932.84	330,307.82
22	14,038.09	30,894.75	44,932.84	299,413.07
23	12,725.06	32,207.78	44,932.84	267,205.29
24	11,356.23	33,576.61	44,932.84	233,628.68
25	9,929.22	35,003.62	44,932.84	198,625.06
26	8,441.57	36,491.27	44,932.84	162,133.79
27	6,890.69	38,042.15	44,932.84	124,091.64
28	5,273.90	39,658.94	44,932.84	84,432.70
29	3,588.39	41,344.45	44,932.84	43,088.25
30	1,831.26	43,088.25	44,919.51	0.0
TOTALS	<u>\$685,785.22</u>	<u>\$1,000,000.00</u>	<u>\$1,685,785.22</u>	

Annex A
to
Conditional Sale Agreement

- Item 1: General Electric Company, a New York corporation,
.2901 East Lake Road, Erie, Pennsylvania 16531.
- Item 2: The Equipment shall be settled for in not more than
7 Groups of units delivered to and accepted by
the Vendee unless a greater number shall be agreed
to by the parties hereto.
- Item 3: (a) The Builder warrants to the Vendee that each
unit of Equipment manufactured by it hereunder will
be free from defects in material, workmanship and
title under normal use and service, and will be of
the kind and quality designated or described in the
Specifications referred to in Article 2 of this
Agreement. The foregoing warranty is exclusive and
in lieu of all other warranties, whether written,
oral, implied or statutory (except as to title).
NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR
PURPOSE SHALL APPLY. If it appears within two
years from the date of shipment by the Builder, or
within 250,000 miles of operation, whichever event
shall first occur, that any unit of the Equipment
does not meet the warranties specified above, and
the Vendee or its agent notifies the Builder promptly,
the Builder, after verification as to condition and
usage, shall correct any defect including noncon-
formance with the Specifications, at its option,
either by repairing any defective part or parts made
available to the Builder, or by making available at
the Builder's plant or warehouse a repaired or
replacement part. If requested by the Builder, the
Vendee will ship the defective part or parts, with
shipping charges prepaid, to the plant or warehouse
designated by the Builder.

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

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

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

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

The Builder further agrees with the Vendee that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Vendee of any of its rights under this Item 3.

(b) In no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall the Builder or its suppliers be liable for any special, consequential, incidental or penal damages including, but not limited to, loss of profit or revenues, loss of use of the products or any associated equipment, damage to associated equipment, cost of capital, cost of substitute products, facilities, services or replacement power, down time costs, or claims of the Vendee's customers for such damages. If the Vendee transfers title to or leases the products hereunder to any third party (other than pursuant to the Lease), the Vendee shall obtain from such third party a provision affording the Builder and its suppliers the protection of the preceding sentence; provided that the Vendee shall have such obligation following expiration of the stated original term or any renewal term, as the case may be, as provided in the Lease, only if the Builder shall, not more than nine nor less than six months prior to the expiration of such original term or any such renewal term, as the case may be, notify the Vendee of its obligation under this sentence.

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

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

- Item 4: Except in cases of designs specified by the Lessee and not developed or purported to be developed by the Builder, and articles and materials specified by the Lessee and not manufactured by the Builder, the Builder warrants that the Equipment furnished hereunder, and any part thereof, shall be delivered free of any rightful claim of any third party for infringement of any United States patent. If notified promptly in writing and given authority, information and assistance, the Builder shall defend, or may settle, at its expense, any suit or proceeding against the Vendee or the Lessee so far as based on a claimed infringement which would result in a breach of this warranty and the Builder shall pay all damages and costs awarded therein against the Vendee or the Lessee due to such breach. In case any Equipment or part thereof is in such suit or proceeding found to constitute such an infringement and the use of such Equipment or part thereof is enjoined, the Builder shall, at its expense and option, either procure for the Vendee and the Lessee the right to continue using said

equipment or part thereof, or replace same within six months of such injunction with noninfringing Equipment or part thereof acceptable to the Vendee, or modify same so it becomes noninfringing, or remove the Equipment or part thereof and refund the Purchase Price (less reasonable depreciation for any period of use) and any transportation costs separately paid by the Vendee or the Lessee, but in each case without impairing the operational capability of such Equipment. (If the Purchase Price is so refunded, such refund shall be made to the assignee of the Builder's rights under this Agreement if this Agreement has been so assigned, which refund, to the extent of the unpaid CSA Indebtedness, shall be applied in like manner as payments in respect of Casualty Occurrences under Article 7 of this Agreement and, as long as no Default shall have occurred and be continuing, the balance shall be paid by such assignee to the Vendee.) The preceding shall not apply to the use of any Equipment or part thereof furnished hereunder in conjunction with any other product in a combination not furnished by the Builder as a part of this transaction. As to any such combination, the Builder assumes no liability whatsoever for patent infringement and the Lessee will hold the Builder harmless against any infringement claims arising therefrom. The Builder will give notice to the Vendee and the Lessee of any claim known to the Builder from which liability may be charged against the Vendee or the Lessee hereunder and the Vendee and the Lessee will give notice to the Builder of any claim known to them from which liability may be charged against the Builder hereunder.

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

- Item 5: The Maximum Purchase Price referred to in Article 4 of this Agreement is \$14,739,867.
- Item 6: The Maximum CSA Indebtedness referred to in Article 4 of this Agreement is \$9,863,000.

Annex B
to
Conditional Sale Agreement

<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Average Unit Base Price</u>	<u>Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
2,250 h.p. Model B23-7 diesel- electric locomotive	3530D	Erie, Pennsyl- vania	27	CR 1940- 1966	\$545,921	\$14,739,867	July-September 1978 at Erie, Pennsylvania

[CS&M Ref. 2043-849]

LEASE OF RAILROAD EQUIPMENT

Dated as of July 1, 1978

between

CONSOLIDATED RAIL CORPORATION

and

UNITED STATES TRUST COMPANY OF NEW YORK,

as Trustee Under a Trust Agreement

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* This Table of Contents has been included in this document for convenience only and does not form a part of or affect any construction or interpretation of this document.

LEASE OF RAILROAD EQUIPMENT dated as of July 1, 1978, between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (the "Lessee"), and UNITED STATES TRUST COMPANY OF NEW YORK, a New York trust company, acting as Trustee (the "Lessor") under Trust Agreement No. 1978-3 dated as of January 3, 1978, as amended by Amendment No. 1 dated as of the date hereof (the "Trust Agreement") with J. P. Morgan Interfunding Corp. and GMAC Leasing Corporation (the "Beneficiaries" or individually a "Beneficiary").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with General Electric Company (the "Builder"), wherein the Builder has agreed to manufacture, conditionally sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (the "Equipment");

WHEREAS the Builder under an Agreement and Assignment dated as of the date hereof (the "CSA Assignment") is assigning its interests in the CSA to Mellon Bank, N.A., acting as Agent (hereinafter, together with its successors and assigns and the Investors, as hereinafter defined, called the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessee, the Lessor, the Beneficiaries and the investor named in Schedule A thereto (said investor, together with its successors and assigns, being hereinafter called the "Investors");

WHEREAS the Builder is willing to guarantee certain obligations of the Lessee under this Lease and of the Lessor under the CSA pursuant to a Guaranty Agreement dated as of the date hereof (the "Guaranty");

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

WHEREAS the parties contemplate that the Lessor will assign for security purposes certain of its rights in this Lease to the Vendor by an Assignment of Lease and

Agreement dated as of the date hereof (the "Lease Assignment"), and the Lessee will consent thereto by a Consent and Agreement (the "Consent");

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

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

shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the CSA. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same and, if such Unit is found to be acceptable, to accept delivery of such Unit, and the Lessee shall execute and deliver to the Lessor a certificate of acceptance (the "Certificate of Acceptance") substantially in the form annexed hereto as Schedule C, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease or to constitute acceptance thereof on behalf of the Lessor for any purpose whatsoever.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for the Units, 31 consecutive payments payable (i) on December 15, 1978 (such date being hereinafter called the "Basic Rent Commencement Date"), and (ii) on the 30 consecutive dates occurring semiannually following the Basic Rent Commencement Date (each of such 30 consecutive dates being hereinafter called a "Rental Payment Date"). The rental payable on the Basic Rent Commencement Date for each Unit shall be in an amount equal to the product of (a) the number of days elapsed from and including the Closing Date for such Unit to, but not including, the Basic Rent Commencement Date, times (b) 0.028332% of the Purchase Price of such Unit, which rate includes the guarantee fee (equal to 0.002778% of the Purchase Price of each such Unit) to be paid by the Lessee to the Builder in respect of its obligations under the Guaranty. The next 30 rental payments shall each be in an amount equal to 5.099779% of the Purchase Price of each Unit then subject to this Lease, which rate includes the semiannual guarantee fee (equal to 0.50% of the Purchase Price of each such Unit) to be paid by the Lessee to the

Builder in respect of its obligations under the Guaranty. The Builder shall be a third-party beneficiary of the Lessee's obligation to pay the guarantee fee referred to in the two preceding sentences. If the Lessor shall provide more than 33.086235% of the Purchase Price of the Units, out of funds provided by the Beneficiaries (as distinguished from the CSA Indebtedness), the Lessee agrees that the rentals payable hereunder and the Casualty Value percentages set forth in Schedule B hereto will be appropriately adjusted so that each Beneficiary's after-tax rate of return and periodic recovery of net cash flow will be at least the same as they would have been had the Lessor not provided more than 33.086235% of the Purchase Price as aforesaid. If there is a change effective prior to December 31, 1979, for which the Beneficiaries are not responsible in the assumptions utilized by the Beneficiaries (as set forth in § 16 hereof) in originally calculating such rentals, the Lessor and the Lessee agree that commencing on the third Rental Payment Date the rentals payable hereunder and the Casualty Value percentages set forth in Schedule B hereto will be appropriately adjusted upward or downward so that each Beneficiary's after-tax rate of return and periodic recovery of net cash flow will be at least the same as they would have been had there been no change in such assumptions. The Lessor and the Lessee further agree that if there is a reduction in the amounts payable by the Builder in respect of its obligations under the Guaranty, the portion of the rentals payable hereunder attributable to the guarantee fee referred to above will be adjusted downward to reflect such reduction. Notwithstanding anything to the contrary set forth herein, the rentals and Casualty Value percentages, as adjusted pursuant to the preceding two sentences, shall be sufficient to satisfy the obligations of the Lessor under the CSA, regardless of any limitation of liability set forth therein.

In addition to the foregoing rentals, the Lessee agrees to pay to the Lessor as additional rentals amounts which, after deduction of any taxes payable in respect of such amounts, will be equal to the amounts required by the Lessor to make the payments provided for (a) in the penultimate sentence of the third paragraph of Paragraph 2, (b) in the last sentence of the first paragraph of Paragraph 9 and (c) in the last paragraph of Paragraph 9 of the Participation Agreement on the dates the Lessor is required to make such payments (without regard to any limitation of the obligation of the Lessor set forth therein) and the Lessor agrees to apply such rentals for such purposes.

If any of the rental payment dates referred to above is not a business day the rental payment otherwise payable on such date shall be payable on the next preceding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, or Pittsburgh, Pennsylvania, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the CSA, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing; provided, however, that the Lessee shall make all payments provided for in §§ 6, 9 and 16 hereof in immediately available funds directly to the person entitled to receive them, as provided in the Lease Assignment. The Lessee agrees to make each payment provided for herein (other than the payments described in the proviso to the preceding sentence) as contemplated by this paragraph in Federal or other funds immediately available to the Vendor by 11:00 a.m., Pittsburgh time, on the date such payment is due. Provided that no Event of Default described in § 10(A) hereof, or event which with notice or lapse of time or both would become such an Event of Default, shall have occurred and be continuing, the Lessor shall pay to the Builder, out of the payments received by it from the Vendor pursuant to the first sentence of this paragraph, an amount equal to the semiannual fee payable by the Lessee to the Builder, as referred to in the first paragraph of this § 3.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 9, 14 and 16 hereof) shall survive the expiration or termination of the term of this Lease and the full payment of all amounts payable under this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination), all as provided therein; provided, however, that, so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 12 hereof.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identification number set forth in Schedule A hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership subject to a Conditional Sale Agreement filed under the Interstate Commerce Act, Section 20c", with appropriate changes thereof as from time to time may be required by law, in the opinion of the Vendor, in order to protect the Lessor's and the Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect that such statement has been so filed and deposited, that such filing and deposit will protect the Vendor's and the Lessor's rights in such Units and that no other filing, deposit or giving of notice with or to any federal, state or local government or agency thereof is necessary to protect the rights of the Vendor and the Lessor in such Units.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Units may be lettered with

the names or initials or other insignia customarily used by the Lessee or its affiliates.

§ 6. Taxes. The Lessee assumes responsibility for, and agrees to pay, hold harmless and indemnify on an after-tax basis the Lessor and the Beneficiaries and their successors and assigns (the "Indemnified Persons") against, all taxes, fees, withholdings and other governmental charges of any nature whatsoever, including without limitation penalties and interest (all such taxes, fees, withholdings, governmental charges, penalties and interest being hereinafter called "Taxes"), imposed on, incurred by or asserted against any Indemnified Person or the Units or any thereof on account of, or with respect to, this Lease or the CSA or any document referred to herein or therein or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acceptance or rejection of the Units or any thereof or the ownership, delivery, nondelivery, leasing, re-leasing, subleasing, possession, use, operation, maintenance, repair, condition, sale, return or other disposition of the Units or any thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom; provided, however, that there shall be no indemnification hereunder for (i) any Taxes imposed on or measured by any fees or compensation received by the Lessor, and (ii) Federal income Taxes and income or franchise Taxes imposed on a Beneficiary or its successors and assigns by any jurisdiction in which such Beneficiary or its successors and assigns has an office, except to the extent that indemnification is provided for in § 16 hereof. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify each Indemnified Person to the extent required by this § 6 within ten days after receipt of a written request by such Indemnified Person for indemnification specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question; provided, however, that if any Taxes are being contested in accordance with the sixth paragraph of this § 6, any payment shall be made at the time therein provided.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any corresponding provision of the CSA (other than the proviso to the third paragraph of Article 12) not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed Taxes hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any returns, statements or reports with respect to Taxes are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Vendor in the Units; provided, however, that the Lessor shall, with respect to any state or political subdivision thereof of the United States of America, file such returns, statements, and reports relating to sales or use taxes, and taxes, fees, and charges on or measured by the Lessor's earnings or gross receipts arising from the Units, or the value added by the Lessor thereto, as the Lessee shall determine are required to be filed, and as shall be prepared by the Lessee, and the Lessor shall remit the amount thereof upon payment by the Lessee to the Lessor (such payment to be made forthwith upon demand by the Lessor therefor) of such taxes, fees and charges except as provided above. To the extent that the Lessor has information necessary to the preparation of such returns, statements and reports, it will furnish such information to the Lessee.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in its own name and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor and the Beneficiaries harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor, of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

If any taxing authority shall assert liability for any Taxes or propose an increase in the liability of any Indemnified Person for any Taxes (such assertion or such proposed increase being hereinafter called a "Claim"), indemnification for which would be required under this § 6, the Indemnified Person will notify the Lessee within a reasonable time of such Claim in writing. If the Lessee delivers to such Indemnified Person written notice of its desire to contest such Claim within 30 days after receipt of notice from such Indemnified Person, such Claim

will be contested in accordance with this paragraph, except to the extent such Claim represents amounts payable to the Vendor under Article 6 of the CSA. The Lessor will permit the Lessee to contest such Claims under Article 6 of the CSA in accordance with the rights of the Lessor thereunder. The Indemnified Person shall have the exclusive right to conduct the contest unless such right is waived in writing, in which event the contest and all preparations therefor shall be the sole responsibility of the Lessee and, in either case, shall be conducted entirely at its expense. Such Indemnified Person will cooperate with any reasonable request made by the Lessee in connection therewith; provided, however, that such Indemnified Person may in its sole discretion determine in what court or other forum such contest will be conducted and whether such contest will proceed by payment of the Taxes in contemplation of a suit for refund and such Indemnified Person shall not be required to take any action pursuant to this paragraph unless and until the Lessee shall have agreed to indemnify such Indemnified Person in a manner satisfactory to such Indemnified Person for any liability or loss which such Indemnified Person may incur as a result of contesting the validity of any Claim and shall have agreed to pay such Indemnified Person on demand all costs and expenses which such Indemnified Person may incur in connection with contesting such Claim (including fees and disbursements of counsel). If in any such contest the decision is made to pay the Taxes and sue for a refund, the Lessee will advance to such Indemnified Person on an interest-free basis sufficient funds to pay the Taxes which are to be contested. Upon receipt by any Indemnified Person of a refund of any Taxes paid by the Lessee pursuant to this paragraph, the amount of such refund and any interest paid to such Indemnified Person with respect thereto shall be paid to the Lessee forthwith upon receipt by such Indemnified Person.

The Lessee agrees to pay all amounts due under this § 6 free of any Taxes and to indemnify each Indemnified Person against any Taxes imposed by reason of any payment made by the Lessee so that the Indemnified Person to whom or for whose benefit the payment is made shall receive an amount which, net of any Taxes or other charges required to be paid by such Indemnified Person in respect thereof, shall be equal to the amount of payment otherwise required hereunder. Without limiting the foregoing, the amount which the Lessee shall be required to pay with respect to any Taxes subject to indemnification under this Section 6 shall be an amount sufficient so that, after considering the tax and

other effects of the Taxes in question and the receipt of indemnification payments hereunder, the Indemnified Person will have the same anticipated after-tax rate of return on equity and periodic recovery of net cash flow as such Indemnified Person would have realized had such Taxes not been incurred or imposed.

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

This § 6 may be enforced by the Lessor as provided in Paragraph 17 of the Participation Agreement.

§ 7. Maintenance; Casualty Occurrences; Insurance.
The Lessee at its own expense will maintain and service each Unit and comply with a preventive maintenance schedule consistent with the Builder's preventive maintenance schedules and which will include testing, repair and overhaul of each Unit so that each Unit will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations, and (c) desirable to and suitable for immediate purchase or lease and use by a Class I line-haul railroad (not then or prospectively a debtor in any insolvency or reorganization proceedings) in the event of resale or release upon default by the Lessee. In no event shall any Unit be maintained or scheduled for maintenance on a basis less frequent than the maintenance or maintenance scheduling basis employed as of the date hereof by the Lessee for similar equipment. No later than the last business day of February and August of each year, commencing in February 1979, the Lessee will furnish the Lessor with a certificate ("Maintenance Certificate A") of a qualified engineer satisfactory to the Lessor (i) setting forth the identification numbers of all Units which are then in the condition required by clauses (a), (b) and (c) of the first sentence of this § 7 and certifying that all such Units are in such condition, and (ii) setting forth the identification numbers of all Units which are not in such condition together with the estimated cost required with respect to each such Unit in order to comply with the maintenance requirements of this § 7. No later than the last business day in April and October of each year, commencing in April 1979, the Lessee will furnish the Lessor with a certificate ("Maintenance Certificate B")

of a qualified engineer satisfactory to the Lessor setting forth the identification number of each Unit that was not certified in the preceding February or August Maintenance Certificate A, as the case may be, as being in the condition required by clauses (a), (b) and (c) of the first sentence of this § 7, and, as to each such Unit, (i) certifying that such Unit is in such condition as of the date of such Maintenance Certificate B, or (ii) stating that such Unit is not in such condition. The Lessee, the Vendor and the Lessor have entered into a Maintenance Agreement dated as of the date hereof (the "Maintenance Agreement"), with respect to certain obligations of the Lessee in the event that any Unit listed on a Maintenance Certificate A as not being in the condition required by clauses (a), (b) and (c) of the first sentence of this § 7 is not certified on the next scheduled Maintenance Certificate B as being in such condition.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, permanently returned to the Builder pursuant to any patent indemnity provision of the CSA, or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term of this Lease (or, if such taking, requisition or condemnation shall occur during a renewal term, for a period which shall exceed the then remaining renewal term), or by any other government or governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days, or if a Default under Section 2 of the Maintenance Agreement shall have occurred with respect to such Unit (such occurrences being hereinafter called "Casualty Occurrences"), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly (but in any event within 30 days after such Casualty Occurrence) and fully notify the Lessor, the Beneficiaries and the Vendor with respect thereto. On the earlier of (i) the 60th day following such notice (but not earlier than the first Rental Payment Date following the Basic Rent Commencement Date) and (ii) the rental payment date next succeeding such notice (but not earlier than the first Rental Payment Date following the Basic Rent Commencement Date) the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit then due and payable or accrued to such date (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days

and the denominator is the total number of days in such full rental period) plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the rental payment date on or next preceding the date of such Casualty Occurrence in accordance with Schedule B hereto referred to 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 (except in the case of the loss, theft, complete destruction or permanent return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis and the Lessee may be a purchaser of such Unit and shall notify the Lessor prior to any such purchase by the Lessee. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit permanently returned to the Builder pursuant to any patent indemnity provision of the CSA an amount equal to any patent indemnity payment in respect of such Unit made by the Builder to the Vendor under the CSA.

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

Whenever any Unit shall suffer a Casualty Occurrence after the final payment of rent in respect thereof is due pursuant to § 3 or § 13 hereof and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly (as provided above) and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 20% of the Purchase Price of such Unit, except that if the term of this Lease shall have been extended pursuant to § 13 hereof, then the applicable Casualty Value shall be (i) during the first five-year renewal term and, if there shall be no second five-year renewal period, thereafter, 20% of the Purchase Price of such

Unit, (ii) during the second five-year renewal term, the fair market value of such Unit, as of the rental payment date on or next preceding the date of such Casualty Occurrence, determined as provided in the following sentence, and (iii) thereafter, the fair market value of such Unit as of the last rental payment date during such second five-year renewal period. For the purposes of the preceding sentence, the term "fair market value" of a Unit shall, at the beginning of such second five-year renewal period, be equal to the Fair Market Purchase Price of such Unit at such time determined in accordance with the provisions of § 13 hereof, and shall decline on a straight-line basis to the estimated Fair Market Purchase Price of such Unit at the end of such second five-year renewal period determined in accordance with the provisions of § 13 hereof. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit or return to the Builder of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence, or any component thereof, at the best price obtainable on an "as is, where is" basis and the Lessee may be a purchaser of such Unit and shall notify the Lessor prior to any such purchase by the Lessee. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition (other than a requisition which constitutes a Casualty Occurrence) for use by the United States Government or by any other government or governmental entity (hereinafter collectively called the "Government") of any Unit during the term of this Lease or any renewal thereof, all of the Lessee's obligations (including without limitation the obligation to pay rent) under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease or any renewal thereof,

but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessee, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease or any renewal thereof, shall be paid over to, or retained by, the Lessor.

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

The Lessee will, at all times prior to the return of the Units to the Lessor, at its own expense, cause to be carried and maintained casualty insurance and public liability insurance in respect of the Units at the time subject hereto, against such risks, in such amounts and on such terms and conditions as are satisfactory to the Lessor and the Vendor, and, in any event, comparable in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it, but in no event shall such coverage be for amounts or against risks less than the prudent industry standard for Class I line-haul railroads. If the Casualty Value at any given time is less than what the deductible would be under the foregoing standard, then no casualty insurance need be carried. All policies with respect to such insurance shall name the Lessor, the Beneficiaries and the Vendor as additional named insureds or loss payees, as their interests may appear, shall provide for at least 30 days' prior written notice by the insurance carrier to the Lessor, the Beneficiaries and the Vendor in the event of cancellation, expiration or amendment (and the Lessee shall provide 30 days' prior written notice to the Lessor, the Beneficiaries, and the Vendor in any such event), shall include waivers by the insurer of all claims for premiums against the Lessor, the Beneficiaries and the Vendor and shall provide that losses are payable notwithstanding, among other things, any act of negligence of the

Lessee, the Lessor, the Beneficiaries or the Vendor, more hazardous use or occupation of the Units than that permitted by such policies, any breach or violation by the Lessee, the Lessor, the Beneficiaries or the Vendor of any warranty, declaration, condition or other provision contained in any such policy, or foreclosure, notice of sale or any other proceeding in respect of the Units, or any change in the title to or ownership of any of the Units. Each such insurance policy shall expressly provide that all of the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Lessee) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by the Lessor, the Beneficiaries or the Vendor. The Lessee shall, not later than June 15 of each year, commencing June 15, 1979, furnish to the Lessor and the Vendor a certificate of an independent insurance broker acceptable to the Lessor evidencing the maintenance of the insurance required hereunder and shall furnish certificates evidencing renewal 15 days prior to the expiration date of such policy or policies. In the event that the Lessee shall fail to maintain insurance as herein provided, the Vendor or a Beneficiary may at its option on five business days' prior written notice to the Lessee provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand from time to time, reimburse the Vendor or the Beneficiaries, as the case may be, for the cost thereof together with interest on the amount of such cost from the date of payment thereof at a rate per annum equal to the greater of (i) 10.5% or (ii) 1.25 times the "prime" or "base" rate of interest announced from time to time by a majority (or if there shall not be a majority, by a plurality) of the 12 largest commercial banks (measured by deposits) operating in the United States for borrowers of the highest credit rating. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor

that any damage to such Unit in respect of which such proceeds were paid has been fully repaired, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

§ 8. Reports. On or before April 30 in each year, commencing with the calendar year 1979, the Lessee will furnish to the Lessor, the Builder and the Vendor a certificate signed by the Chief Executive Officer, Chief Operating Officer or Vice President of Operations or the Chief Mechanical Officer of the Lessee (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the CSA, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof have been preserved or replaced. The Lessor or the Builder, at its sole expense, shall have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Builder may request during the continuance of this Lease.

The Lessee shall promptly notify the Lessor, the Beneficiaries and the Vendor of any occurrence of an Event of Default or other event which after notice or lapse of time or both would become an Event of Default, specifying such Event of Default and all such events and the nature and status thereof.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF THE LESSOR), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the

Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A to the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, subleasing, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal thereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its

own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, the Beneficiaries or the Vendor, adversely affect the property or rights of the Lessor, the Beneficiaries or the Vendor under this Lease or under the CSA. The Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value of the Units). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, except to the extent such additions, modifications or improvements are described in the following sentence. Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of the provisions contained hereinabove, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the United States Department of Transportation or any other regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA) shall immediately be vested in the Lessor.

The Lessee agrees to indemnify, protect and hold harmless the Lessor, the Beneficiaries and the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent, trademark and copyright liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default, an event of default or an Event of Default, under the CSA, the Participation Agreement, this Lease, the Maintenance Agreement or any sublease entered into pursuant to § 12 hereunder, the ownership of any Unit, the manufacture, ordering, acquisition, use, operation, condition, purchase, sublease, delivery, nondelivery, acceptance, 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, or the transfer of title to the Units by the Vendor pursuant to any provision of the CSA; provided, however, that the foregoing indemnification shall not apply to any failure to pay the principal of or interest on the CSA Indebtedness (as defined in the CSA) or constitute a guaranty of the residual value of the Units. 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 expiration or termination of the term of this Lease.

The Lessee shall bear the responsibility and risk for, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any or all of the Units of equipment.

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

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

(A) default shall be made in payment of any amount provided for in § 3, 7 or 13 hereof, and such default shall continue for five business days;

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

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Consent or in the Participation Agreement or in Section 5 of the Maintenance Agreement,

and such default shall continue for 30 days after the earlier of (i) written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied and (ii) the date on which such default shall first become known to any officer of the Lessee;

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

(E) any other proceeding shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee, or for the property of the Lessee, in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations

incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

(F) the occurrence of any of the following:

(i) Involuntary Bankruptcy Proceedings--a receiver, liquidator or trustee of the Lessee or of any of its property is appointed by court order and such order remains in effect for more than 30 days; or the Lessee is adjudicated bankrupt or insolvent; or any of its property is sequestered by court order and such order remains in effect for more than 30 days; or a petition is filed against the Lessee under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within 30 days after such filing;

(ii) Voluntary Petitions--the Lessee files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or

(iii) Assignments for Benefit of Creditors, etc.--the Lessee makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due, or consents to the appointment of a receiver, trustee or liquidator of the Lessee or of all or any part of its property;

followed by a good faith determination by the Vendor or the Lessor and notification thereof to the Lessee within 45 days following knowledge by the Vendor or the Lessor of any such occurrence that, as a result, it will be inadequately secured;

(G) Section 77(j) of the Bankruptcy Act (or any successor provision thereto providing similar protection

and benefits for creditors of railroads) is repealed, not carried forward in subsequent legislation or otherwise unavailable to the Lessor or the Vendor, and there shall then exist or thereafter be a default under, or an event shall occur or shall have occurred which, with the giving of notice or the lapse of time or both, would become a default under, any agreement or instrument then or thereafter binding upon the Lessee or to which it then is or thereafter becomes a party or to which any of its property is or thereafter becomes subject;

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

(a) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of Federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents, subject to compliance with all mandatory requirements of law, enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts

the Lessor, in its sole discretion, shall specify:

(x) a sum, with respect to each Unit, equal to (A) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 8.50% per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated plus (B) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of any Federal, state or local government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall, in the reasonable opinion of the Lessor, be equal to all or such portion of the Investment Credit (as defined in § 16 hereof) lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 16 or any other provision of this Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as shall cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the ADR Deductions and the Interest Deduction (as such deductions are defined in § 16 hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 16 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessee or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default plus such sum as will pay or reimburse the Lessor for any interest, penalties or

additions to tax incurred in connection with such loss, failure to claim, inability to claim, disallowance or recapture; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination, over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf. The Lessee hereby waives any and all claims against the Lessor and the Vendor and their agent or agents for damages of whatever nature in connection with any retaking of any Unit in any reasonable manner. The Lessor and the Lessee agree that the Lessor shall be entitled to all rights (such rights being fundamental to the willingness of the

Lessor to enter into this Lease) provided for in § 77(j) of the Bankruptcy Act or any comparable provision of any amendment thereto, or of any other bankruptcy act, so that the Lessor shall have the right to take possession of the Equipment upon an Event of Default under this Lease regardless of whether the Lessee is in reorganization.

No failure by the Lessor to exercise, and no delay by the Lessor in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege by the Lessor preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

Any Event of Default under this Lease caused by the failure of the Lessee to make any payment due hereunder shall not be deemed to be an Event of Default under this Lease permitting the Lessor to exercise the remedies specified in clauses (a) and (b) of the first paragraph of this § 10, or otherwise existing in its favor at law or in equity, if, prior to the exercise of any such remedies and prior to a Declaration of Default under and as defined in the CSA, the Builder pays to the Lessor an amount equal to all amounts then payable under this Lease, including any interest on overdue rentals.

§ 11. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof. For the purpose of delivering possession, the Lessee shall:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

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

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

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own expense, maintain and keep the Equipment in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All rent and per diem charges earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which 0.028332% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor with respect to such Unit for each such day.

Without in any way limiting the foregoing obligations of the Lessee under this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's successors and assigns.

So long as (i) no Event of Default exists here-

under, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and, without the prior written consent of the Lessor and the Vendor, the Lessee may sublease the Units to, or permit their use by, a user incorporated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by the Lessee or such user or by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Vendor's and the Lessor's consent, not to be unreasonably withheld, must be obtained for any sublease that is for a term longer than six months; provided, further, however, that the Lessee shall not sublease or permit the sublease or use of any Unit to service involving operation or maintenance outside the United States of America except that occasional service in Canada shall be permitted so long as such service in Canada does not involve regular operation and maintenance outside the United States of America; and provided, further, however, that any such sublease or use shall be consistent with the provisions of § 16 hereof. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety.

The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor, any Beneficiary or the Vendor or resulting from claims against the Lessor, any Beneficiary or the Vendor not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

§ 13. Renewal and Purchase Options. Provided that this Lease has not been earlier terminated and the Lessee is

not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term or any extended term of this Lease, as the case may be, (i) elect to extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for one or two additional five-year periods commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, provided that no such extended term shall extend beyond a date 25 years after the Basic Rent Commencement Date, at a Fair Market Rental (as defined below) payable in semiannual payments, commencing six months after the next preceding rental payment date, in each year of such extended term; or (ii) after the first additional five-year rental period, as provided above, purchase all but not fewer than all of the Units then subject to this Lease, at a Fair Market Purchase Price (as defined below) payable at the end of such first additional five-year rental period.

Fair Market Rental and Fair Market Purchase Price shall be determined on the basis of, and shall be equal in amount to, the cash rental for a five-year period or the purchase price, as the case may be, which would obtain in an arm's-length transaction between an informed and willing lessee or purchaser and an informed and willing lessor or seller, as the case may be, under no compulsion to lease or sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental or purchase price. If, after 60 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease or to exercise its purchase option, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental or Fair Market Purchase Price of the Units, such rental or purchase price shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such rental or purchase price by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after

such notice is given, either party may request the American Arbitration Association to make such appointment, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental (and, in the case of a second renewal period, the Fair Market Purchase Price at the beginning and end of such second renewal period) of the Units subject to the proposed extended term, or the Fair Market Purchase Price, as the case may be, within 70 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental or Fair Market Purchase Price, as the case may be, of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from that of the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental or Fair Market Purchase Price, as the case may be. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental or Fair Market Purchase Price, as the case may be, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The appraisal procedure expenses shall be borne equally by the Lessee and the Lessor.

Upon payment of the purchase price of any Unit, pursuant to an election by the Lessee to purchase the Units, the Lessor 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 warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

§ 14. Return of Units upon Expiration of Term.

The Lessor intends to retain the Units for re-lease at the expiration of the term of this Lease. As soon as practicable on or after the expiration of the original or any extended term of this Lease with respect to any Unit, the Lessee will,

at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding 60 days following notification to the Lessor by the Lessee that all the Units have been assembled and delivered for storage and transport the same, at any time within such 60-day period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee (except for the insurance required by § 7 hereof which shall be provided at the Lessor's expense); and in the event that any Unit shall suffer a Casualty Occurrence during such storage period, the Lessee shall pay the Lessor the Casualty Value thereof as provided in § 7 hereof. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence or strict liability of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor or any prospective purchaser, lessee or user, such rights of inspection. Each Unit returned to the Lessor pursuant to this § 14 shall be in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof. During any storage period, the Lessee will, at its own expense, maintain and keep the Units in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof and will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All rent and per diem charges earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay

to the Lessor for each day from the date of such termination an amount equal to the amount, if any, by which 0.028332% of the Purchase Price of such Unit (or, in the case of Units returned following any renewal term, the amount which is the product of the Purchase Price of such Unit times a fraction the numerator of which is the semiannual rental factor (expressed as a percentage of the Purchase Price) for such Unit in effect for such preceding renewal term and the denominator of which is 180) for each such day exceeds the actual earnings received by the Lessor with respect to such Unit for each such day.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the CSA and any assignment hereof or thereof to be filed in accordance with Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada (and notice of such deposit to be given forthwith in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the CSA and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective rights in the Units, or for the purpose of carrying out the intention of this Lease, the CSA and the assignments thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this § 15, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor; provided, however, that no such opinion of counsel need be furnished in respect of the filing of the CSA or the assignment thereof in Canada. This Lease and the CSA, and the assignments thereof, shall be filed with the Interstate Commerce Commission and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision shall be made for publication of notice of such deposit in The Canada Gazette prior to the delivery and acceptance hereunder of any Unit.

§ 16. (a) Indemnity for Federal and Other Income Tax Benefits. This Lease has been entered into on the assumption that this Lease will be recognized as a lease for Federal, state and local income or franchise tax purposes and that this Lease does not convey to the Lessee any right, title or interest in the Units except as Lessee. Accordingly, the Beneficiaries, the Lessor and the Lessee have assumed for purposes of United States Federal income tax and (to the extent applicable) state and local income and franchise tax that the trust under the Trust Agreement will be treated as a partnership and that the Beneficiaries (A) as the beneficial owners of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (the "Code"), and state and local taxing statutes to an owner of property, including, without limitation, (1) deductions for depreciation of the Units under section 167 of the Code (the "ADR Deductions") computed on the basis (i) that the Units will have a depreciable basis under section 167(g) of the Code at least equivalent to the Purchase Price plus 33.086235% of the Transaction Expenses (as defined in the Participation Agreement) borne by the Beneficiaries or the Lessor and that the Federal corporate income tax rate in effect for 1978 and thereafter will be 48%, (ii) of the double-declining balance method of depreciation authorized by section 167(b)(2) of the Code, switching to the sum-of-the-years-digits method of depreciation authorized by section 167(b)(3) of the Code when most beneficial to the Beneficiaries, (iii) of the asset depreciation range system of Treasury Regulation Section 1.167(a)-11, using the half-year convention and obtaining not less than six months of depreciation in 1978, (iv) of an asset depreciation period of 12 years, and (v) of a salvage value of zero after the reduction in accordance with section 167(f)(1) of the Code, (2) deductions with respect to interest payable on the CSA Indebtedness (as defined in the CSA) and the guarantee fee payable to the Builder (the "Interest Deductions") for any period during which the CSA Indebtedness is held by any person other than the Beneficiaries and (3) the investment credit pursuant to section 38 of the Code for "new section 38 property" (the "Investment Credit") equal to 10% of the depreciable basis referred to above, (B) shall be entitled to amortize 66.913765% of the Transaction Expenses borne by the Beneficiaries or the Lessor on a straight-line basis over a period of 15 years (the "Amortization Deductions") and (C) shall be entitled to

treat each item of income, deduction and credit with respect to this Lease and the Maintenance Agreement as attributable to sources within the United States.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that the Lessee and any corporation controlled by it, in control of it or under common control with it, directly or indirectly, will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof.

Each Beneficiary will claim on its Federal, state and local income tax returns the Investment Credit, the ADR Deductions, the Amortization Deductions and the Interest Deductions to the extent that any opinion or advice of counsel satisfactory to such Beneficiary confirms its entitlement thereto.

If for any reason whatsoever a Beneficiary shall not be allowed all or any portion of the ADR Deductions, the Amortization Deductions, the Interest Deductions or the Investment Credit, or if the ADR Deductions or the Investment Credit with respect to any portion of the Units is recaptured in whole or in part pursuant to section 1245 or section 47 of the Code, or if a Beneficiary, in computing its Federal tax liability, shall not have, shall lose the right to claim (including a good faith determination based upon advice of its tax counsel that such claim is not allowable), shall suffer a disallowance of or be required to recapture an amount of foreign tax credit which would have been allowable to such Beneficiary if such Beneficiary had not participated in the transactions contemplated by this Lease (the "Foreign Tax Credit") (any such event being a "Loss"), then the Lessee shall pay to such Beneficiary such amount or, from time to time, such amounts as, after deduction of all taxes required to be paid by such Beneficiary in respect of the receipt of such amounts under the laws of any Federal, state or local government or taxing authority, shall be equal to the sum of the aggregate additional Federal, state or local income taxes, including penalties and interest, if any, payable by such Beneficiary from time to time as a result of any such Loss; provided that indemnification payments hereunder shall be an amount sufficient so that, after considering the tax and other effects of the Loss in question and the receipt of indemnification payments hereunder, such

Beneficiary will have the same anticipated after-tax rate of return on equity and periodic recovery of net cash flow which such Beneficiary would have realized had such Loss not occurred. If, as a result of a Loss, the aggregate Federal, state or local income taxes, including penalties and interest, if any, paid by such Beneficiary for any taxable year shall be less than the amount of such taxes which would have been payable by such Beneficiary had no such Loss occurred, then such Beneficiary shall pay the Lessee the amount of such difference in taxes, plus any additional tax benefits realized by such Beneficiary as the result of such payment; provided, however, that such Beneficiary shall not be obligated to make any payment pursuant to this sentence to the extent that any such payment would cause such Beneficiary not to realize the after-tax rate of return on equity and periodic recovery of net cash flow referred to in the preceding sentence or to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to such Beneficiary pursuant to this subsection (a) in respect of a Loss, less (y) the amount of all prior payments by such Beneficiary to the Lessee pursuant to this sentence. The amount payable to a Beneficiary pursuant to this paragraph shall be paid within 30 days after receipt of a written demand therefor from such Beneficiary (but not prior to five business days prior to the payment of additional tax which becomes due as the result of the Loss), accompanied by a written statement describing in reasonable detail such Loss and the computation of the amount so payable. Any payment due to the Lessee from a Beneficiary pursuant to this paragraph shall be paid within 30 days after such Beneficiary realizes any such savings in its income taxes or additional tax benefits, as the case may be.

Incremental amounts of rent paid by reason of an upward adjustment of rentals pursuant to the first paragraph of § 3 shall be deemed to be indemnification payments to the Beneficiaries under this § 16.

Notwithstanding anything to the contrary hereinbefore set forth, no amount shall be payable to a Beneficiary as an indemnity under this § 16 in respect of any Loss to the extent that such Loss is a direct result of the occurrence of any of the following events:

- (i) a voluntary transfer or other voluntary disposition by the Lessor of any interest in the Equipment (otherwise than pursuant to the Lease Assignment), or a voluntary transfer or other voluntary disposition by

a Beneficiary of part or all of its interest in the trust estate under the Trust Agreement unless, in each case, an Event of Default shall have occurred and be continuing;

(ii) the failure of the Beneficiaries (or the tax partnership created by the Trust Agreement) to claim the Investment Credit, the ADR Deductions, the Amortization Deductions or the Interest Deductions;

(iii) the failure of the Beneficiaries to have sufficient liability for Federal income tax against which to credit the Investment Credit or the Foreign Tax Credit or to have sufficient income to benefit from the ADR Deductions, the Amortization Deductions or the Interest Deductions, as the case may be;

(iv) a Casualty Occurrence if the Lessee shall have paid the Casualty Value pursuant to § 7;

(v) any other acts or omissions of the Beneficiaries or the Lessor inconsistent with the transactions contemplated hereby; and

(vi) changes in law which are not effective prior to December 31, 1979.

(b) Indemnity for Improvements and Deposits.

If at any time a Beneficiary is required by the Internal Revenue Service to include in its gross income an amount in respect of any improvement or addition to the Units or any accession referred to in § 9 or any action required to be taken by the Lessee pursuant to the Maintenance Agreement (hereinafter called "Capital Expenditures") or an amount in respect of any funds paid under the Guaranty Agreement (hereinafter called the "Deposits"), then the Lessee shall pay to such Beneficiary, as an indemnity, such amount or amounts as, after deduction of all taxes required to be paid by such Beneficiary in respect of the receipt of such amounts under the laws of any Federal, state or local taxing authority, shall be equal to the sum of the aggregate additional Federal, state or local income taxes payable by such Beneficiary from time to time as a result of such Capital Expenditures or Deposits plus the amount of any interest, penalties or additions to tax payable as a result of any such Capital Expenditures or Deposits; provided that indemnification payments hereunder shall be an amount

sufficient so that, after considering the tax and other effects of the Capital Expenditures or the Deposits, as the case may be, and the receipt of indemnification payments hereunder, such Beneficiary will have the same anticipated after-tax rate of return on equity and periodic recovery of net cash flow which such Beneficiary would have realized had such Capital Expenditures or Deposits not occurred. If as a result of any such Capital Expenditures or Deposits the aggregate Federal, state or local income taxes paid by such Beneficiary for any taxable year shall be less than the amount of such taxes which would have been payable by such Beneficiary had no such Capital Expenditures or Deposits been made, then such Beneficiary shall pay the Lessee the amount of such savings in taxes plus any additional tax benefits realized by such Beneficiary as the result of such payment; provided, however, that such Beneficiary shall not be obligated to make any payment pursuant to this sentence to the extent that any such payment would cause such Beneficiary not to realize the after-tax rate of return on equity and periodic recovery of net cash flow referred to in the preceding sentence or to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee pursuant to this subsection (b) in respect of any Capital Expenditures or Deposits less (y) the amount of all prior payments by such Beneficiary pursuant to this sentence. The amount payable to a Beneficiary pursuant to this subsection (b) shall be paid within 30 days after receipt of the written demand therefor from such Beneficiary (but not prior to five business days prior to payment of the additional Federal, state or local income tax which becomes due as a result of said inclusion) accompanied by a written statement describing in reasonable detail such inclusion and the computation of the amount so payable. Any payment due to the Lessee pursuant to § 16(c) shall be paid within 30 days after a Beneficiary realizes any such savings in its income taxes or additional tax benefits, as the case may be.

(c) Contests. (1) If the Internal Revenue Service shall propose an adjustment in the Federal income taxes of a Beneficiary for which the Lessee would be required to indemnify such Beneficiary pursuant to subsection (a) or (b) of this § 16 and the amount of the indemnity which the Lessee would be required to pay would exceed \$100,000, then, if requested by the Lessee in a timely written request, such Beneficiary shall request an opinion from counsel selected by such Beneficiary and approved by the Lessee as to whether the basis in law and in fact in favor of allowance of the

item proposed to be adjusted outweighs the basis in law and in fact to the contrary. If the opinion is to that effect and if the Lessee promptly requests such Beneficiary to do so, such Beneficiary shall contest the proposed adjustment; provided, however, that such Beneficiary shall determine in its sole discretion the nature of all action to be taken to contest such proposed adjustment including (i) whether any action to contest such proposed adjustment shall initially be by way of judicial or administrative proceedings, or both, (ii) whether any such proposed adjustment shall be contested by resisting payment thereof or by paying the same and seeking a refund thereof, and (iii) if such Beneficiary shall undertake judicial action with respect to such proposed adjustment, the court or other judicial body before which such action shall be commenced. Such Beneficiary shall have full control over any contest pursuant to this subsection (c) and shall not be obligated to appeal an adverse determination by any court. At any time, whether before or after commencing to take the action set forth in this subsection (c), such Beneficiary may decline to take any such action with respect to all or any portion of a proposed adjustment by notifying the Lessee in writing that the Lessee is relieved of its obligation to indemnify such Beneficiary with respect to the adjustment or such portion, as the case may be.

(2) A Beneficiary shall not be required to take any action pursuant to this subsection (c) unless and until the Lessee shall have agreed to indemnify such Beneficiary in a manner reasonably satisfactory to such Beneficiary for any liability or loss which such Beneficiary may incur as a result of contesting the validity of any proposed adjustment and shall have agreed to pay such Beneficiary on demand all costs and expenses which such Beneficiary may incur in connection with contesting such proposed adjustment (including fees and disbursements of counsel). If such Beneficiary determines to contest any adjustment by paying the additional tax and suing for a refund, the Lessee shall have paid to such Beneficiary an amount equal to the sum on an after-tax basis of any tax, interest, penalties and additions to tax which are required to be paid. Upon receipt by such Beneficiary of a refund of any amounts paid by it based on the adjustment in respect of which amounts it shall have been paid an equivalent amount by the Lessee, such Beneficiary shall pay to the Lessee the amount of such refund together with any interest received by it on such amount. The Lessee shall be obligated to pay to such Beneficiary the amount

specified in subsection (a) or (b) of this § 16 within ten days after the Beneficiary has taken all the action that it has agreed in this § 16 to take.

(d) Definition of Beneficiary. For purposes of this § 16, the term "Beneficiary" or "Beneficiaries" shall include either or both of the corporations constituting the Beneficiaries, as the context requires, and shall also include any member of an affiliated group, within the meaning of section 1504 of the Code, of which either Beneficiary is a member if consolidated returns are filed for such affiliated group for Federal income tax purposes.

(e) Survival of Indemnities. The liability of the Lessee to make indemnification payments pursuant to this § 16 shall, notwithstanding any expiration or termination of this Lease, continue to exist until such indemnity payments are made by the Lessee. All indemnity payments under this § 16 shall be made directly to the party entitled to indemnification.

(f) Enforcement. This § 16 may be enforced by the Lessor as provided in Paragraph 17 of the Participation Agreement.

§ 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount on the overdue rentals and other obligations for the period of time during which they are overdue at a rate per annum equal to the greater of (i) 9.50% or (ii) 1.25 times the "prime" or "base" rate of interest announced from time to time by a majority (or if there shall not be a majority, by a plurality) of the 12 largest commercial banks (measured by deposits) operating in the United States for borrowers of the highest credit rating, or such lesser amount as may be legally enforceable. Interest hereunder shall be determined on the basis of a 360-day year of twelve 30-day months.

§ 18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at 130 John Street, 4th Floor, New York, New York 10038, Attention of Corporate Trust and Agency Division; and

(b) if to the Lessee, at 1310 Six Penn Center Plaza,

Philadelphia, Pennsylvania 19104, Attention of Vice President & Treasurer;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at Mellon Square, Pittsburgh, Pennsylvania 15230, Attention of Corporate Trust Division, and to GMAC Leasing Corporation at 767 Fifth Avenue, New York, New York 10022, Attention of Director of Special Financing and to J. P. Morgan Interfunding Corp. at 522 Fifth Avenue, New York, New York 10022.

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

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

The Lessor and the Lessee acknowledge that the Guaranty contains certain provisions regarding the consent of the Builder in the event of any variation or modification of this Lease or any waiver of any of its provisions or conditions which would either individually or cumulatively have a material adverse effect upon the Builder.

§ 20. Immunities; Satisfaction of Undertakings. Anything herein to the contrary notwithstanding, each and all of the representations, undertakings and agreements herein made on the part of the Lessor are made and intended not as personal representations, undertakings and agreements by United States Trust Company of New York or for the purpose or with the intention of binding it personally but are made and intended for the purpose of binding only the Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the said trust company solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and

no personal liability or responsibility is assumed hereunder by or shall at any time be enforceable against the said trust company or the Beneficiaries on account of any representation, undertaking or agreement hereunder of the Lessor or the Beneficiaries, either expressed or implied, all such personal liability, if any, being expressly waived by the Lessee and by all persons claiming by, through or under the Lessee; provided, however, that the Lessee or any person claiming by, through or under it, making claim hereunder, may look to said Estate for satisfaction of the same.

§ 21. Governmental Guarantees. In the event the United States of America or any political subdivision thereof or any agency or instrumentality of any of the foregoing shall use or permit to be used its credit, directly or indirectly, to pay, guarantee or otherwise support the Lessee's obligation to pay the purchase price of or rent for, or to so support any other financing arrangements for the acquisition of, any rolling stock used by the Lessee (other than any such support obtained prior to the first use by the Lessee of and in order to induce any person to provide or finance any such rolling stock) the Lessee shall cause to be provided for the benefit of the Lessor, the Vendor and their successors and assigns a guaranty of or other comparable commitment with respect to the Lessee's obligations under this Lease from the same entity whose credit supports such other financing arrangements, such guaranty or commitment to be provided at the same time as such other rolling stock financing arrangement becomes entitled to such protection, so that the Lessor shall at all times have the benefit of the most favorable form of governmental support for financing of rolling stock used by the Lessee as is available to any other person with respect to rolling stock used by the Lessee subject to the limitations set forth above.

§ 22. Waiver of Priority. If at any time the Lessee shall, directly or indirectly, obtain any waiver (or its equivalent) of any priority status claim assertable by or on behalf of the United States of America or the United States Railway Association which benefits any obligee of the Lessee other than the Lessor, the Lessee shall cause all amounts payable by it hereunder and under the Maintenance Agreement to be entitled to the same benefits of such waiver (or its equivalent). It is understood that Federal legislation shall not be deemed to be a waiver (or its equivalent) within the meaning of the foregoing sentence.

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

§ 24. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed or deposited.

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

CONSOLIDATED RAIL CORPORATION,

by

[Corporate Seal]

Vice President & Treasurer

Attest:

Assistant Secretary

UNITED STATES TRUST COMPANY OF
NEW YORK, as Trustee,

by

[Corporate Seal]

Assistant Vice President

Attest:

Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
 COUNTY OF PHILADELPHIA,)

On this day of July 1978, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is Vice President & Treasurer of CONSOLIDATED RAIL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

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

On this day of July 1978, before me personally appeared , to me personally known, who, being by me duly sworn, says that he/she is an Assistant Vice President of UNITED STATES TRUST COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Trustees, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

SCHEDULE A TO LEASE

<u>Type</u>	<u>Builder</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>
2,250 h.p. Model B23-7 diesel-electric locomotive	General Electric Company	27	CR 1940-1966

SCHEDULE B TO LEASE

Casualty Value

<u>Semiannual Dates Following the Basic Rent Commencement Date</u>	<u>Percentage of Purchase Price</u>
Prior to First	108.52
First	109.43
Second	112.89
Third	113.53
Fourth	113.55
Fifth	113.84
Sixth	113.70
Seventh	104.78
Eighth	103.92
Ninth	103.75
Tenth	103.73
Eleventh	92.22
Twelfth	91.83
Thirteenth	92.92
Fourteenth	92.78
Fifteenth	75.98
Sixteenth	75.17
Seventeenth	72.84
Eighteenth	72.03
Nineteenth	64.29
Twentieth	63.03
Twenty-first	55.18
Twenty-second	51.92
Twenty-third	48.59
Twenty-fourth	45.19
Twenty-fifth	41.74
Twenty-sixth	38.23
Twenty-seventh	34.68
Twenty-eighth	29.06
Twenty-ninth	24.12
Thirtieth	20.00

SCHEDULE C TO LEASE

Certificate of Acceptance

To: United States Trust Company of New York, acting as
Trustee (the "Trustee") under Trust Agreement
130 John Street
New York, New York 10038

I, the duly authorized representative for the Trustee and Consolidated Rail Corporation (the "Lessee") under the Conditional Sale Agreement and the Lease of Railroad Equipment, both dated as of July 1, 1978, respectively, do hereby certify that I inspected and accepted delivery thereunder of the following Units of Equipment:

TYPE OF EQUIPMENT: Diesel electric locomotive
MODEL: B23-7
DATE ACCEPTED:
NUMBER OF UNITS:
NUMBERED: CR

I do further certify that the foregoing Units are in good order and condition, and appear to conform to the specifications, requirements and standards applicable thereto as provided in Article 2 of the aforesaid Conditional Sale Agreement.

I do further certify that each of the foregoing Units has been marked by means of a stencil printed in contrasting colors upon each side of each such Unit in letters not less than one inch in height as follows:

"Ownership Subject to a Conditional Sale Agreement filed under the Interstate Commerce Act, Section 20c."

The execution of this Certificate will in no way relieve or decrease the responsibility of the Builder named below for any warranties it has made with respect to the Equipment.

Authorized Representative of Trustee and Lessee

BUILDER:

General Electric Company

ASSIGNMENT OF LEASE AND AGREEMENT dated as of July 1, 1978 (this "Assignment"), between UNITED STATES TRUST COMPANY OF NEW YORK, acting as Trustee (the "Lessor") under Trust Agreement No. 1978-3 dated as of January 3, 1978, as amended by Amendment No. 1 dated as of the date hereof (the "Trust Agreement") with J. P. Morgan Interfunding Corp. and GMAC Leasing Corporation as beneficiaries (the "Beneficiaries"), and MELLON BANK, N.A., as Agent (the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with General Electric Company (the "Builder"), providing for the sale to the Lessor of such units of railroad equipment (the "Units") described in Annex B thereto as are delivered to and accepted by the Lessor thereunder;

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

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

WHEREAS the Builder is willing to guarantee certain obligations of the Lessee under the Lease and of the Lessor under the CSA pursuant to a Guaranty Agreement (the "Guaranty Agreement") dated as of the date hereof;

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

1. The Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor under the the CSA, all the Lessor's rights, titles and interests, powers, privileges, and other benefits in, to and under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the "Payments"), and the right to make all waivers, modifications and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under or with respect to the Lease; provided, however, that the Lessor does not assign its right to receive the amounts payable by the Lessee as indemnification pursuant to § 6 or 16 of the Lease or amounts payable to the Lessor or to the Beneficiaries as indemnification pursuant to the third paragraph of § 9 of the Lease, except to the extent such indemnification under such § 6 or 9 is required to be paid to the Builder or the Vendor pursuant to Article 6 or 13 of the CSA, and such amounts shall be excluded from the meaning of the term "Payments"; provided, further, however, that the Vendor shall not at any time without the prior written consent of the Lessor waive or consent to any modification or amendment of, or give any release in respect of, any obligation of the Lessee (i) under § 5, 6, 7, 9, 12, 14, 16 or 17 of the Lease or (ii) to make payments under the Lease other than payments of such amount or amounts as are applicable pursuant to the terms of the CSA and this Assignment to the satisfaction of the obligations of the Lessor under the CSA. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as attorney for the Lessor to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments first, to satisfy the obligations of the Lessor

under the CSA, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default thereunder shall have occurred and be continuing, any balance shall be paid to the Lessor on the same date such Payment is applied to satisfy such obligations of the Lessor, by check mailed to the Lessor on such date or, upon written request of the Lessor, by bank wire to the Lessor at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Lessor. If the Vendor shall not receive any rental payment under the first paragraph of § 3 of the Lease when due, the Vendor shall notify the Lessor at the address set forth in the Lease; provided, however, that the failure of the Vendor to so notify the Lessor shall not affect the obligations of the Lessor hereunder or under the CSA.

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

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

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

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

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

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

7. The Lessor will pay and discharge any and all claims, liens, charges or security interests (other than those created by the CSA) on the Lease or the rentals or other payments due or to become due thereunder claimed by

any party from, through or under the Lessor or its successors and assigns (other than the Vendor), not arising out of the transactions contemplated by the CSA or the Lease (but including tax liens arising out of the receipt of the income and proceeds from the Units) which, if unpaid, might become a claim, lien, charge or security interest on or with respect to the Lease or such rentals or other payments equal or superior to the Vendor's interest therein, unless the Lessor shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect such interests of the Vendor.

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

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

10. This Assignment shall be governed by the laws of the State of New York, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing or deposit hereof, if any, as shall be conferred by the laws of the several jurisdictions in which this Assignment shall be filed or deposited.

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

12. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no event of default under the CSA has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits

which are assigned and transferred by the Lessor to the Vendor by this Assignment and which are for the sole benefit of the Lessor, without the prior written consent of the Lessor.

13. Anything in this Assignment to the contrary notwithstanding, each and all of the representations, undertakings and agreements in this Assignment made on the part of the Lessor are made and intended not as personal representations, undertakings and agreements by United States Trust Company of New York or for the purpose or with the intention of binding it personally but are made and intended for the purpose of binding only the Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by the said trust company solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or responsibility is assumed by or shall at any time be enforceable against the said trust company or the Beneficiaries on account of any representation, undertaking or agreement of the Lessor or the Beneficiaries hereunder, either expressed or implied, all such personal liability, if any, being expressly waived 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 the Vendor, making claim hereunder, may look to said Estate for the satisfaction of the same.

14. The parties hereto acknowledge that the Guaranty Agreement contains certain provisions regarding the consent of the Builder as Guarantor thereunder in the event of any modification of this Assignment or any waiver of any of its provisions or conditions which would either individually or cumulatively have a material adverse effect upon the Guarantor thereunder.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their

respective corporate seals to be affixed and duly attested,
all as of the date first above written.

UNITED STATES TRUST COMPANY
OF NEW YORK, as Trustee,

by

[Corporate Seal]

Assistant Vice President

Attest:

Assistant Secretary

MELLON BANK, N.A., as Agent,

by

[Corporate Seal]

Vice President

Attest:

Assistant Secretary

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

On this day of July 1978, before me personally appeared , to me personally known, who, being by me duly sworn, says that he/she is an Assistant Vice President of UNITED STATES TRUST COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Trustees, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF ALLEGHENY,)

On this day of July 1978, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of MELLON BANK, N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said national bank, and that said instrument was signed and sealed on behalf of said national bank 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 national bank.

Notary Public

[Notarial Seal]

CONSENT AND AGREEMENT

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

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease other than amounts not assigned by the Lessor as provided in Paragraph 1 of the Lease Assignment (which moneys, other than such unassigned amounts, are hereinafter called the "Payments") due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to Mellon Bank, N.A., as Agent (the "Vendor"), the assignee named in the Lease Assignment, at Mellon Square, Pittsburgh, Pennsylvania 15230, Attention of Corporate Trust Division (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) it shall not be entitled to any abatement of rent or additional rent, reduction thereof or setoff against or recoupment of rent or additional rent, including, but not limited to, abatements, reductions, setoffs or recoupments due or alleged to be due by reason of any past, present or future claims or counterclaims of the Lessee against the Lessor under the Lease or under the CSA referred to in the Lease Assignment, or against the Builder (as defined in the Lease Assignment) or the Vendor or otherwise;

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

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

(5) the Lease shall not, without the prior written consent of the Vendor (and the Lessor in the cases

specified in Section 1 of the Lease Assignment), be terminated, amended or modified, nor shall any waiver or release be given or accepted with respect thereto nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

The parties hereto acknowledge that the Guaranty Agreement referred to in the Lease Assignment contains certain provisions regarding the consent of the Builder as Guarantor thereunder in the event of any modification of this Consent and Agreement or any waiver of any of its provisions or conditions which would either individually or cumulatively have a material adverse effect upon the Guarantor thereunder.

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

CONSOLIDATED RAIL CORPORATION,
as Lessee,

by

[Corporate Seal]

Vice President & Treasurer

Attest:

Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the 1st day of July 1978.

MELLON BANK, N.A., as Agent,

by

Vice President

CONDITIONAL SALE AGREEMENT

Dated as of July 1, 1978

between

GENERAL ELECTRIC COMPANY

and

UNITED STATES TRUST COMPANY OF NEW YORK,
as Trustee under
a Trust Agreement

8-1/2% Conditional Sale Indebtedness due 1993

7/26/78

J. Barclay Collins
Cravath, Swaine & Moore
One Chase Manhattan Plaza
New York, N.Y. 10005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on **7/26/78** at **12:45pm** and assigned recordation number(s) **9600, 9600-A, 9600-B & 9600-C**

Sincerely yours,

H.G. Homme, Jr.,
Acting Secretary

Enclosure(s)

SE-30-T
(2/78)

Conditional Sale Agreement

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* This Table of Contents has been included in this document for convenience only and does not form a part of or affect any construction or interpretation of this document.

CONDITIONAL SALE AGREEMENT dated as of July 1, 1978, between the corporation named in Item 1 of Annex A hereto (said corporation being hereinafter called the "Builder" or the "Vendor", as the context may require, all as more particularly set forth in Article 1 hereof) and UNITED STATES TRUST COMPANY OF NEW YORK, acting as Trustee (the "Vendee") under Trust Agreement No. 1978-3 dated as of January 3, 1978, as amended by Amendment No. 1 dated as of the date hereof (the "Trust Agreement") with J. P. Morgan Interfunding Corp. and GMAC Leasing Corporation (the "Beneficiaries").

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

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

WHEREAS Mellon Bank, N.A. (hereinafter called the "Assignee" or the "Vendor" as more particularly set forth in Article 1 hereof), is acting as Agent for investors pursuant to a Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Assignee, the Lessee, the Vendee, the Beneficiaries and the party named in Schedule A thereto, and all obligations of the Vendee to the Builder under the Purchase Order (as defined in the Participation Agreement) will be superseded by this Agreement; and

WHEREAS the Builder will guarantee to the Vendee and the Assignee certain obligations under this Agreement and the Lease pursuant to a Guaranty Agreement dated as of the date hereof (the "Guaranty Agreement", and the Builder in its capacity as guarantor thereunder is hereinafter sometimes called the "Guarantor").

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

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

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the Builder 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 Builder and any successor or successors for the time being to its manufacturing properties and business.

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

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the units of Equipment and will conditionally sell and deliver to the Vendee, and the Vendee will conditionally purchase from the Builder and accept delivery of and pay for (as hereinafter provided and subject to the limitations hereinafter set forth), the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design, quality and component parts of each unit of the Equipment shall conform, on the date of

completion of manufacture thereof, to all United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and each such unit will be new railroad equipment, will not incorporate any used components (or, if such components are incorporated, their aggregate cost will not be more than 20% of the cost of material and parts used in constructing such unit) and will not have been used by any person so as to preclude the "original use" of such unit, within the meaning of Sections 48(b)(2) and 167(c)(2) of the Internal Revenue Code of 1954, as amended, from commencing with the Vendee.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee at the place or places specified in Annex B hereto, freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of the Equipment shall not be made (i) until this Agreement, the Lease, the CSA Assignment and the Lease Assignment have been filed pursuant to Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision shall have been made for publication of notice of such deposit in The Canada Gazette; (ii) subsequent to the commencement of any proceedings or the occurrence of any event specified in clauses (c), (d) or (f) of Article 15 hereof or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default (any such commencement, occurrence, event of default or event being hereinafter in this Agreement called a "Default"); or (iii) if the Purchase Price for such unit when added to the aggregate Purchase Price of (A) all units theretofore delivered and accepted under and made subject to this Agreement and (B) all other units proposed to be delivered and accepted under and made subject to this Agreement concurrently with such unit would exceed the Maximum Purchase Price for the Equipment specified in Item 5 of Annex A hereto. The Builder agrees not to deliver any unit of the Equipment hereunder (a) following receipt of written notice from the Vendee or the Assignee (i) of a Default, or (ii) that the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as the Vendee may have agreed to pursuant to Article 4) would be exceeded by any subsequent delivery of a unit, or (iii) of its determination that there

has been a material adverse change in the business prospects or financial condition of the Lessee since the date of the most recent financial statements referred to in Paragraph 4(b) of the Participation Agreement, other than as set forth in the Memorandum referred to in the Participation Agreement, and (b) until it receives notice from the Vendee and the Assignee that the conditions contained in Paragraphs 7 and 8 of the Participation Agreement have been met.

Any unit of Equipment not delivered at the time of receipt by the Builder of the notice specified in clause (a) of the last sentence of the first paragraph of this Article 3 and any unit of Equipment not delivered and accepted hereunder on or prior to December 15, 1978, by reason of noncompliance with the conditions referred to in the next preceding paragraph or causes set forth in the next succeeding paragraph or otherwise shall be excluded from this Agreement and the Vendee shall be relieved of its obligation to purchase and pay for such unit of Equipment. If any unit of Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the Vendee and the Builder (and any assignee of the Builder) shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. Pursuant to the Participation Agreement the Lessee has agreed to purchase such excluded Equipment and any Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof from the Builder, upon the satisfaction or waiver of any conditions of the Purchase Order, all as provided in Paragraph 1 of the Participation Agreement. The Vendee agrees, upon any such exclusion, to take such steps, including the execution of instruments of transfer, as may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting the interest of the Lessee in any unit of Equipment so excluded from this Agreement, and the Vendee shall have no further obligation or liability in respect of units so excluded.

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

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

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

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

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Lessee, including prepaid freight charges, if any. The term "Purchase Price" as used herein shall mean the base price or prices per unit of the Equipment as so increased or decreased as set forth in the Builder's invoice

or invoices delivered to the Vendee (the "Invoices") and, if the Purchase Price is other than the base price or prices set forth in Annex B, the Invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the Vendee. If on any Closing Date the aggregate Purchase Price of the Equipment for which settlement has theretofore been or is then being made would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as the Vendee may at its option agree to prior to delivery of any unit or units of Equipment that, but for such agreement, would be excluded from this Agreement), the Builder (and any assignee of the Builder) and the Vendee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price to not more than such Maximum Purchase Price (or such higher amount as aforesaid).

The Equipment shall be settled for in such number of groups of units of the Equipment as is provided in Item 2 of Annex A hereto (each such group being hereinafter called a "Group"). The term "Closing Date" with respect to any Group shall mean such date (which shall be a business day not earlier than July 14, 1978, and not later than December 15, 1978, such later date being hereinafter called the "Cut-Off Date"), occurring not more than ten business days following presentation by the Builder to the Vendee of the Invoices and Certificates of Acceptance for such Group and written notice thereof by the Builder to the Lessee, as shall be fixed by the Lessee by written notice delivered to the Vendee and the Vendor at least six business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York or Pittsburgh, Pennsylvania are authorized or obligated to remain closed.

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

- (a) on the Closing Date with respect to each Group
 - (i) an amount equal to 33.086235% of the aggregate Purchase Price of such Group plus
 - (ii) the amount, if any,

by which (x) the Purchase Price (not paid pursuant to clause (i)) of all units of Equipment for which settlement has theretofore or is then being made, as set forth in the Invoices therefor exceeds (y) the Maximum CSA Indebtedness specified in Item 6 of Annex A hereto and any amount or amounts previously paid or payable with respect to prior Invoices pursuant to this clause (ii); and

(b) in 30 semiannual installments, 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.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (the "CSA Indebtedness") shall be payable on the 30 consecutive dates occurring semiannually following December 15, 1978 (or, if any such date is not a business day, on the next preceding business day), each such date being hereinafter called a "Payment Date". The unpaid balance of the CSA Indebtedness from time to time outstanding shall bear interest at the rate of 8.50% per annum payable, to the extent accrued, on December 15, 1978, and on each Payment Date. The installments of principal payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the allocation set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal will completely amortize the CSA Indebtedness. The Vendee will furnish to the Vendor and the Lessee promptly after the last Closing Date a schedule showing the respective amounts of principal and interest payable on each Payment Date.

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

The Vendee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at a rate per annum (the "Overdue Rate") equal to the greater of (i) 9.50% or (ii) 1.25 times the "prime" or "base" rate of interest announced from time to time by a majority (or if there shall not be a majority, by a plurality) of the 12 largest commercial banks (measured by deposits) operating in the United States for borrowers of the highest credit rating.

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. If at any time an Event of Default under the Lease shall have occurred and be continuing, the Vendee may prepay in whole without penalty or premium the CSA Indebtedness, together with accrued interest thereon to the date of such prepayment, and thereupon absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee as provided in Article 5 hereof and the Vendee shall have the right to give the instructions to the Agent provided for in the fourth sentence of the fifth paragraph and the first sentence of the eleventh paragraph of Paragraph 10 of the Participation Agreement. Except as provided in the immediately preceding sentence and in Article 7 hereof, the Vendee shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to the date it becomes due.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof), but not limiting the effect of Article 21 hereof, the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under this Agreement, including any liability arising out of or in connection with the performance of its obligations hereunder and excluding only the obligations set forth in the proviso in the third paragraph of Article 12 hereof and the payments to be made pursuant to subparagraph (a) of the third paragraph of this Article, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment" (as hereinafter defined), and such payments shall be made by the Vendee only to the extent that the Vendee (or any such assignee) shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the next preceding sentence, the Vendee (and any such assignee) shall have no personal liability to make any payments under this Agreement except from the "income and proceeds from the Equipment". In addition, it is agreed that the Vendee (and such assignee) (i) make no representation or warranty with respect to, and are not responsible for, the execution, validity, sufficiency or enforceability of the Lease (or any document relative thereto) in so far as it relates to the Lessee or of any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities,

obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights under the Lease against the Lessee and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee (or any such assignee) at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 10 or any other provision of the Lease, other than amounts paid by the Lessee by way of indemnity pursuant to § 6, 9 or 16 of the Lease, except to the extent such indemnity under such § 6 or 9 is required to be paid to the Builder or the Vendor pursuant to Article 6 or 13 hereof, and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee (or any such assignee) and as shall equal the portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) received by the Vendee (or any such assignee) prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including such prepayments) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee (or any such assignee) were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Notwithstanding anything to the contrary contained in this Agreement, in the event the Vendor shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee

pursuant to the limitations set forth in this paragraph, the Vendor will limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment for the full unpaid Purchase Price of the Equipment and accrued interest thereon and all other payments and obligations hereunder.

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

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

law requiring the filing of the same, except for failure so to do within a reasonable time after written demand by the Vendee.

ARTICLE 6. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than gross receipts taxes [except gross receipt taxes in the nature of or in lieu of sales or use or rental taxes], taxes measured by net income, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or the Equipment or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions"), all of which impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Vendor solely by reason of its ownership thereof (except as provided above) and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title or interests of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the title or interests or property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved in writing the payment thereof.

ARTICLE 7. Maintenance; Casualty Occurrences. The Vendee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order, repair and condition.

In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, permanently returned to the Builder pursuant to any patent indemnity provision hereof, or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term of the Lease, or by any other government or governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days, or if a "Default", under and as defined in Section 2 of the Maintenance Agreement (as defined in the Lease), shall have occurred with respect to such unit (such occurrences being herein called "Casualty Occurrences"), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the earlier of (i) the 60th day following notice by the Lessee to the Vendee of a Casualty Occurrence under the Lease (but not earlier than the first Payment Date pursuant to Article 4 hereof) and (ii) the Payment Date next succeeding such notice (hereinafter called a "Casualty Payment Date"), the Vendee shall pay to the Vendor an amount equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of such Casualty Payment Date and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal, if any, on and of the CSA Indebtedness due on such date) to prepay without penalty or premium the instalments of the CSA Indebtedness (ratably in accordance with the unpaid balance of each such instalment) and the Vendee will promptly furnish to the Vendor and the Lessee a revised schedule of payments of principal and interest with respect to the CSA Indebtedness thereafter to be made. In the event of the requisition for use by the United States Government or any other government or governmental entity of any unit of the Equipment not constituting a Casualty Occurrence, all of the Vendee's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

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

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

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall, subject to having received payment of the Casualty Value and provided no Default shall have occurred and be continuing, pay such insurance proceeds or condemnation payments to the Vendee. All insurance proceeds or condemnation payments received by the Vendor in respect of any unit of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon reasonable proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired, provided no Default shall have occurred and be continuing.

ARTICLE 8. Reports and Inspections. On or before April 30 in each year, commencing with the year 1979, the Vendee shall cause to be furnished to the Vendor an accurate statement to the effect set forth in § 8 of the Lease.

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

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

ARTICLE 10. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all applicable laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement, addition or modification of or to any part on any unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee or the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

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

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

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

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

The foregoing provisions of this Article 12 shall be subject to the limitations set forth in the last paragraph of Article 4 hereof and the provisions of Article 21 hereof; provided, however, that the Vendee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Vendee or

its successors or assigns, not arising out of the transactions contemplated hereby (but including tax liens arising out of the receipt of the income and proceeds from the Equipment), equal or superior to the Vendor's security interest therein, which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's interest in the Lease and the payments to be made thereunder, but the Vendee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments to be made thereunder.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to or a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any claim for patent, trademark or copyright infringement, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, in the case of the Builder, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any 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 release of the Vendor's security interest in, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and

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

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

The Builder represents that it is not entering into this Agreement, or into any other transaction contemplated by the Participation Agreement, directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which it, or, in so far as is known to it, any party to the Participation Agreement is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974, as amended.

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

ARTICLE 14. Assignments. The Vendee will not, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment, or sell, assign or otherwise dispose of any of its rights under this Agreement, except as provided in the Trust Agreement.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve 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 referred to in Article 13 hereof, or relieve the Vendee of its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any

other obligation which, according to its terms or context, is intended to survive an assignment.

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

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

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

- (a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4

or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) and such default shall continue for ten business days after the date such payment is due and payable; or

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

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

(d) any other proceeding shall be commenced by or against the Vendee or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Vendee hereunder or of the Lessee under the Lease under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law

which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee under this Agreement or of the Lessee under the Lease, as the case may be, shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee or the Lessee, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

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

(f) the occurrence of any of the following:

(i) Involuntary Bankruptcy Proceedings--a receiver, liquidator or trustee of the Vendee or the Lessee, or of any of the property of either, is appointed by court order and such order remains in effect for more than 30 days; or the Vendee, or the Lessee, is adjudicated bankrupt or insolvent; or any of the property of either is sequestered by court order and such order remains in effect for more than 30 days; or a petition is filed against the Vendee or the Lessee under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within 30 days after such filing;

(ii) Voluntary Petitions--the Vendee, or the Lessee, files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or

(iii) Assignments for Benefit of Creditors, etc.--the Vendee or the Lessee makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due, or consents to the appointment of a receiver, trustee or liquidator of the Vendee, or the Lessee, or of all or any part of the property of either;

followed by a good faith determination by the Assignee and notification thereof to the Vendee, the Beneficiaries and the Lessee within 45 days following knowledge by the Assignee of any such occurrence that, as a result, it deems itself inadequately secured; or

(g) an Event of Default shall have occurred under the Lease; provided, however, that any Event of Default under the Lease caused by the failure of the Lessee to make any payment due thereunder shall not be deemed to be an event of default hereunder if, prior to a Declaration of Default (as hereinafter defined), the Vendee pays to the Vendor an amount equal to (a) the amount which the Lessee failed to pay minus (b) any portion of such amount which the Vendor would have been required to pay over to the Vendee pursuant to the Lease Assignment, or the Guarantor pays to the Vendor an amount equal to the amount which the Lessee failed to pay plus any interest on overdue rentals;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the proviso in the second paragraph of § 4 of the Lease relating to termination and to the Lessee's rights of possession, use and assignment under §§ 4 and 12 of the Lease, cause the Lease immediately upon such notice to terminate, but the Lessee shall remain liable

as therein provided and/or (ii) declare (herein called a "Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the Overdue Rate, to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, subject to the provisions of Articles 4 and 21 hereof, and to collect such judgment out of the "income and proceeds of the Equipment" wherever situated.

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

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

facilities or means of the Vendee, subject to all mandatory requirements of due process of law.

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

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

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

(c) cause the Equipment to be transported to any reasonable place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Vendor.

During any storage period, the Vendee will, at its own cost and expense, insure, maintain and keep each such unit in good order and repair and will permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction, the Vendor shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee, the Beneficiaries, the Guarantor and the

Lessee by telegram or registered mail, 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 Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee or for its account may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided, further, that if the Vendee, the Lessee, the Guarantor 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, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

Subject to the Lessee's rights of possession, use and assignment under §§ 4 and 12 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Lessee or any other party claiming from, through or under the Vendee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise

arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment shall be credited on the amount due to the Vendor under the provisions of this Agreement.

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

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and may be exercised from time

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

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Overdue Rate, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of the last paragraph of Article 4 hereof, be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee.

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

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

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement.

Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

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

ARTICLE 18. Recording. The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto, to be filed in accordance with Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

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

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

The parties hereto acknowledge that the Guaranty Agreement contains certain provisions regarding the consent of the Guarantor in the event of any modification of this Agreement or any waiver of any of its provisions or conditions which would either individually or cumulatively have a material adverse effect upon the Guarantor.

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

(a) to the Vendee, at 130 John Street, 4th Floor, New York, New York 10038, Attention of Corporate Trust and Agency Division, with copies to the Beneficiaries at their respective addresses specified below,

(b) to the Lessee, at 1310 Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, Attention of Vice President & Treasurer,

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

(d) to the Assignee, at its address at Mellon Square, Pittsburgh, Pennsylvania 15230, Attention of Corporate Trust Division,

(e) to GMAC Leasing Corporation, at its address at 767 Fifth Avenue, New York, New York 10022, Attention of Director of Special Financing,

(f) to J. P. Morgan Interfunding Corp., at its address at 522 Fifth Avenue, New York, New York 10022, Attention of Lease Administration,

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

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

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

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

Anything in this Agreement to the contrary notwithstanding, each and all of the representations, undertakings and agreements herein made on the part of the Vendee are made and intended not as personal representations, undertakings and agreements by United States Trust Company of New York or for the purpose or with the intention of binding it personally but are made and intended for the purpose of binding only the Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by the said trust company solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or responsibility hereunder is assumed by or shall at any time be enforceable against the said trust company (except liability under the proviso contained in the last paragraph of Article 12 hereof) or the Beneficiaries (except as provided in the Trust Agreement) on account of any representation, undertaking or agreement hereunder of the Vendee or the Beneficiaries, either expressed or implied, all such personal liability, if any, being expressly waived 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 the Vendor, making claim hereunder, may look to said Estate for satisfaction of the same.

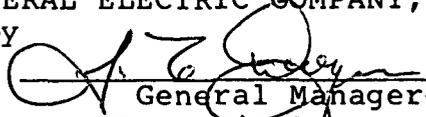
ARTICLE 22. Law Governing. The Vendee warrants that its chief place of business is located in the state specified in clause (a) of Article 20 hereof. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of such state; provided, however, that the parties shall 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. Execution. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee pursuant to the CSA Assignment shall be deemed the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

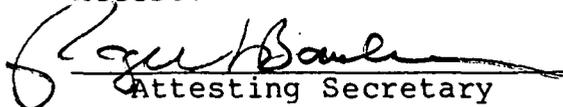
GENERAL ELECTRIC COMPANY,

by


General Manager--
Domestic Locomotive
Marketing Department

[Corporate Seal]

Attest:


Attesting Secretary

UNITED STATES TRUST COMPANY
OF NEW YORK, as Trustee,

by

Assistant Vice President

[Corporate Seal]

Attest:

Assistant Secretary

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

On this 24 day of July 1978, before me personally appeared J.C. Dwyer, to me personally known, who, being by me duly sworn, says that he is a General Manager--Domestic Locomotive Marketing Department of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Collette Wronek
Notary Public

[Notarial Seal]

COLLETTE WRONEK, NOTARY PUBLIC
LAWRENCE PARK TWP., ERIE CO., PENNA.
MY COMMISSION EXPIRES FEB. 10, 1979

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

On this _____ day of July 1978, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he/she is an Assistant Vice President of UNITED STATES TRUST COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Trustees, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

SCHEDULE I

Allocation Schedule of Each \$1,000,000 of
CSA Indebtedness Payable in Installments
on the 30 consecutive semiannual
dates following December 15, 1978

<u>Payment Date</u>	<u>Interest Payment</u>	<u>Principal Repayment</u>	<u>Debt Service</u>	<u>Ending Principal Balance</u>
0	\$ 0.0	\$ 0.0	\$ 0.0	\$1,000,000.00
1	42,500.00	24,953.73	67,453.73	975,046.27
2	41,439.47	26,014.26	67,453.73	949,032.01
3	40,333.87	27,119.86	67,453.73	921,912.15
4	39,181.27	28,272.46	67,453.73	893,639.69
5	37,979.69	29,474.04	67,453.73	864,165.65
6	36,727.05	30,726.68	67,453.73	833,438.97
7	35,421.16	32,032.57	67,453.73	801,406.40
8	34,059.78	33,393.95	67,453.73	768,012.45
9	32,640.53	34,813.20	67,453.73	733,199.25
10	31,160.97	36,292.76	67,453.73	696,906.49
11	29,618.53	37,835.20	67,453.73	659,071.29
12	28,010.53	39,443.20	67,453.73	619,628.09
13	26,334.20	41,119.53	67,453.73	578,508.56
14	24,586.62	42,867.11	67,453.73	535,641.45
15	22,764.77	44,688.96	67,453.73	490,952.49
16	20,865.49	24,067.35	44,932.84	466,885.14
17	19,842.62	25,090.22	44,932.84	441,794.92
18	18,776.29	26,156.55	44,932.84	415,638.37
19	17,664.64	27,268.20	44,932.84	388,370.17
20	16,505.74	28,427.10	44,932.84	359,943.07
21	15,297.59	29,635.25	44,932.84	330,307.82
22	14,038.09	30,894.75	44,932.84	299,413.07
23	12,725.06	32,207.78	44,932.84	267,205.29
24	11,356.23	33,576.61	44,932.84	233,628.68
25	9,929.22	35,003.62	44,932.84	198,625.06
26	8,441.57	36,491.27	44,932.84	162,133.79
27	6,890.69	38,042.15	44,932.84	124,091.64
28	5,273.90	39,658.94	44,932.84	84,432.70
29	3,588.39	41,344.45	44,932.84	43,088.25
30	1,831.26	43,088.25	44,919.51	0.0
TOTALS	<u>\$685,785.22</u>	<u>\$1,000,000.00</u>	<u>\$1,685,785.22</u>	

Annex A
to
Conditional Sale Agreement

- Item 1: General Electric Company, a New York corporation, 2901 East Lake Road, Erie, Pennsylvania 16531.
- Item 2: The Equipment shall be settled for in not more than 7 Groups of units delivered to and accepted by the Vendee unless a greater number shall be agreed to by the parties hereto.
- Item 3: (a) The Builder warrants to the Vendee that each unit of Equipment manufactured by it hereunder will be free from defects in material, workmanship and title under normal use and service, and will be of the kind and quality designated or described in the Specifications referred to in Article 2 of this Agreement. The foregoing warranty is exclusive and in lieu of all other warranties, whether written, oral, implied or statutory (except as to title). NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PURPOSE SHALL APPLY. If it appears within two years from the date of shipment by the Builder, or within 250,000 miles of operation, whichever event shall first occur, that any unit of the Equipment does not meet the warranties specified above, and the Vendee or its agent notifies the Builder promptly, the Builder, after verification as to condition and usage, shall correct any defect including nonconformance with the Specifications, at its option, either by repairing any defective part or parts made available to the Builder, or by making available at the Builder's plant or warehouse a repaired or replacement part. If requested by the Builder, the Vendee will ship the defective part or parts, with shipping charges prepaid, to the plant or warehouse designated by the Builder.

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

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

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

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

The Builder further agrees with the Vendee that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Vendee of any of its rights under this Item 3.

(b) In no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall the Builder or its suppliers be liable for any special, consequential, incidental or penal damages including, but not limited to, loss of profit or revenues, loss of use of the products or any associated equipment, damage to associated equipment, cost of capital, cost of substitute products, facilities, services or replacement power, down time costs, or claims of the Vendee's customers for such damages. If the Vendee transfers title to or leases the products hereunder to any third party (other than pursuant to the Lease), the Vendee shall obtain from such third party a provision affording the Builder and its suppliers the protection of the preceding sentence; provided that the Vendee shall have such obligation following expiration of the stated original term or any renewal term, as the case may be, as provided in the Lease, only if the Builder shall, not more than nine nor less than six months prior to the expiration of such original term or any such renewal term, as the case may be, notify the Vendee of its obligation under this sentence.

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

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

- Item 4: Except in cases of designs specified by the Lessee and not developed or purported to be developed by the Builder, and articles and materials specified by the Lessee and not manufactured by the Builder, the Builder warrants that the Equipment furnished hereunder, and any part thereof, shall be delivered free of any rightful claim of any third party for infringement of any United States patent. If notified promptly in writing and given authority, information and assistance, the Builder shall defend, or may settle, at its expense, any suit or proceeding against the Vendee or the Lessee so far as based on a claimed infringement which would result in a breach of this warranty and the Builder shall pay all damages and costs awarded therein against the Vendee or the Lessee due to such breach. In case any Equipment or part thereof is in such suit or proceeding found to constitute such an infringement and the use of such Equipment or part thereof is enjoined, the Builder shall, at its expense and option, either procure for the Vendee and the Lessee the right to continue using said

equipment or part thereof, or replace same within six months of such injunction with noninfringing Equipment or part thereof acceptable to the Vendee, or modify same so it becomes noninfringing, or remove the Equipment or part thereof and refund the Purchase Price (less reasonable depreciation for any period of use) and any transportation costs separately paid by the Vendee or the Lessee, but in each case without impairing the operational capability of such Equipment. (If the Purchase Price is so refunded, such refund shall be made to the assignee of the Builder's rights under this Agreement if this Agreement has been so assigned, which refund, to the extent of the unpaid CSA Indebtedness, shall be applied in like manner as payments in respect of Casualty Occurrences under Article 7 of this Agreement and, as long as no Default shall have occurred and be continuing, the balance shall be paid by such assignee to the Vendee.) The preceding shall not apply to the use of any Equipment or part thereof furnished hereunder in conjunction with any other product in a combination not furnished by the Builder as a part of this transaction. As to any such combination, the Builder assumes no liability whatsoever for patent infringement and the Lessee will hold the Builder harmless against any infringement claims arising therefrom. The Builder will give notice to the Vendee and the Lessee of any claim known to the Builder from which liability may be charged against the Vendee or the Lessee hereunder and the Vendee and the Lessee will give notice to the Builder of any claim known to them from which liability may be charged against the Builder hereunder.

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

- Item 5: The Maximum Purchase Price referred to in Article 4 of this Agreement is \$14,739,867.
- Item 6: The Maximum CSA Indebtedness referred to in Article 4 of this Agreement is \$9,863,000.

Annex B
to
Conditional Sale Agreement

<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Average Unit Base Price</u>	<u>Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
2,250 h.p. Model B23-7 diesel- electric locomotive	3530D	Erie, Pennsyl- vania	27	CR 1940- 1966	\$545,921	\$14,739,867	July-September 1978 at Erie, Pennsylvania

[CS&M Ref. 2043-849]

LEASE OF RAILROAD EQUIPMENT

Dated as of July 1, 1978

between

CONSOLIDATED RAIL CORPORATION

and

UNITED STATES TRUST COMPANY OF NEW YORK,

as Trustee Under a Trust Agreement

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* This Table of Contents has been included in this document for convenience only and does not form a part of or affect any construction or interpretation of this document.

LEASE OF RAILROAD EQUIPMENT dated as of July 1, 1978, between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (the "Lessee"), and UNITED STATES TRUST COMPANY OF NEW YORK, a New York trust company, acting as Trustee (the "Lessor") under Trust Agreement No. 1978-3 dated as of January 3, 1978, as amended by Amendment No. 1 dated as of the date hereof (the "Trust Agreement") with J. P. Morgan Interfunding Corp. and GMAC Leasing Corporation (the "Beneficiaries" or individually a "Beneficiary").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with General Electric Company (the "Builder"), wherein the Builder has agreed to manufacture, conditionally sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (the "Equipment");

WHEREAS the Builder under an Agreement and Assignment dated as of the date hereof (the "CSA Assignment") is assigning its interests in the CSA to Mellon Bank, N.A., acting as Agent (hereinafter, together with its successors and assigns and the Investors, as hereinafter defined, called the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessee, the Lessor, the Beneficiaries and the investor named in Schedule A thereto (said investor, together with its successors and assigns, being hereinafter called the "Investors");

WHEREAS the Builder is willing to guarantee certain obligations of the Lessee under this Lease and of the Lessor under the CSA pursuant to a Guaranty Agreement dated as of the date hereof (the "Guaranty");

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

WHEREAS the parties contemplate that the Lessor will assign for security purposes certain of its rights in this Lease to the Vendor by an Assignment of Lease and

Agreement dated as of the date hereof (the "Lease Assignment"), and the Lessee will consent thereto by a Consent and Agreement (the "Consent");

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

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

shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the CSA. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same and, if such Unit is found to be acceptable, to accept delivery of such Unit, and the Lessee shall execute and deliver to the Lessor a certificate of acceptance (the "Certificate of Acceptance") substantially in the form annexed hereto as Schedule C, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease or to constitute acceptance thereof on behalf of the Lessor for any purpose whatsoever.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for the Units, 31 consecutive payments payable (i) on December 15, 1978 (such date being hereinafter called the "Basic Rent Commencement Date"), and (ii) on the 30 consecutive dates occurring semiannually following the Basic Rent Commencement Date (each of such 30 consecutive dates being hereinafter called a "Rental Payment Date"). The rental payable on the Basic Rent Commencement Date for each Unit shall be in an amount equal to the product of (a) the number of days elapsed from and including the Closing Date for such Unit to, but not including, the Basic Rent Commencement Date, times (b) 0.028332% of the Purchase Price of such Unit, which rate includes the guarantee fee (equal to 0.002778% of the Purchase Price of each such Unit) to be paid by the Lessee to the Builder in respect of its obligations under the Guaranty. The next 30 rental payments shall each be in an amount equal to 5.099779% of the Purchase Price of each Unit then subject to this Lease, which rate includes the semiannual guarantee fee (equal to 0.50% of the Purchase Price of each such Unit) to be paid by the Lessee to the

Builder in respect of its obligations under the Guaranty. The Builder shall be a third-party beneficiary of the Lessee's obligation to pay the guarantee fee referred to in the two preceding sentences. If the Lessor shall provide more than 33.086235% of the Purchase Price of the Units, out of funds provided by the Beneficiaries (as distinguished from the CSA Indebtedness), the Lessee agrees that the rentals payable hereunder and the Casualty Value percentages set forth in Schedule B hereto will be appropriately adjusted so that each Beneficiary's after-tax rate of return and periodic recovery of net cash flow will be at least the same as they would have been had the Lessor not provided more than 33.086235% of the Purchase Price as aforesaid. If there is a change effective prior to December 31, 1979, for which the Beneficiaries are not responsible in the assumptions utilized by the Beneficiaries (as set forth in § 16 hereof) in originally calculating such rentals, the Lessor and the Lessee agree that commencing on the third Rental Payment Date the rentals payable hereunder and the Casualty Value percentages set forth in Schedule B hereto will be appropriately adjusted upward or downward so that each Beneficiary's after-tax rate of return and periodic recovery of net cash flow will be at least the same as they would have been had there been no change in such assumptions. The Lessor and the Lessee further agree that if there is a reduction in the amounts payable by the Builder in respect of its obligations under the Guaranty, the portion of the rentals payable hereunder attributable to the guarantee fee referred to above will be adjusted downward to reflect such reduction. Notwithstanding anything to the contrary set forth herein, the rentals and Casualty Value percentages, as adjusted pursuant to the preceding two sentences, shall be sufficient to satisfy the obligations of the Lessor under the CSA, regardless of any limitation of liability set forth therein.

In addition to the foregoing rentals, the Lessee agrees to pay to the Lessor as additional rentals amounts which, after deduction of any taxes payable in respect of such amounts, will be equal to the amounts required by the Lessor to make the payments provided for (a) in the penultimate sentence of the third paragraph of Paragraph 2, (b) in the last sentence of the first paragraph of Paragraph 9 and (c) in the last paragraph of Paragraph 9 of the Participation Agreement on the dates the Lessor is required to make such payments (without regard to any limitation of the obligation of the Lessor set forth therein) and the Lessor agrees to apply such rentals for such purposes.

If any of the rental payment dates referred to above is not a business day the rental payment otherwise payable on such date shall be payable on the next preceding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, or Pittsburgh, Pennsylvania, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the CSA, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing; provided, however, that the Lessee shall make all payments provided for in §§ 6, 9 and 16 hereof in immediately available funds directly to the person entitled to receive them, as provided in the Lease Assignment. The Lessee agrees to make each payment provided for herein (other than the payments described in the proviso to the preceding sentence) as contemplated by this paragraph in Federal or other funds immediately available to the Vendor by 11:00 a.m., Pittsburgh time, on the date such payment is due. Provided that no Event of Default described in § 10(A) hereof, or event which with notice or lapse of time or both would become such an Event of Default, shall have occurred and be continuing, the Lessor shall pay to the Builder, out of the payments received by it from the Vendor pursuant to the first sentence of this paragraph, an amount equal to the semiannual fee payable by the Lessee to the Builder, as referred to in the first paragraph of this § 3.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 9, 14 and 16 hereof) shall survive the expiration or termination of the term of this Lease and the full payment of all amounts payable under this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination), all as provided therein; provided, however, that, so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 12 hereof.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identification number set forth in Schedule A hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership subject to a Conditional Sale Agreement filed under the Interstate Commerce Act, Section 20c", with appropriate changes thereof as from time to time may be required by law, in the opinion of the Vendor, in order to protect the Lessor's and the Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect that such statement has been so filed and deposited, that such filing and deposit will protect the Vendor's and the Lessor's rights in such Units and that no other filing, deposit or giving of notice with or to any federal, state or local government or agency thereof is necessary to protect the rights of the Vendor and the Lessor in such Units.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Units may be lettered with

the names or initials or other insignia customarily used by the Lessee or its affiliates.

§ 6. Taxes. The Lessee assumes responsibility for, and agrees to pay, hold harmless and indemnify on an after-tax basis the Lessor and the Beneficiaries and their successors and assigns (the "Indemnified Persons") against, all taxes, fees, withholdings and other governmental charges of any nature whatsoever, including without limitation penalties and interest (all such taxes, fees, withholdings, governmental charges, penalties and interest being herein-after called "Taxes"), imposed on, incurred by or asserted against any Indemnified Person or the Units or any thereof on account of, or with respect to, this Lease or the CSA or any document referred to herein or therein or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acceptance or rejection of the Units or any thereof or the ownership, delivery, nondelivery, leasing, re-leasing, subleasing, possession, use, operation, maintenance, repair, condition, sale, return or other disposition of the Units or any thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom; provided, however, that there shall be no indemnification hereunder for (i) any Taxes imposed on or measured by any fees or compensation received by the Lessor, and (ii) Federal income Taxes and income or franchise Taxes imposed on a Beneficiary or its successors and assigns by any jurisdiction in which such Beneficiary or its successors and assigns has an office, except to the extent that indemnification is provided for in § 16 hereof. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify each Indemnified Person to the extent required by this § 6 within ten days after receipt of a written request by such Indemnified Person for indemnification specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question; provided, however, that if any Taxes are being contested in accordance with the sixth paragraph of this § 6, any payment shall be made at the time therein provided.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any corresponding provision of the CSA (other than the proviso to the third paragraph of Article 12) not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed Taxes hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any returns, statements or reports with respect to Taxes are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Vendor in the Units; provided, however, that the Lessor shall, with respect to any state or political subdivision thereof of the United States of America, file such returns, statements, and reports relating to sales or use taxes, and taxes, fees, and charges on or measured by the Lessor's earnings or gross receipts arising from the Units, or the value added by the Lessor thereto, as the Lessee shall determine are required to be filed, and as shall be prepared by the Lessee, and the Lessor shall remit the amount thereof upon payment by the Lessee to the Lessor (such payment to be made forthwith upon demand by the Lessor therefor) of such taxes, fees and charges except as provided above. To the extent that the Lessor has information necessary to the preparation of such returns, statements and reports, it will furnish such information to the Lessee.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in its own name and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor and the Beneficiaries harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor, of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

If any taxing authority shall assert liability for any Taxes or propose an increase in the liability of any Indemnified Person for any Taxes (such assertion or such proposed increase being hereinafter called a "Claim"), indemnification for which would be required under this § 6, the Indemnified Person will notify the Lessee within a reasonable time of such Claim in writing. If the Lessee delivers to such Indemnified Person written notice of its desire to contest such Claim within 30 days after receipt of notice from such Indemnified Person, such Claim

will be contested in accordance with this paragraph, except to the extent such Claim represents amounts payable to the Vendor under Article 6 of the CSA. The Lessor will permit the Lessee to contest such Claims under Article 6 of the CSA in accordance with the rights of the Lessor thereunder. The Indemnified Person shall have the exclusive right to conduct the contest unless such right is waived in writing, in which event the contest and all preparations therefor shall be the sole responsibility of the Lessee and, in either case, shall be conducted entirely at its expense. Such Indemnified Person will cooperate with any reasonable request made by the Lessee in connection therewith; provided, however, that such Indemnified Person may in its sole discretion determine in what court or other forum such contest will be conducted and whether such contest will proceed by payment of the Taxes in contemplation of a suit for refund and such Indemnified Person shall not be required to take any action pursuant to this paragraph unless and until the Lessee shall have agreed to indemnify such Indemnified Person in a manner satisfactory to such Indemnified Person for any liability or loss which such Indemnified Person may incur as a result of contesting the validity of any Claim and shall have agreed to pay such Indemnified Person on demand all costs and expenses which such Indemnified Person may incur in connection with contesting such Claim (including fees and disbursements of counsel). If in any such contest the decision is made to pay the Taxes and sue for a refund, the Lessee will advance to such Indemnified Person on an interest-free basis sufficient funds to pay the Taxes which are to be contested. Upon receipt by any Indemnified Person of a refund of any Taxes paid by the Lessee pursuant to this paragraph, the amount of such refund and any interest paid to such Indemnified Person with respect thereto shall be paid to the Lessee forthwith upon receipt by such Indemnified Person.

The Lessee agrees to pay all amounts due under this § 6 free of any Taxes and to indemnify each Indemnified Person against any Taxes imposed by reason of any payment made by the Lessee so that the Indemnified Person to whom or for whose benefit the payment is made shall receive an amount which, net of any Taxes or other charges required to be paid by such Indemnified Person in respect thereof, shall be equal to the amount of payment otherwise required hereunder. Without limiting the foregoing, the amount which the Lessee shall be required to pay with respect to any Taxes subject to indemnification under this Section 6 shall be an amount sufficient so that, after considering the tax and

other effects of the Taxes in question and the receipt of indemnification payments hereunder, the Indemnified Person will have the same anticipated after-tax rate of return on equity and periodic recovery of net cash flow as such Indemnified Person would have realized had such Taxes not been incurred or imposed.

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

This § 6 may be enforced by the Lessor as provided in Paragraph 17 of the Participation Agreement.

§ 7. Maintenance; Casualty Occurrences; Insurance. The Lessee at its own expense will maintain and service each Unit and comply with a preventive maintenance schedule consistent with the Builder's preventive maintenance schedules and which will include testing, repair and overhaul of each Unit so that each Unit will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations, and (c) desirable to and suitable for immediate purchase or lease and use by a Class I line-haul railroad (not then or prospectively a debtor in any insolvency or reorganization proceedings) in the event of resale or release upon default by the Lessee. In no event shall any Unit be maintained or scheduled for maintenance on a basis less frequent than the maintenance or maintenance scheduling basis employed as of the date hereof by the Lessee for similar equipment. No later than the last business day of February and August of each year, commencing in February 1979, the Lessee will furnish the Lessor with a certificate ("Maintenance Certificate A") of a qualified engineer satisfactory to the Lessor (i) setting forth the identification numbers of all Units which are then in the condition required by clauses (a), (b) and (c) of the first sentence of this § 7 and certifying that all such Units are in such condition, and (ii) setting forth the identification numbers of all Units which are not in such condition together with the estimated cost required with respect to each such Unit in order to comply with the maintenance requirements of this § 7. No later than the last business day in April and October of each year, commencing in April 1979, the Lessee will furnish the Lessor with a certificate ("Maintenance Certificate B")

of a qualified engineer satisfactory to the Lessor setting forth the identification number of each Unit that was not certified in the preceding February or August Maintenance Certificate A, as the case may be, as being in the condition required by clauses (a), (b) and (c) of the first sentence of this § 7, and, as to each such Unit, (i) certifying that such Unit is in such condition as of the date of such Maintenance Certificate B, or (ii) stating that such Unit is not in such condition. The Lessee, the Vendor and the Lessor have entered into a Maintenance Agreement dated as of the date hereof (the "Maintenance Agreement"), with respect to certain obligations of the Lessee in the event that any Unit listed on a Maintenance Certificate A as not being in the condition required by clauses (a), (b) and (c) of the first sentence of this § 7 is not certified on the next scheduled Maintenance Certificate B as being in such condition.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, permanently returned to the Builder pursuant to any patent indemnity provision of the CSA, or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term of this Lease (or, if such taking, requisition or condemnation shall occur during a renewal term, for a period which shall exceed the then remaining renewal term), or by any other government or governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days, or if a Default under Section 2 of the Maintenance Agreement shall have occurred with respect to such Unit (such occurrences being hereinafter called "Casualty Occurrences"), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly (but in any event within 30 days after such Casualty Occurrence) and fully notify the Lessor, the Beneficiaries and the Vendor with respect thereto. On the earlier of (i) the 60th day following such notice (but not earlier than the first Rental Payment Date following the Basic Rent Commencement Date) and (ii) the rental payment date next succeeding such notice (but not earlier than the first Rental Payment Date following the Basic Rent Commencement Date) the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit then due and payable or accrued to such date (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days

and the denominator is the total number of days in such full rental period) plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the rental payment date on or next preceding the date of such Casualty Occurrence in accordance with Schedule B hereto referred to 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 (except in the case of the loss, theft, complete destruction or permanent return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis and the Lessee may be a purchaser of such Unit and shall notify the Lessor prior to any such purchase by the Lessee. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit permanently returned to the Builder pursuant to any patent indemnity provision of the CSA an amount equal to any patent indemnity payment in respect of such Unit made by the Builder to the Vendor under the CSA.

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

Whenever any Unit shall suffer a Casualty Occurrence after the final payment of rent in respect thereof is due pursuant to § 3 or § 13 hereof and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly (as provided above) and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 20% of the Purchase Price of such Unit, except that if the term of this Lease shall have been extended pursuant to § 13 hereof, then the applicable Casualty Value shall be (i) during the first five-year renewal term and, if there shall be no second five-year renewal period, thereafter, 20% of the Purchase Price of such

Unit, (ii) during the second five-year renewal term, the fair market value of such Unit, as of the rental payment date on or next preceding the date of such Casualty Occurrence, determined as provided in the following sentence, and (iii) thereafter, the fair market value of such Unit as of the last rental payment date during such second five-year renewal period. For the purposes of the preceding sentence, the term "fair market value" of a Unit shall, at the beginning of such second five-year renewal period, be equal to the Fair Market Purchase Price of such Unit at such time determined in accordance with the provisions of § 13 hereof, and shall decline on a straight-line basis to the estimated Fair Market Purchase Price of such Unit at the end of such second five-year renewal period determined in accordance with the provisions of § 13 hereof. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit or return to the Builder of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence, or any component thereof, at the best price obtainable on an "as is, where is" basis and the Lessee may be a purchaser of such Unit and shall notify the Lessor prior to any such purchase by the Lessee. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition (other than a requisition which constitutes a Casualty Occurrence) for use by the United States Government or by any other government or governmental entity (hereinafter collectively called the "Government") of any Unit during the term of this Lease or any renewal thereof, all of the Lessee's obligations (including without limitation the obligation to pay rent) under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease or any renewal thereof,

but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessee, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease or any renewal thereof, shall be paid over to, or retained by, the Lessor.

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

The Lessee will, at all times prior to the return of the Units to the Lessor, at its own expense, cause to be carried and maintained casualty insurance and public liability insurance in respect of the Units at the time subject hereto, against such risks, in such amounts and on such terms and conditions as are satisfactory to the Lessor and the Vendor, and, in any event, comparable in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it, but in no event shall such coverage be for amounts or against risks less than the prudent industry standard for Class I line-haul railroads. If the Casualty Value at any given time is less than what the deductible would be under the foregoing standard, then no casualty insurance need be carried. All policies with respect to such insurance shall name the Lessor, the Beneficiaries and the Vendor as additional named insureds or loss payees, as their interests may appear, shall provide for at least 30 days' prior written notice by the insurance carrier to the Lessor, the Beneficiaries and the Vendor in the event of cancellation, expiration or amendment (and the Lessee shall provide 30 days' prior written notice to the Lessor, the Beneficiaries, and the Vendor in any such event), shall include waivers by the insurer of all claims for premiums against the Lessor, the Beneficiaries and the Vendor and shall provide that losses are payable notwithstanding, among other things, any act of negligence of the

Lessee, the Lessor, the Beneficiaries or the Vendor, more hazardous use or occupation of the Units than that permitted by such policies, any breach or violation by the Lessee, the Lessor, the Beneficiaries or the Vendor of any warranty, declaration, condition or other provision contained in any such policy, or foreclosure, notice of sale or any other proceeding in respect of the Units, or any change in the title to or ownership of any of the Units. Each such insurance policy shall expressly provide that all of the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Lessee) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by the Lessor, the Beneficiaries or the Vendor. The Lessee shall, not later than June 15 of each year, commencing June 15, 1979, furnish to the Lessor and the Vendor a certificate of an independent insurance broker acceptable to the Lessor evidencing the maintenance of the insurance required hereunder and shall furnish certificates evidencing renewal 15 days prior to the expiration date of such policy or policies. In the event that the Lessee shall fail to maintain insurance as herein provided, the Vendor or a Beneficiary may at its option on five business days' prior written notice to the Lessee provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand from time to time, reimburse the Vendor or the Beneficiaries, as the case may be, for the cost thereof together with interest on the amount of such cost from the date of payment thereof at a rate per annum equal to the greater of (i) 10.5% or (ii) 1.25 times the "prime" or "base" rate of interest announced from time to time by a majority (or if there shall not be a majority, by a plurality) of the 12 largest commercial banks (measured by deposits) operating in the United States for borrowers of the highest credit rating. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor

that any damage to such Unit in respect of which such proceeds were paid has been fully repaired, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

§ 8. Reports. On or before April 30 in each year, commencing with the calendar year 1979, the Lessee will furnish to the Lessor, the Builder and the Vendor a certificate signed by the Chief Executive Officer, Chief Operating Officer or Vice President of Operations or the Chief Mechanical Officer of the Lessee (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the CSA, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof have been preserved or replaced. The Lessor or the Builder, at its sole expense, shall have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Builder may request during the continuance of this Lease.

The Lessee shall promptly notify the Lessor, the Beneficiaries and the Vendor of any occurrence of an Event of Default or other event which after notice or lapse of time or both would become an Event of Default, specifying such Event of Default and all such events and the nature and status thereof.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF THE LESSOR), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the

Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A to the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, subleasing, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal thereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its

own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, the Beneficiaries or the Vendor, adversely affect the property or rights of the Lessor, the Beneficiaries or the Vendor under this Lease or under the CSA. The Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value of the Units). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, except to the extent such additions, modifications or improvements are described in the following sentence. Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of the provisions contained hereinabove, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the United States Department of Transportation or any other regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA) shall immediately be vested in the Lessor.

The Lessee agrees to indemnify, protect and hold harmless the Lessor, the Beneficiaries and the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent, trademark and copyright liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default, an event of default or an Event of Default, under the CSA, the Participation Agreement, this Lease, the Maintenance Agreement or any sublease entered into pursuant to § 12 hereunder, the ownership of any Unit, the manufacture, ordering, acquisition, use, operation, condition, purchase, sublease, delivery, nondelivery, acceptance, 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, or the transfer of title to the Units by the Vendor pursuant to any provision of the CSA; provided, however, that the foregoing indemnification shall not apply to any failure to pay the principal of or interest on the CSA Indebtedness (as defined in the CSA) or constitute a guaranty of the residual value of the Units. 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 expiration or termination of the term of this Lease.

The Lessee shall bear the responsibility and risk for, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any or all of the Units of equipment.

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

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

(A) default shall be made in payment of any amount provided for in § 3, 7 or 13 hereof, and such default shall continue for five business days;

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

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Consent or in the Participation Agreement or in Section 5 of the Maintenance Agreement,

and such default shall continue for 30 days after the earlier of (i) written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied and (ii) the date on which such default shall first become known to any officer of the Lessee;

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

(E) any other proceeding shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee, or for the property of the Lessee, in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations

incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

(F) the occurrence of any of the following:

(i) Involuntary Bankruptcy Proceedings--a receiver, liquidator or trustee of the Lessee or of any of its property is appointed by court order and such order remains in effect for more than 30 days; or the Lessee is adjudicated bankrupt or insolvent; or any of its property is sequestered by court order and such order remains in effect for more than 30 days; or a petition is filed against the Lessee under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within 30 days after such filing;

(ii) Voluntary Petitions--the Lessee files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or

(iii) Assignments for Benefit of Creditors, etc.--the Lessee makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due, or consents to the appointment of a receiver, trustee or liquidator of the Lessee or of all or any part of its property;

followed by a good faith determination by the Vendor or the Lessor and notification thereof to the Lessee within 45 days following knowledge by the Vendor or the Lessor of any such occurrence that, as a result, it will be inadequately secured;

(G) Section 77(j) of the Bankruptcy Act (or any successor provision thereto providing similar protection

and benefits for creditors of railroads) is repealed, not carried forward in subsequent legislation or otherwise unavailable to the Lessor or the Vendor, and there shall then exist or thereafter be a default under, or an event shall occur or shall have occurred which, with the giving of notice or the lapse of time or both, would become a default under, any agreement or instrument then or thereafter binding upon the Lessee or to which it then is or thereafter becomes a party or to which any of its property is or thereafter becomes subject;

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

(a) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of Federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents, subject to compliance with all mandatory requirements of law, enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts

the Lessor, in its sole discretion, shall specify:

(x) a sum, with respect to each Unit, equal to (A) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 8.50% per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated plus (B) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of any Federal, state or local government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall, in the reasonable opinion of the Lessor, be equal to all or such portion of the Investment Credit (as defined in § 16 hereof) lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 16 or any other provision of this Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as shall cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the ADR Deductions and the Interest Deduction (as such deductions are defined in § 16 hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 16 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessee or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default plus such sum as will pay or reimburse the Lessor for any interest, penalties or

additions to tax incurred in connection with such loss, failure to claim, inability to claim, disallowance or recapture; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination, over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf. The Lessee hereby waives any and all claims against the Lessor and the Vendor and their agent or agents for damages of whatever nature in connection with any retaking of any Unit in any reasonable manner. The Lessor and the Lessee agree that the Lessor shall be entitled to all rights (such rights being fundamental to the willingness of the

Lessor to enter into this Lease) provided for in § 77(j) of the Bankruptcy Act or any comparable provision of any amendment thereto, or of any other bankruptcy act, so that the Lessor shall have the right to take possession of the Equipment upon an Event of Default under this Lease regardless of whether the Lessee is in reorganization.

No failure by the Lessor to exercise, and no delay by the Lessor in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege by the Lessor preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

Any Event of Default under this Lease caused by the failure of the Lessee to make any payment due hereunder shall not be deemed to be an Event of Default under this Lease permitting the Lessor to exercise the remedies specified in clauses (a) and (b) of the first paragraph of this § 10, or otherwise existing in its favor at law or in equity, if, prior to the exercise of any such remedies and prior to a Declaration of Default under and as defined in the CSA, the Builder pays to the Lessor an amount equal to all amounts then payable under this Lease, including any interest on overdue rentals.

§ 11. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof. For the purpose of delivering possession, the Lessee shall:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

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

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

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own expense, maintain and keep the Equipment in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All rent and per diem charges earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which 0.028332% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor with respect to such Unit for each such day.

Without in any way limiting the foregoing obligations of the Lessee under this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's successors and assigns.

So long as (i) no Event of Default exists here-

under, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and, without the prior written consent of the Lessor and the Vendor, the Lessee may sublease the Units to, or permit their use by, a user incorporated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by the Lessee or such user or by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Vendor's and the Lessor's consent, not to be unreasonably withheld, must be obtained for any sublease that is for a term longer than six months; provided, further, however, that the Lessee shall not sublease or permit the sublease or use of any Unit to service involving operation or maintenance outside the United States of America except that occasional service in Canada shall be permitted so long as such service in Canada does not involve regular operation and maintenance outside the United States of America; and provided, further, however, that any such sublease or use shall be consistent with the provisions of § 16 hereof. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety.

The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor, any Beneficiary or the Vendor or resulting from claims against the Lessor, any Beneficiary or the Vendor not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

§ 13. Renewal and Purchase Options. Provided that this Lease has not been earlier terminated and the Lessee is

not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term or any extended term of this Lease, as the case may be, (i) elect to extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for one or two additional five-year periods commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, provided that no such extended term shall extend beyond a date 25 years after the Basic Rent Commencement Date, at a Fair Market Rental (as defined below) payable in semiannual payments, commencing six months after the next preceding rental payment date, in each year of such extended term; or (ii) after the first additional five-year rental period, as provided above, purchase all but not fewer than all of the Units then subject to this Lease, at a Fair Market Purchase Price (as defined below) payable at the end of such first additional five-year rental period.

Fair Market Rental and Fair Market Purchase Price shall be determined on the basis of, and shall be equal in amount to, the cash rental for a five-year period or the purchase price, as the case may be, which would obtain in an arm's-length transaction between an informed and willing lessee or purchaser and an informed and willing lessor or seller, as the case may be, under no compulsion to lease or sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental or purchase price. If, after 60 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease or to exercise its purchase option, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental or Fair Market Purchase Price of the Units, such rental or purchase price shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such rental or purchase price by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after

such notice is given, either party may request the American Arbitration Association to make such appointment, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental (and, in the case of a second renewal period, the Fair Market Purchase Price at the beginning and end of such second renewal period) of the Units subject to the proposed extended term, or the Fair Market Purchase Price, as the case may be, within 70 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental or Fair Market Purchase Price, as the case may be, of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from that of the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental or Fair Market Purchase Price, as the case may be. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental or Fair Market Purchase Price, as the case may be, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The appraisal procedure expenses shall be borne equally by the Lessee and the Lessor.

Upon payment of the purchase price of any Unit, pursuant to an election by the Lessee to purchase the Units, the Lessor 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 warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

§ 14. Return of Units upon Expiration of Term.

The Lessor intends to retain the Units for re-lease at the expiration of the term of this Lease. As soon as practicable on or after the expiration of the original or any extended term of this Lease with respect to any Unit, the Lessee will,

at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding 60 days following notification to the Lessor by the Lessee that all the Units have been assembled and delivered for storage and transport the same, at any time within such 60-day period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee (except for the insurance required by § 7 hereof which shall be provided at the Lessor's expense); and in the event that any Unit shall suffer a Casualty Occurrence during such storage period, the Lessee shall pay the Lessor the Casualty Value thereof as provided in § 7 hereof. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence or strict liability of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor or any prospective purchaser, lessee or user, such rights of inspection. Each Unit returned to the Lessor pursuant to this § 14 shall be in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof. During any storage period, the Lessee will, at its own expense, maintain and keep the Units in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof and will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All rent and per diem charges earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay

to the Lessor for each day from the date of such termination an amount equal to the amount, if any, by which 0.028332% of the Purchase Price of such Unit (or, in the case of Units returned following any renewal term, the amount which is the product of the Purchase Price of such Unit times a fraction the numerator of which is the semiannual rental factor (expressed as a percentage of the Purchase Price) for such Unit in effect for such preceding renewal term and the denominator of which is 180) for each such day exceeds the actual earnings received by the Lessor with respect to such Unit for each such day.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the CSA and any assignment hereof or thereof to be filed in accordance with Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada (and notice of such deposit to be given forthwith in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the CSA and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective rights in the Units, or for the purpose of carrying out the intention of this Lease, the CSA and the assignments thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this § 15, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor; provided, however, that no such opinion of counsel need be furnished in respect of the filing of the CSA or the assignment thereof in Canada. This Lease and the CSA, and the assignments thereof, shall be filed with the Interstate Commerce Commission and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision shall be made for publication of notice of such deposit in The Canada Gazette prior to the delivery and acceptance hereunder of any Unit.

§ 16. (a) Indemnity for Federal and Other Income Tax Benefits. This Lease has been entered into on the assumption that this Lease will be recognized as a lease for Federal, state and local income or franchise tax purposes and that this Lease does not convey to the Lessee any right, title or interest in the Units except as Lessee. Accordingly, the Beneficiaries, the Lessor and the Lessee have assumed for purposes of United States Federal income tax and (to the extent applicable) state and local income and franchise tax that the trust under the Trust Agreement will be treated as a partnership and that the Beneficiaries (A) as the beneficial owners of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (the "Code"), and state and local taxing statutes to an owner of property, including, without limitation, (1) deductions for depreciation of the Units under section 167 of the Code (the "ADR Deductions") computed on the basis (i) that the Units will have a depreciable basis under section 167(g) of the Code at least equivalent to the Purchase Price plus 33.086235% of the Transaction Expenses (as defined in the Participation Agreement) borne by the Beneficiaries or the Lessor and that the Federal corporate income tax rate in effect for 1978 and thereafter will be 48%, (ii) of the double-declining balance method of depreciation authorized by section 167(b)(2) of the Code, switching to the sum-of-the-years-digits method of depreciation authorized by section 167(b)(3) of the Code when most beneficial to the Beneficiaries, (iii) of the asset depreciation range system of Treasury Regulation Section 1.167(a)-11, using the half-year convention and obtaining not less than six months of depreciation in 1978, (iv) of an asset depreciation period of 12 years, and (v) of a salvage value of zero after the reduction in accordance with section 167(f)(1) of the Code, (2) deductions with respect to interest payable on the CSA Indebtedness (as defined in the CSA) and the guarantee fee payable to the Builder (the "Interest Deductions") for any period during which the CSA Indebtedness is held by any person other than the Beneficiaries and (3) the investment credit pursuant to section 38 of the Code for "new section 38 property" (the "Investment Credit") equal to 10% of the depreciable basis referred to above, (B) shall be entitled to amortize 66.913765% of the Transaction Expenses borne by the Beneficiaries or the Lessor on a straight-line basis over a period of 15 years (the "Amortization Deductions") and (C) shall be entitled to

treat each item of income, deduction and credit with respect to this Lease and the Maintenance Agreement as attributable to sources within the United States.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that the Lessee and any corporation controlled by it, in control of it or under common control with it, directly or indirectly, will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof.

Each Beneficiary will claim on its Federal, state and local income tax returns the Investment Credit, the ADR Deductions, the Amortization Deductions and the Interest Deductions to the extent that any opinion or advice of counsel satisfactory to such Beneficiary confirms its entitlement thereto.

If for any reason whatsoever a Beneficiary shall not be allowed all or any portion of the ADR Deductions, the Amortization Deductions, the Interest Deductions or the Investment Credit, or if the ADR Deductions or the Investment Credit with respect to any portion of the Units is recaptured in whole or in part pursuant to section 1245 or section 47 of the Code, or if a Beneficiary, in computing its Federal tax liability, shall not have, shall lose the right to claim (including a good faith determination based upon advice of its tax counsel that such claim is not allowable), shall suffer a disallowance of or be required to recapture an amount of foreign tax credit which would have been allowable to such Beneficiary if such Beneficiary had not participated in the transactions contemplated by this Lease (the "Foreign Tax Credit") (any such event being a "Loss"), then the Lessee shall pay to such Beneficiary such amount or, from time to time, such amounts as, after deduction of all taxes required to be paid by such Beneficiary in respect of the receipt of such amounts under the laws of any Federal, state or local government or taxing authority, shall be equal to the sum of the aggregate additional Federal, state or local income taxes, including penalties and interest, if any, payable by such Beneficiary from time to time as a result of any such Loss; provided that indemnification payments hereunder shall be an amount sufficient so that, after considering the tax and other effects of the Loss in question and the receipt of indemnification payments hereunder, such

Beneficiary will have the same anticipated after-tax rate of return on equity and periodic recovery of net cash flow which such Beneficiary would have realized had such Loss not occurred. If, as a result of a Loss, the aggregate Federal, state or local income taxes, including penalties and interest, if any, paid by such Beneficiary for any taxable year shall be less than the amount of such taxes which would have been payable by such Beneficiary had no such Loss occurred, then such Beneficiary shall pay the Lessee the amount of such difference in taxes, plus any additional tax benefits realized by such Beneficiary as the result of such payment; provided, however, that such Beneficiary shall not be obligated to make any payment pursuant to this sentence to the extent that any such payment would cause such Beneficiary not to realize the after-tax rate of return on equity and periodic recovery of net cash flow referred to in the preceding sentence or to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to such Beneficiary pursuant to this subsection (a) in respect of a Loss, less (y) the amount of all prior payments by such Beneficiary to the Lessee pursuant to this sentence. The amount payable to a Beneficiary pursuant to this paragraph shall be paid within 30 days after receipt of a written demand therefor from such Beneficiary (but not prior to five business days prior to the payment of additional tax which becomes due as the result of the Loss), accompanied by a written statement describing in reasonable detail such Loss and the computation of the amount so payable. Any payment due to the Lessee from a Beneficiary pursuant to this paragraph shall be paid within 30 days after such Beneficiary realizes any such savings in its income taxes or additional tax benefits, as the case may be.

Incremental amounts of rent paid by reason of an upward adjustment of rentals pursuant to the first paragraph of § 3 shall be deemed to be indemnification payments to the Beneficiaries under this § 16.

Notwithstanding anything to the contrary hereinbefore set forth, no amount shall be payable to a Beneficiary as an indemnity under this § 16 in respect of any Loss to the extent that such Loss is a direct result of the occurrence of any of the following events:

- (i) a voluntary transfer or other voluntary disposition by the Lessor of any interest in the Equipment (otherwise than pursuant to the Lease Assignment), or a voluntary transfer or other voluntary disposition by

a Beneficiary of part or all of its interest in the trust estate under the Trust Agreement unless, in each case, an Event of Default shall have occurred and be continuing;

(ii) the failure of the Beneficiaries (or the tax partnership created by the Trust Agreement) to claim the Investment Credit, the ADR Deductions, the Amortization Deductions or the Interest Deductions;

(iii) the failure of the Beneficiaries to have sufficient liability for Federal income tax against which to credit the Investment Credit or the Foreign Tax Credit or to have sufficient income to benefit from the ADR Deductions, the Amortization Deductions or the Interest Deductions, as the case may be;

(iv) a Casualty Occurrence if the Lessee shall have paid the Casualty Value pursuant to § 7;

(v) any other acts or omissions of the Beneficiaries or the Lessor inconsistent with the transactions contemplated hereby; and

(vi) changes in law which are not effective prior to December 31, 1979.

(b) Indemnity for Improvements and Deposits.

If at any time a Beneficiary is required by the Internal Revenue Service to include in its gross income an amount in respect of any improvement or addition to the Units or any accession referred to in § 9 or any action required to be taken by the Lessee pursuant to the Maintenance Agreement (hereinafter called "Capital Expenditures") or an amount in respect of any funds paid under the Guaranty Agreement (hereinafter called the "Deposits"), then the Lessee shall pay to such Beneficiary, as an indemnity, such amount or amounts as, after deduction of all taxes required to be paid by such Beneficiary in respect of the receipt of such amounts under the laws of any Federal, state or local taxing authority, shall be equal to the sum of the aggregate additional Federal, state or local income taxes payable by such Beneficiary from time to time as a result of such Capital Expenditures or Deposits plus the amount of any interest, penalties or additions to tax payable as a result of any such Capital Expenditures or Deposits; provided that indemnification payments hereunder shall be an amount

sufficient so that, after considering the tax and other effects of the Capital Expenditures or the Deposits, as the case may be, and the receipt of indemnification payments hereunder, such Beneficiary will have the same anticipated after-tax rate of return on equity and periodic recovery of net cash flow which such Beneficiary would have realized had such Capital Expenditures or Deposits not occurred. If as a result of any such Capital Expenditures or Deposits the aggregate Federal, state or local income taxes paid by such Beneficiary for any taxable year shall be less than the amount of such taxes which would have been payable by such Beneficiary had no such Capital Expenditures or Deposits been made, then such Beneficiary shall pay the Lessee the amount of such savings in taxes plus any additional tax benefits realized by such Beneficiary as the result of such payment; provided, however, that such Beneficiary shall not be obligated to make any payment pursuant to this sentence to the extent that any such payment would cause such Beneficiary not to realize the after-tax rate of return on equity and periodic recovery of net cash flow referred to in the preceding sentence or to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee pursuant to this subsection (b) in respect of any Capital Expenditures or Deposits less (y) the amount of all prior payments by such Beneficiary pursuant to this sentence. The amount payable to a Beneficiary pursuant to this subsection (b) shall be paid within 30 days after receipt of the written demand therefor from such Beneficiary (but not prior to five business days prior to payment of the additional Federal, state or local income tax which becomes due as a result of said inclusion) accompanied by a written statement describing in reasonable detail such inclusion and the computation of the amount so payable. Any payment due to the Lessee pursuant to § 16(c) shall be paid within 30 days after a Beneficiary realizes any such savings in its income taxes or additional tax benefits, as the case may be.

(c) Contests. (1) If the Internal Revenue Service shall propose an adjustment in the Federal income taxes of a Beneficiary for which the Lessee would be required to indemnify such Beneficiary pursuant to subsection (a) or (b) of this § 16 and the amount of the indemnity which the Lessee would be required to pay would exceed \$100,000, then, if requested by the Lessee in a timely written request, such Beneficiary shall request an opinion from counsel selected by such Beneficiary and approved by the Lessee as to whether the basis in law and in fact in favor of allowance of the

item proposed to be adjusted outweighs the basis in law and in fact to the contrary. If the opinion is to that effect and if the Lessee promptly requests such Beneficiary to do so, such Beneficiary shall contest the proposed adjustment; provided, however, that such Beneficiary shall determine in its sole discretion the nature of all action to be taken to contest such proposed adjustment including (i) whether any action to contest such proposed adjustment shall initially be by way of judicial or administrative proceedings, or both, (ii) whether any such proposed adjustment shall be contested by resisting payment thereof or by paying the same and seeking a refund thereof, and (iii) if such Beneficiary shall undertake judicial action with respect to such proposed adjustment, the court or other judicial body before which such action shall be commenced. Such Beneficiary shall have full control over any contest pursuant to this subsection (c) and shall not be obligated to appeal an adverse determination by any court. At any time, whether before or after commencing to take the action set forth in this subsection (c), such Beneficiary may decline to take any such action with respect to all or any portion of a proposed adjustment by notifying the Lessee in writing that the Lessee is relieved of its obligation to indemnify such Beneficiary with respect to the adjustment or such portion, as the case may be.

(2) A Beneficiary shall not be required to take any action pursuant to this subsection (c) unless and until the Lessee shall have agreed to indemnify such Beneficiary in a manner reasonably satisfactory to such Beneficiary for any liability or loss which such Beneficiary may incur as a result of contesting the validity of any proposed adjustment and shall have agreed to pay such Beneficiary on demand all costs and expenses which such Beneficiary may incur in connection with contesting such proposed adjustment (including fees and disbursements of counsel). If such Beneficiary determines to contest any adjustment by paying the additional tax and suing for a refund, the Lessee shall have paid to such Beneficiary an amount equal to the sum on an after-tax basis of any tax, interest, penalties and additions to tax which are required to be paid. Upon receipt by such Beneficiary of a refund of any amounts paid by it based on the adjustment in respect of which amounts it shall have been paid an equivalent amount by the Lessee, such Beneficiary shall pay to the Lessee the amount of such refund together with any interest received by it on such amount. The Lessee shall be obligated to pay to such Beneficiary the amount

specified in subsection (a) or (b) of this § 16 within ten days after the Beneficiary has taken all the action that it has agreed in this § 16 to take.

(d) Definition of Beneficiary. For purposes of this § 16, the term "Beneficiary" or "Beneficiaries" shall include either or both of the corporations constituting the Beneficiaries, as the context requires, and shall also include any member of an affiliated group, within the meaning of section 1504 of the Code, of which either Beneficiary is a member if consolidated returns are filed for such affiliated group for Federal income tax purposes.

(e) Survival of Indemnities. The liability of the Lessee to make indemnification payments pursuant to this § 16 shall, notwithstanding any expiration or termination of this Lease, continue to exist until such indemnity payments are made by the Lessee. All indemnity payments under this § 16 shall be made directly to the party entitled to indemnification.

(f) Enforcement. This § 16 may be enforced by the Lessor as provided in Paragraph 17 of the Participation Agreement.

§ 17. Interest on Overdue Rentals. Anything to the contrary herein notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount on the overdue rentals and other obligations for the period of time during which they are overdue at a rate per annum equal to the greater of (i) 9.50% or (ii) 1.25 times the "prime" or "base" rate of interest announced from time to time by a majority (or if there shall not be a majority, by a plurality) of the 12 largest commercial banks (measured by deposits) operating in the United States for borrowers of the highest credit rating, or such lesser amount as may be legally enforceable. Interest hereunder shall be determined on the basis of a 360-day year of twelve 30-day months.

§ 18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at 130 John Street, 4th Floor, New York, New York 10038, Attention of Corporate Trust and Agency Division; and

(b) if to the Lessee, at 1310 Six Penn Center Plaza,

Philadelphia, Pennsylvania 19104, Attention of Vice President & Treasurer;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at Mellon Square, Pittsburgh, Pennsylvania 15230, Attention of Corporate Trust Division, and to GMAC Leasing Corporation at 767 Fifth Avenue, New York, New York 10022, Attention of Director of Special Financing and to J. P. Morgan Interfunding Corp. at 522 Fifth Avenue, New York, New York 10022.

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

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

The Lessor and the Lessee acknowledge that the Guaranty contains certain provisions regarding the consent of the Builder in the event of any variation or modification of this Lease or any waiver of any of its provisions or conditions which would either individually or cumulatively have a material adverse effect upon the Builder.

§ 20. Immunities; Satisfaction of Undertakings. Anything herein to the contrary notwithstanding, each and all of the representations, undertakings and agreements herein made on the part of the Lessor are made and intended not as personal representations, undertakings and agreements by United States Trust Company of New York or for the purpose or with the intention of binding it personally but are made and intended for the purpose of binding only the Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the said trust company solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and

no personal liability or responsibility is assumed hereunder by or shall at any time be enforceable against the said trust company or the Beneficiaries on account of any representation, undertaking or agreement hereunder of the Lessor or the Beneficiaries, either expressed or implied, all such personal liability, if any, being expressly waived by the Lessee and by all persons claiming by, through or under the Lessee; provided, however, that the Lessee or any person claiming by, through or under it, making claim hereunder, may look to said Estate for satisfaction of the same.

§ 21. Governmental Guarantees. In the event the United States of America or any political subdivision thereof or any agency or instrumentality of any of the foregoing shall use or permit to be used its credit, directly or indirectly, to pay, guarantee or otherwise support the Lessee's obligation to pay the purchase price of or rent for, or to so support any other financing arrangements for the acquisition of, any rolling stock used by the Lessee (other than any such support obtained prior to the first use by the Lessee of and in order to induce any person to provide or finance any such rolling stock) the Lessee shall cause to be provided for the benefit of the Lessor, the Vendor and their successors and assigns a guaranty of or other comparable commitment with respect to the Lessee's obligations under this Lease from the same entity whose credit supports such other financing arrangements, such guaranty or commitment to be provided at the same time as such other rolling stock financing arrangement becomes entitled to such protection, so that the Lessor shall at all times have the benefit of the most favorable form of governmental support for financing of rolling stock used by the Lessee as is available to any other person with respect to rolling stock used by the Lessee subject to the limitations set forth above.

§ 22. Waiver of Priority. If at any time the Lessee shall, directly or indirectly, obtain any waiver (or its equivalent) of any priority status claim assertable by or on behalf of the United States of America or the United States Railway Association which benefits any obligee of the Lessee other than the Lessor, the Lessee shall cause all amounts payable by it hereunder and under the Maintenance Agreement to be entitled to the same benefits of such waiver (or its equivalent). It is understood that Federal legislation shall not be deemed to be a waiver (or its equivalent) within the meaning of the foregoing sentence.

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

§ 24. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed or deposited.

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

CONSOLIDATED RAIL CORPORATION,

by

[Corporate Seal]

Vice President & Treasurer

Attest:

Assistant Secretary

UNITED STATES TRUST COMPANY OF
NEW YORK, as Trustee,

by

[Corporate Seal]

Assistant Vice President

Attest:

Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
 COUNTY OF PHILADELPHIA,)

On this day of July 1978, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is Vice President & Treasurer of CONSOLIDATED RAIL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

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

On this day of July 1978, before me personally appeared , to me personally known, who, being by me duly sworn, says that he/she is an Assistant Vice President of UNITED STATES TRUST COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Trustees, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

SCHEDULE A TO LEASE

<u>Type</u>	<u>Builder</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>
2,250 h.p. Model B23-7 diesel-electric locomotive	General Electric Company	27	CR 1940-1966

SCHEDULE B TO LEASE

Casualty Value

<u>Semiannual Dates Following the Basic Rent Commencement Date</u>	<u>Percentage of Purchase Price</u>
Prior to First	108.52
First	109.43
Second	112.89
Third	113.53
Fourth	113.55
Fifth	113.84
Sixth	113.70
Seventh	104.78
Eighth	103.92
Ninth	103.75
Tenth	103.73
Eleventh	92.22
Twelfth	91.83
Thirteenth	92.92
Fourteenth	92.78
Fifteenth	75.98
Sixteenth	75.17
Seventeenth	72.84
Eighteenth	72.03
Nineteenth	64.29
Twentieth	63.03
Twenty-first	55.18
Twenty-second	51.92
Twenty-third	48.59
Twenty-fourth	45.19
Twenty-fifth	41.74
Twenty-sixth	38.23
Twenty-seventh	34.68
Twenty-eighth	29.06
Twenty-ninth	24.12
Thirtieth	20.00

SCHEDULE C TO LEASE

Certificate of Acceptance

To: United States Trust Company of New York, acting as
Trustee (the "Trustee") under Trust Agreement
130 John Street
New York, New York 10038

I, the duly authorized representative for the Trustee and Consolidated Rail Corporation (the "Lessee") under the Conditional Sale Agreement and the Lease of Railroad Equipment, both dated as of July 1, 1978, respectively, do hereby certify that I inspected and accepted delivery thereunder of the following Units of Equipment:

TYPE OF EQUIPMENT: Diesel electric locomotive
MODEL: B23-7
DATE ACCEPTED:
NUMBER OF UNITS:
NUMBERED: CR

I do further certify that the foregoing Units are in good order and condition, and appear to conform to the specifications, requirements and standards applicable thereto as provided in Article 2 of the aforesaid Conditional Sale Agreement.

I do further certify that each of the foregoing Units has been marked by means of a stencil printed in contrasting colors upon each side of each such Unit in letters not less than one inch in height as follows:

"Ownership Subject to a Conditional Sale Agreement filed under the Interstate Commerce Act, Section 20c."

The execution of this Certificate will in no way relieve or decrease the responsibility of the Builder named below for any warranties it has made with respect to the Equipment.

Authorized Representative of Trustee and Lessee

BUILDER:

General Electric Company

ASSIGNMENT OF LEASE AND AGREEMENT dated as of July 1, 1978 (this "Assignment"), between UNITED STATES TRUST COMPANY OF NEW YORK, acting as Trustee (the "Lessor") under Trust Agreement No. 1978-3 dated as of January 3, 1978, as amended by Amendment No. 1 dated as of the date hereof (the "Trust Agreement") with J. P. Morgan Interfunding Corp. and GMAC Leasing Corporation as beneficiaries (the "Beneficiaries"), and MELLON BANK, N.A., as Agent (the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with General Electric Company (the "Builder"), providing for the sale to the Lessor of such units of railroad equipment (the "Units") described in Annex B thereto as are delivered to and accepted by the Lessor thereunder;

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

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

WHEREAS the Builder is willing to guarantee certain obligations of the Lessee under the Lease and of the Lessor under the CSA pursuant to a Guaranty Agreement (the "Guaranty Agreement") dated as of the date hereof;

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

1. The Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor under the the CSA, all the Lessor's rights, titles and interests, powers, privileges, and other benefits in, to and under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the "Payments"), and the right to make all waivers, modifications and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under or with respect to the Lease; provided, however, that the Lessor does not assign its right to receive the amounts payable by the Lessee as indemnification pursuant to § 6 or 16 of the Lease or amounts payable to the Lessor or to the Beneficiaries as indemnification pursuant to the third paragraph of § 9 of the Lease, except to the extent such indemnification under such § 6 or 9 is required to be paid to the Builder or the Vendor pursuant to Article 6 or 13 of the CSA, and such amounts shall be excluded from the meaning of the term "Payments"; provided, further, however, that the Vendor shall not at any time without the prior written consent of the Lessor waive or consent to any modification or amendment of, or give any release in respect of, any obligation of the Lessee (i) under § 5, 6, 7, 9, 12, 14, 16 or 17 of the Lease or (ii) to make payments under the Lease other than payments of such amount or amounts as are applicable pursuant to the terms of the CSA and this Assignment to the satisfaction of the obligations of the Lessor under the CSA. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as attorney for the Lessor to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments first, to satisfy the obligations of the Lessor

under the CSA, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default thereunder shall have occurred and be continuing, any balance shall be paid to the Lessor on the same date such Payment is applied to satisfy such obligations of the Lessor, by check mailed to the Lessor on such date or, upon written request of the Lessor, by bank wire to the Lessor at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Lessor. If the Vendor shall not receive any rental payment under the first paragraph of § 3 of the Lease when due, the Vendor shall notify the Lessor at the address set forth in the Lease; provided, however, that the failure of the Vendor to so notify the Lessor shall not affect the obligations of the Lessor hereunder or under the CSA.

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

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

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

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

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

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

7. The Lessor will pay and discharge any and all claims, liens, charges or security interests (other than those created by the CSA) on the Lease or the rentals or other payments due or to become due thereunder claimed by

any party from, through or under the Lessor or its successors and assigns (other than the Vendor), not arising out of the transactions contemplated by the CSA or the Lease (but including tax liens arising out of the receipt of the income and proceeds from the Units) which, if unpaid, might become a claim, lien, charge or security interest on or with respect to the Lease or such rentals or other payments equal or superior to the Vendor's interest therein, unless the Lessor shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect such interests of the Vendor.

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

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

10. This Assignment shall be governed by the laws of the State of New York, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing or deposit hereof, if any, as shall be conferred by the laws of the several jurisdictions in which this Assignment shall be filed or deposited.

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

12. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no event of default under the CSA has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits

which are assigned and transferred by the Lessor to the Vendor by this Assignment and which are for the sole benefit of the Lessor, without the prior written consent of the Lessor.

13. Anything in this Assignment to the contrary notwithstanding, each and all of the representations, undertakings and agreements in this Assignment made on the part of the Lessor are made and intended not as personal representations, undertakings and agreements by United States Trust Company of New York or for the purpose or with the intention of binding it personally but are made and intended for the purpose of binding only the Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by the said trust company solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or responsibility is assumed by or shall at any time be enforceable against the said trust company or the Beneficiaries on account of any representation, undertaking or agreement of the Lessor or the Beneficiaries hereunder, either expressed or implied, all such personal liability, if any, being expressly waived 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 the Vendor, making claim hereunder, may look to said Estate for the satisfaction of the same.

14. The parties hereto acknowledge that the Guaranty Agreement contains certain provisions regarding the consent of the Builder as Guarantor thereunder in the event of any modification of this Assignment or any waiver of any of its provisions or conditions which would either individually or cumulatively have a material adverse effect upon the Guarantor thereunder.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their

respective corporate seals to be affixed and duly attested,
all as of the date first above written.

UNITED STATES TRUST COMPANY
OF NEW YORK, as Trustee,

by

[Corporate Seal]

Assistant Vice President

Attest:

Assistant Secretary

MELLON BANK, N.A., as Agent,

by

[Corporate Seal]

Vice President

Attest:

Assistant Secretary

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

On this day of July 1978, before me personally appeared , to me personally known, who, being by me duly sworn, says that he/she is an Assistant Vice President of UNITED STATES TRUST COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Trustees, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
 COUNTY OF ALLEGHENY,)

On this day of July 1978, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of MELLON BANK, N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said national bank, and that said instrument was signed and sealed on behalf of said national bank 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 national bank.

Notary Public

[Notarial Seal]

CONSENT AND AGREEMENT

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

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease other than amounts not assigned by the Lessor as provided in Paragraph 1 of the Lease Assignment (which moneys, other than such unassigned amounts, are hereinafter called the "Payments") due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to Mellon Bank, N.A., as Agent (the "Vendor"), the assignee named in the Lease Assignment, at Mellon Square, Pittsburgh, Pennsylvania 15230, Attention of Corporate Trust Division (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) it shall not be entitled to any abatement of rent or additional rent, reduction thereof or setoff against or recoupment of rent or additional rent, including, but not limited to, abatements, reductions, setoffs or recoupments due or alleged to be due by reason of any past, present or future claims or counter-claims of the Lessee against the Lessor under the Lease or under the CSA referred to in the Lease Assignment, or against the Builder (as defined in the Lease Assignment) or the Vendor or otherwise;

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

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

(5) the Lease shall not, without the prior written consent of the Vendor (and the Lessor in the cases

specified in Section 1 of the Lease Assignment), be terminated, amended or modified, nor shall any waiver or release be given or accepted with respect thereto nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

The parties hereto acknowledge that the Guaranty Agreement referred to in the Lease Assignment contains certain provisions regarding the consent of the Builder as Guarantor thereunder in the event of any modification of this Consent and Agreement or any waiver of any of its provisions or conditions which would either individually or cumulatively have a material adverse effect upon the Guarantor thereunder.

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

CONSOLIDATED RAIL CORPORATION,
as Lessee,

by

[Corporate Seal]

Vice President & Treasurer

Attest:

Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the 1st day of July 1978.

MELLON BANK, N.A., as Agent,

by

Vice President