

JUL 31 1978 - 3 05 AM

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INTERSTATE COMMERCE COMMISSION

CRAVATH, SWAINE & MOORE

INTERSTATE COMMERCE COMMISSION

ONE CHASE MANHATTAN PLAZA

NEW YORK, N.Y. 10005

212 HANOVER 2-3000

INTERNATIONAL TELEX: 620976

TELETYPE: 710-581-0338

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9615 Filed & Recorded

JUL 31 1978 - 3 05 AM

INTERSTATE COMMERCE COMMISSION

9615

RECORDATION NO. Filed & Recorded

JUL 31 1978 - 3 05 AM

INTERSTATE COMMERCE COMMISSION

July 31, 1978

Consolidated Rail Corporation

Lease Financing Dated as of June 1, 1978

10% Conditional Sale Indebtedness Due July 1, 1993

[CS&M Ref: 5406-001]

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:

RECEIVED

JUL 31 2 58 PM '78

I.C.C. FEE OPERATION BR.

(1)(a) Conditional Sale Agreement dated as of June 1, 1978, between Heleasco One, Inc. and Bethlehem Steel Corporation;

(1)(b) Agreement and Assignment dated as of June 1, 1978, between Girard Bank and Bethlehem Steel Corporation;

(2)(a) Lease of Railroad Equipment dated as of June 1, 1978, between Consolidated Rail Corporation and Heleasco One, Inc.; and

(2)(b) Assignment of Lease and Agreement dated as of June 1, 1978, between Heleasco One, Inc. and Girard Bank.

The addresses of the parties to the aforementioned agreements are:

Lessor-Vendee:

Heleasco One, Inc.,
1200 Philadelphia Pike,
Wilmington, Delaware 19809.

8-212A124

JUL 31 1978

Date

Fee \$ 150

ICC Washington, D. C.

Countyparts - Allan C. Hughes

Builder-Vendor:

Bethlehem Steel Corporation,
Bethlehem, Pennsylvania 18016.

Lessee:

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

Agent-Vendor-Assignee:

Girard Bank,
Three Girard Plaza (3rd Floor),
Philadelphia, Pennsylvania 19101.

The equipment covered by the aforementioned agreements consists of 341 100-ton open-top general service hopper cars bearing the road numbers of the lessee CR-487825-CR-488165 and also bearing the legend "Ownership Subject to a Security Agreement filed under the Interstate Commerce Act, Section 20c".

Enclosed is our check for \$100 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt, addressed to the undersigned.

Very truly yours,

Laurance V. Goodrich

Laurance V. Goodrich
As Agent for Consolidated
Rail Corporation

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

Encls.

39N

BY HAND

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Laurance V. Goodrich
Cravath, Swaine & Moore
One Chase Manhattan Plaza
New York, NY. 10005

Sir:

Dear

The enclosed document(s) was recorded pursuant to the
provisions of Section ~~20(c)~~⁷⁻³¹⁻⁷⁸ of the Interstate Commerce Act, ^{3:05 PM}
49 U.S.C. 20(c), on **9615** at **9615-A, 9615-B and**
9615-C
and assigned recordation number(s)

Sincerely yours,

H.G. Homme, Jr.,
Acting Secretary

Enclosure(s)

SE-30-T
(2/78)

RECORDATION NO. 9615 Filed & Recorded

JUL 31 1978 AM

INTERSTATE COMMERCE COMMISSION

[CS&M Ref. 5406-001]

CONDITIONAL SALE AGREEMENT

Dated as of June 1, 1978

between

HELEASCO ONE, INC.,
as Vendee,

and

BETHLEHEM STEEL CORPORATION,
as Builder and Vendor.

10% Conditional Sale Indebtedness due July 1, 1993

CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT dated as of June 1, 1978, between BETHLEHEM STEEL CORPORATION, a Delaware corporation (hereinafter called the "Builder" or the "Vendor" as the context may require, all as more particularly set forth in Article 1 hereof) and HELEASCO ONE, INC., a Delaware corporation (the "Vendee").

WHEREAS the Builder agrees to construct, sell and deliver to the Vendee, and the Vendee agrees to purchase, the railroad equipment described in Annex B hereto (the "Equipment");

WHEREAS the Vendee is entering into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") with Consolidated Rail Corporation (the "Lessee") substantially in the form of Annex C hereto; and

WHEREAS Girard Bank (hereinafter sometimes called the "Assignee" or the "Vendor") is acting as agent for certain investors (the "Investors") pursuant to the Participation Agreement dated as of the date hereof (the "Participation Agreement"), among the Assignee, the Lessee, the Vendee and the Investors.

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 dated as of the date hereof (the "CSA Assignment") between the Builder and the Assignee, as agent.

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

in this Agreement, means, before any such assignment, the Builder, as the context may require, 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.

In case of such assignment, the Vendee will assign to the Vendor, as security for the payment and performance of all the Vendee's obligations hereunder, all right, title, and interest of the Vendee in and to the Lease, pursuant to an Assignment of Lease and Agreement substantially in the form of Annex D hereto (the "Lease Assignment") and the Lessee shall consent thereto pursuant to a Consent and Agreement substantially in the form attached to Annex D (the "Consent").

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Annex B hereto and will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for, 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 U.S. 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.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of Equipment to the Vendee at the place specified in Annex B hereto (or if Annex B does not specify a place, at the place designated by the Vendee), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of the Equipment shall not be made until this Agreement and the Lease 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 provided, further, that

the Builder shall not have any obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clauses (c) or (d) of Article 15 hereof or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default. The Builder agrees not to deliver any unit of the Equipment hereunder (a) following receipt of written notice from the Vendee or the Assignee of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, until such time as such written notice may be canceled by a further written notice, and (b) until it receives notice from the Assignee that the conditions contained in Paragraph 6 of the Participation Agreement have been met and from the Vendee that the conditions contained in Paragraph 7 of the Participation Agreement have been met.

Any unit of Equipment not delivered at the time of receipt 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 28, 1978, by reason of noncompliance with the conditions referred to in the preceding paragraph or the causes set forth in the next 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 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 relating thereto (as defined in the Participation Agreement) 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 it 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 authorized inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Prior to delivery, each unit of the Equipment shall be presented to an inspector of the Vendee for inspection at the place specified for delivery or at the plant of the Builder specified in Annex B hereto, 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 (as defined in the Lease); provided, however, that the Builder shall not thereby be relieved of its warranties referred to in Article 13 hereof.

On delivery by the Builder hereunder of units of Equipment 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 warranties 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 may be agreed to by the Builder, the Vendee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased as set forth in the invoice or invoices (the "Invoice or Invoices") of the Builder delivered to the Vendee; and, if the Purchase Price is other than the base price or prices set forth in Annex B, the Invoice or Invoices shall be accompanied by, or have endorsed thereon, the approval of the Vendee and the Lessee. If on any Closing Date (as hereinafter defined in this Article) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made under this Agreement 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 the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as aforesaid).

The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Vendee 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 business day (not later than December 28, 1978, such date being herein called the "Cut-Off Date"), occurring not more than ten business days following presentation by the Builder to the Vendee of the Invoices (with copies to the Lessee) and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Lessee by written notice delivered to the Vendee and the Assignee 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 Philadelphia, 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 cash 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 an amount equal to (i) 26.25% of the aggregate Purchase Price of such Group up to the Maximum Purchase Price, plus, (ii) to the extent the Vendee shall have agreed, any amount by which the aggregate Purchase Price exceeds the Maximum Purchase Price; and

(b) in 59 quarterly installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (herein called the "CSA Indebtedness") shall be payable on each January 1, April 1, July 1 and October 1 beginning January 1, 1979 to and including July 1, 1993 (or if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the CSA Indebtedness shall bear interest from the Closing Date in respect of which such CSA Indebtedness was incurred at the rate of 10% per annum, payable (to the extent accrued) (i) on October 1, 1978, and (ii) on each Payment Date thereafter. 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 amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto and the aggregate of such installments of principal will completely amortize the CSA Indebtedness. The Vendee will furnish to the Vendor promptly after each 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 except that interest payable on October 1, 1978, shall be calculated on an actual elapsed day basis.

The Vendee will pay, to the extent legally enforce-

able, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at the rate of 11% per annum (the "Penalty Rate").

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 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 Vendor agrees that the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under and pursuant this Agreement, including any liability arising out of or in connection with the performance of its obligations hereunder (excluding only the obligations set forth in subparagraph (a) of the third paragraph of this Article 4 and the proviso in the third paragraph of Article 12 hereof) shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be required to be made by the Vendee only to the extent that the Vendee or any assignee of the Vendee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the preceding sentence, the Vendor agrees that the Vendee shall have no personal liability to make any payments under this Agreement except from the "income and proceeds from the Equipment". In addition, the Vendor agrees that the Vendee (i) makes no representation or warranty, and is not responsible for, the execution, validity, sufficiency or enforceability of the Lease insofar as it relates to the Lessee (or any document relative thereto) or of any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease or the Consent; 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 assignee of the Vendee at any time after the occurrence of any such event of default and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 10 or any other provision of the Lease and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time, only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee or any assignee of the Vendee 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 assignee of the Vendee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Notwithstanding anything to the contrary contained in Article 15 or 16 hereof, the Vendor agrees that in the event it 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, it 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 or the Vendee's interest in the Lease for the full unpaid Purchase Price of the Equipment and accrued interest thereon and all other payments and obligations hereunder.

ARTICLE 5. Security Interest in the Equipment.
The Vendor shall and hereby does retain a security interest

in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, 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.

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, at the Vendee's expense, (a) execute a bill or bills of sale for the Equipment releasing its security 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 at its address referred to in Article 20 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand 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 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 by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security interest 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 or the Lessee 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 security interest 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; Insurance. The Vendee agrees that, at the Vendee's own cost and expense, it will be responsible for ordinary maintenance and repairs required to maintain and keep all of the units of the Equipment which are subject to this Agreement in good operating order, repair and condition and eligible for interchange service.

In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, or permanently rendered unfit for use from any

cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except a requisition for use by the United States Government for a stated period not in excess of the remaining term of this Agreement (such occurrences being hereinafter 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 next succeeding date for the payment of interest on the CSA Indebtedness (each such date being hereinafter called a "Casualty Payment Date"), the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal due on such date) to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the CSA Indebtedness and the Vendee will promptly furnish to the Vendor a revised schedule of payments of principal and interest thereafter to be made. In the event of the requisition for use (which is not a Casualty Occurrence) of any unit of the Equipment, 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 date as of which such Casualty Value shall be

determined (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 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 from the Lessee's insurance coverage any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall, subject to the Vendor having received payment of the Casualty Value hereunder, 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 or units 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.

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 identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the 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 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 operations involving the Equipment may extend, with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, and with all applicable interchange rules, 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 Equipment by the Builder to the Vendee, to the possession of such 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. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Vendor, it being agreed that such consent shall not be unreasonably withheld for changes in § 6 or § 16 of the Lease which are not intended or necessary to satisfy the obligations of the Vendee under this Agreement or the security provided to the Vendor under this Agreement or the Lease Assignment.

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 Vendee's interests in the Lease and the payments to be made thereunder equal or superior to the Vendor's security interest 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 security interest 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), 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, equal or superior to the Vendor's security interest therein, but the Vendee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this

Agreement or in and to the Lease and the payments to be made thereunder.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to or a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any 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 tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the release of the 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 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 by it of each unit of the Equipment under this Agreement, the Builder will have good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature other than this Agreement, the Assignment and the Lease.

The agreement of the parties relating to warranties of material and workmanship and patent indemnification

are set forth in Items 3 and 4, respectively, of Annex A hereto.

ARTICLE 14. Assignments. The Vendee will not (a) except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment or (b), without the prior written consent of the Vendor, sell, assign or otherwise dispose of its rights under this Agreement. Any such sale, assignment or disposition which may be made by the Vendee to another party shall be subject to the assumption by such party of all of the obligations of the Vendee hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the 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 and the Lessee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's 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 in such manner 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 CSA Indebtedness or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the 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, as the case may be, 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 12 business days after the date such payment is due and payable; or

(b) 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 shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified,

stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Lease and the Consent 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 proceeding shall be commenced by or against the Vendee or the Lessee for any relief 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 the obligations hereunder or under the Lease, the Lease Assignment, the Consent or the Participation Agreement of the Vendee or the Lessee, as the case may be), 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 or the Lessee under this Agreement, the Lease, the Lease Assignment, the Consent and/or the Participation Agreement, as the case may be, shall not have been (and shall not continue to be), 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 its or their property in connection with any such proceedings in such manner that such obligations 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 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) an Event of Default shall have occurred under the Lease; provided, however, that an Event of Default under paragraph (a) of § 10 of the Lease shall not be deemed to be an event of default hereunder if, prior to the expiration of the 12 business day period provided by subparagraph (a) of Article 15 hereof, the Vendee shall make payment of all amounts in default under subparagraph (a) of Article 15 hereof;

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) cause the Lease immediately upon such notice to terminate (and the Vendee acknowledges the right of the Vendor to terminate the Lease), but without affecting the indemnities which by the provisions of the Lease survive its termination and/or (ii) declare (hereinafter called a "Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of the CSA Indebtedness and interest thereon shall bear interest from the date of such Declaration of Default at the Penalty 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, and to collect such judgment out of any property of the Vendee, subject to the provisions of Article 4 hereof, wherever situated. The Vendee shall promptly notify the Vendor of any event of which the Vendee has actual knowledge which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or 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 par-

ties 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 understood and 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. At any time during the continuance of a Declaration of Default, the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 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 in the premises, 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 may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee and the Lessee by telegram or registered mail, addressed as provided in Article 20 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the 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 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.

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 any unit 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 City, New York, 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 or the Lessee may bid for and become the purchaser of the Equipment, or any unit

thereof, so offered for sale, provided that the Lessee may not so bid if it shall have caused the Event or Events of Default in respect of which the relevant Declaration of Default was made. The Vendee and the Lessee shall be given written notice of such sale or the making of a contract for such sale not less than ten days prior thereto, by telegram or registered mail. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where fewer than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee and the Vendee to purchase or provide a purchaser, within 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 any 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 duly granted to the Vendee or the Lessee shall not otherwise affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to 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 Penalty 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 such reasonable expenses 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, waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Recording. The 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 and the CSA Assignment, 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 modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Vendee.

ARTICLE 20. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first class mail, postage prepaid, at the following addresses:

(a) to the Lessee, at 1310 Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, attention of Vice President and Treasurer,

(b) to the Vendee, at 1200 Philadelphia Pike, Wilmington, Delaware 19809, Attention of President,

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

(d) to the Assignee, at Three Girard Plaza, Philadelphia, Pennsylvania 19101, Attention of Corporate Trust Division,

(e) to any assignee of the Vendor, or of the Vendee, at such address as may have been furnished in writing to the Vendee or the Vendor, 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 to this Agreement.

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

The obligations of the Vendee under the second 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 hereunder pursuant to Article 15 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

ARTICLE 22. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act 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. The Vendee warrants that its principal place of business is located in the State of Delaware.

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.

BETHLEHEM STEEL CORPORATION,

by

David R. ...
Vice President

[CORPORATE SEAL]

Attest:

R. J. ...
Assistant Secretary

HELEASCO ONE, INC.,

by

President

[CORPORATE SEAL]

Attest:

Secretary

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

On this 26th day of July 1978, before me personally appeared David Adams IV, to me personally known, who, being by me duly sworn, says that he is a Vice President of BETHLEHEM STEEL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

J. the H. Vary

Notary Public

[Notarial Seal]

My Commission expires My Commission Expires
July 17, 1982
City of Bethlehem
Lehigh County

STATE OF DELAWARE,)
) ss.:
COUNTY OF NEW CASTLE,)

On this day of 1978, before me personally appeared Donald W. Turner, to me personally known, who, being by me duly sworn, says that he is President of HELEASCO ONE, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation, by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

SCHEDULE I

Allocation Schedule
of Each \$1,000,000 of CSA Indebtedness
Payable, in. (i) One Interim Payment,
and (ii) 59 Quarterly Installments
Commencing on January 1, 1979

<u>Installment No.</u>	<u>Debt Service</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Ending Principal</u>	
(Interim Payment)	(10/1/78)	\$ *	\$ *	\$ -0-	\$1000000.00
1	(1/1/79)	33296.81	25000.00**	8296.81	991703.19
2	(4/1/79)	33296.81	24792.58	8504.23	983198.96
3	(7/1/79)	33296.81	24579.97	8716.84	974482.12
4	(10/1/79)	33296.81	24362.05	8934.76	965547.36
5	(1/1/80)	33296.81	24138.68	9158.13	956389.23
6	(4/1/80)	33296.81	23909.73	9387.08	947002.15
7	(7/1/80)	33296.81	23675.05	9621.76	937380.39
8	(10/1/80)	33296.81	23434.51	9862.30	927518.09
9	(1/1/81)	33296.81	23187.95	10108.86	917409.23
10	(4/1/81)	33296.81	22935.23	10361.58	907047.65
11	(7/1/81)	33296.81	22676.19	10620.62	896427.03
12	(10/1/81)	33296.81	22410.68	10886.13	885540.90
13	(1/1/82)	33296.81	22138.52	11158.29	874382.61
14	(4/1/82)	33296.81	21859.57	11437.24	862945.37
15	(7/1/82)	33296.81	21573.63	11723.18	851222.19
16	(10/1/82)	33296.81	21280.55	12016.26	839205.93
17	(1/1/83)	33296.81	20980.15	12316.66	826889.27
18	(4/1/83)	33296.81	20672.23	12624.58	814264.69
19	(7/1/83)	33296.81	20356.62	12940.19	801324.50
20	(10/1/83)	33296.81	20033.11	13263.70	788060.80
21	(1/1/84)	33296.81	19701.52	13595.29	774465.51
22	(4/1/84)	33296.81	19361.64	13935.17	760530.34
23	(7/1/84)	33296.81	19013.26	14283.55	746246.79
24	(10/1/84)	33296.81	18656.17	14640.64	731606.15
25	(1/1/85)	33296.81	18290.15	15006.66	716599.49
26	(4/1/85)	33296.81	17914.99	15381.82	701217.67
27	(7/1/85)	33296.81	17530.44	15766.37	685451.30
28	(10/1/85)	33296.81	17136.28	16160.53	669290.77
29	(1/1/86)	33296.81	16732.27	16564.54	652726.23
30	(4/1/86)	33296.81	16318.16	16978.65	635747.58
31	(7/1/86)	33296.81	15893.69	17403.12	618344.46
32	(10/1/86)	33296.81	15458.61	17838.20	600506.26

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

** This figure will be reduced if any Closing Date occurs after September 30, 1978.

<u>Installment No.</u>		<u>Debt Service</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Ending Principal</u>
33	(1/1/87)	33296.81	15012.66	18284.15	582222.11
34	(4/1/87)	33296.81	14555.55	18741.26	563480.85
35	(7/1/87)	33296.81	14087.02	19209.79	544271.06
36	(10/1/87)	33296.81	13606.78	19690.03	524581.03
37	(1/1/88)	33296.81	13114.53	20182.28	504398.75
38	(4/1/88)	33296.81	12609.97	20686.84	483711.91
39	(7/1/88)	33296.81	12092.80	21204.01	462507.90
40	(10/1/88)	33296.81	11562.70	21734.11	440773.79
41	(1/1/89)	33296.81	11019.34	22277.47	418496.32
42	(4/1/89)	33296.81	10462.41	22834.40	395661.92
43	(7/1/89)	33296.81	9891.55	23405.26	372256.66
44	(10/1/89)	33296.81	9306.42	23990.39	348266.27
45	(1/1/90)	33296.81	8706.66	24590.15	323676.12
46	(4/1/90)	33296.81	8091.90	25204.91	298471.21
47	(7/1/90)	33296.81	7461.78	25835.03	272636.18
48	(10/1/90)	33296.81	6815.90	26480.91	246155.27
49	(1/1/91)	33296.81	6153.88	27142.93	219012.34
50	(4/1/91)	33296.81	5475.31	27821.50	191190.84
51	(7/1/91)	33296.81	4779.77	28517.04	162673.80
52	(10/1/91)	33296.81	4066.84	29229.97	133443.83
53	(1/1/92)	33296.81	3336.10	29960.71	103483.12
54	(4/1/92)	21583.73	2587.08	18996.65	84486.47
55	(7/1/92)	18599.32	2112.16	16487.16	67999.31
56	(10/1/92)	18401.36	1699.98	16701.38	51297.93
57	(1/1/93)	18200.68	1282.45	16918.23	34379.70
58	(4/1/93)	17937.63	859.49	17078.14	17301.56
59	(7/1/93)	17734.10	432.54	17301.56	0.00
TOTALS		1877187.75	877187.75	1000000.00	

Annex A
to
Conditional Sale Agreement

- Item 1: Bethlehem Steel Corporation, a Delaware corporation, Bethlehem, Pennsylvania 18016, Attention of Manager of Railroad Product Sales (the "Builder").
- Item 2: The Equipment shall be settled for in not more than three Groups of units of Equipment delivered to and accepted by the Vendee.
- Item 3: The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the the Conditional Sale Agreement to which this Annex A is attached (hereinafter in this Annex A called "this Agreement") and warrants that the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Lessee and not manufactured by the Builder) and workmanship under normal use and service, the Builder's obligation under this Item 3 being limited to making good at its plant any part or parts of any unit of such Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Vendee, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. EXCEPT FOR THE OBLIGATIONS AND LIABILITIES OF THE BUILDER UNDER ARTICLES 2, 3 AND 4 OF THIS AGREEMENT AND ITEM 4 OF THIS ANNEX A, THE FOREGOING WARRANTY OF THE BUILDER IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER, and the Builder does not assume or authorize any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid. It is further agreed that in no event shall the Builder be liable for indirect or consequential damages of any kind.

The Builder further agrees 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.

Item 4: The Builder agrees (except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder) to indemnify, protect and hold harmless the Vendee and, as third party beneficiary hereof, the Lessee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, the Lessee, or its or their assigns, because of the use in or about the construction or operation of any of such Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. Pursuant to § 9 of the Lease the Lessee likewise will indemnify, protect and hold harmless the Builder and the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Builder and the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Lessee every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee and purchased

or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Lessee or the Vendee or the users of the Equipment all and every such further assurance as may be reasonably requested by the Lessee or the Vendee to more fully effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Lessee of any claim known to the Builder as a result of which liability may be charged against the Lessee hereunder and the Vendee will give notice to the Builder of any claim known to the Vendee from which liability may be charged against the Builder hereunder. The undertakings set forth herein shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement or the satisfaction, discharge or the termination of this Agreement in any manner whatsoever.

- Item 5: The Maximum Purchase Price referred to in Article 4 of this Agreement is \$9,984,480 plus $\frac{100}{73.75}$ of the amount (the "Increased Investors' Amount") by which the Investors' commitments are increased pursuant to the first paragraph of Paragraph 2 of the Participation Agreement.
- Item 6: The maximum CSA Indebtedness referred to in Article 4 of this Agreement is \$7,375,000 plus the Increased Investors' Amount.

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 Road Numbers (Both Inclusive)</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
100-ton open-top general service hopper cars AAR Mechanical Designation: HT	DF 3400-486	Johnstown, Pennsylvania	341	CR-487825- CR-488165	\$29,280	\$9,984,480	August- September 1978, at Johnstown, Pennsylvania

ANNEX C
to
Conditional Sale Agreement

[CS&M Ref. 5406-001]

LEASE OF RAILROAD EQUIPMENT

Dated as of June 1, 1978

between

CONSOLIDATED RAIL CORPORATION,
as Lessee,

and

HELEASCO ONE, INC.,
as Lessor.

Lease of Railroad Equipment

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Schedule I--Schedule of Equipment

Schedule 2--Casualty Values

LEASE OF RAILROAD EQUIPMENT dated as of June 1, 1978, between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (the "Lessee"), and HELEASCO ONE, INC., a Delaware corporation (the "Lessor").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with Bethlehem Steel Corporation (the "Builder"), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule 1 hereto (the "Equipment");

WHEREAS the Builder is assigning its interests in the CSA to Girard Bank, acting as Agent (together with its successors and assigns, called the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Lessee, the Lessor, the Vendor and the parties named in Schedule A thereto;

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

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

§ 1. Net Lease. This Lease is a net lease; the Lessee's obligations hereunder shall be absolute and unconditional, and, except as herein provided, the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the CSA, or against the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect

in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, any prohibition or restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. The Lessor will cause the Units to be delivered to the Lessee at the point within the United States of America at which the Units are 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, shall accept delivery of such Unit and the Lessee shall execute and deliver to the Lessor a certificate of acceptance (the "Certificate of Acceptance") in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, 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.

§ 3. Rentals. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease one interim payment and 60 consecutive quarterly payments payable in advance. The interim payment for each such Unit is payable on October 1, 1978, and shall be in an amount equal to the product of the Purchase Price (as defined in the CSA) for such Unit multiplied by .027778% for each day elapsed from and including the Closing Date (as defined in the CSA) for such Unit under the CSA to but not including October 1, 1978. The 60 quarterly payments are payable on the Closing Date for such Unit and thereafter on January 1, April 1, July 1 and October 1 in each year, commencing January 1, 1979, to and including July 1, 1993. Each such quarterly payment shall be in an amount equal to 2.45564% of the Purchase Price of each such Unit then subject to this Lease.

The Lessee shall pay as additional rental the following: (i) on the Cut-Off Date (as defined in Paragraph 8 of the Participation Agreement), an amount equal to any Investment Deficiency payable by the Lessor pursuant to the first paragraph of Paragraph 8 of the Participation Agreement plus any amount payable by the Lessor in respect of interest on any Surplus Deposit pursuant to clause (a) of the final paragraph of Paragraph 8 of the Participation Agreement, and (ii) on October 1, 1978, an amount equal to any interim interest payable by the Lessor pursuant to clause (b) of the final paragraph of Paragraph 8 of the Participation Agreement.

The rental payments hereinbefore set forth are subject to adjustment pursuant to § 16 hereof.

If any rental payment date referred to above is not a business day the rental otherwise payable on such date shall be payable on the next business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Philadelphia, 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, but excluding payments due to the Lessor by reason of § 16 hereof) if and to the extent provided in any

assignment of this Lease to the Vendor, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the CSA, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in immediately available funds to the Vendor by 11:00 a.m., Philadelphia time, on the date such payment is due.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 14 hereof, shall terminate 90 days after 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 of the term of 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 at its own expense will cause each Unit to be kept numbered with the road number set forth in Schedule 1 hereto, or in the case of any Unit not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED

UNDER THE INTERSTATE COMMERCE ACT, SECTION 20c", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and 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 or permit any such Unit to be placed 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 or permit to be changed the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to such effect. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

Except as provided in the 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.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, Federal or foreign taxes (other than any United States Federal income tax payable by the Lessor in consequence of the receipt of payments provided for herein and, to the extent that the Lessor receives credit therefor against its United States Federal income tax liability, any foreign income tax, and other than the aggregate of all state or local taxes measured by net income based on such receipts and value added taxes in lieu of such net income taxes up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state and other than any state franchise tax which is not based on or measured by net income, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines

or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions") hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the CSA, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the interest of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as such imposition remains unpaid and Lessee is contesting in its own name and in good faith and by appropriate legal or administrative proceedings such impositions, or the Lessor is required to contest such impositions as provided in this § 6, and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Lessor or the Vendor under the CSA. The Lessee agrees to give the Lessor notice of such contest brought in Lessee's name within 30 days after institution thereof and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall pay the Lessor on presentation of an invoice therefor if the Lessor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Lessor) or the Lessee shall have approved the payment thereof, and the Lessor agrees to give the Lessee written notice promptly after it first obtains knowledge of the making of such charge or levy, and agrees to take such other action as may reasonably be requested by the Lessee for the purpose of contesting payment or obtaining refund of all or a portion of such imposition, as hereinafter provided in this § 6.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative provision of the CSA not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed imposi-

tions hereunder) to the Lessor to fulfill completely its obligations pursuant to said provision; provided, however, that the Lessor shall have contested (if required to do so under this § 6) such impositions in good faith and to the extent permitted under the CSA.

In the event any returns, statements or reports with respect to impositions involving any Unit 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 such Units, as shall be satisfactory to them or, where not so permitted, will notify the Lessor and the Vendor of such requirement and will prepare and deliver such reports to them within a reasonable period of time prior to the time such reports are to be filed in such manner as shall be satisfactory to them.

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

In the event the Lessee may be prohibited by law or is impaired from contesting in its own name any imposition covered by this § 6 in respect of which the Lessee would otherwise be required to make payments to the Lessor pursuant hereto, the Lessor shall, upon request and at the expense of the Lessee, take all legal and other appropriate action reasonably requested by the Lessee to contest such imposition. The Lessor shall not be obligated to take any such action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein. The Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action taken by the Lessor or Lessee under this § 6. The Lessee shall be entitled to any refund received by the Lessor or the Lessee in respect of any imposition paid 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.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, state-

ments, 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.

The amount which the Lessee shall be required to pay with respect to any imposition which is subject to indemnification under this § 6 shall be an amount sufficient to restore the Lessor to the same net after tax rate of return and after tax cash position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that the Lessor would have been in had such imposition not been imposed.

§ 7. Maintenance; Casualty Occurrences; Insurance. The Lessee agrees that, at the Lessee's own cost and expense, it will be responsible for ordinary maintenance and repairs required to maintain and keep all of the Units which are subject to this Lease in good operating order, repair and condition and eligible for interchange service.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, or permanently rendered unfit for use from any cause other than obsolescence, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government for a stated period not in excess of the then remaining term of the CSA (such occurrences being hereinafter called "Casualty Occurrences"), during the term of this Lease, or until such Unit shall have been returned in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice (other than the Closing Date rental payment date) the Lessee shall pay to the Lessor an amount equal to a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule referred to below plus, in the case of any payment made on October 1, 1978, the rental payment due on said date. 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 or complete destruction of such Unit) the Lessor shall be

entitled to recover possession of such Unit and the Lessee shall pay all costs of removal of such Unit and of freight to the place designated pursuant to § 14 hereof.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule 2 hereto opposite such date; provided, however, that if the Casualty Value for any Unit as of such payment date as determined pursuant to Schedule 2 reflects an amount representing investment credit recapture to the Owner that is greater or lesser than the actual amount of investment credit recapture incurred by the Lessor as a result of the Casualty Occurrence to such Unit, the Casualty Value for such Unit as so determined shall be appropriately decreased or increased so as to reflect the actual amount of investment credit recapture incurred by the Lessor as a result of the Casualty Occurrence to such Unit.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease at the expiration of the original or extended term thereof and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly 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 20% of the Purchase Price of such Unit (unless such termination occurs after the term of this Lease has been extended pursuant to § 13 hereof, in which case the amount of such Casualty Value shall be as agreed upon between the Lessor and the Lessee at the time of such extension). 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), the Lessor shall be entitled to recover possession of such Unit.

The Lessor hereby irrevocably appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, before or after the expiration of this Lease, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, has made any payments required by § 6 hereof or by § 16 hereof and no Event of Default or event which after notice or lapse of time or both would have 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 for use (which is not a Casualty Occurrence) by the United States Government (the "Government") of any Unit during the term of this Lease or any renewal thereof, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease, 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, 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 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, 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 Equipment 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, with such carriers 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. 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, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to such 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 from the Lessee's insurance coverage in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§ 8. Reports and Inspection. On or before April 30 in each year, commencing with the calendar year 1979, the Lessee will furnish to the Lessor and the Vendor (a) an accurate statement (i) 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, (ii) 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 and by the CSA have been preserved or replaced and (iii) setting forth a description of the insurance in effect with respect to the Equipment pursuant to § 7 hereof, and (b) a certification of insurance coverage from the Lessee's independent broker stating the amounts of such insurance in effect and the amount of deductible. The Lessor, at its sole cost and 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 may request during the continuance of this Lease. The Lessee shall promptly notify the Lessor and the Vendor of any material changes or any material proposed changes of which the Lessee has knowledge in its insurance coverage in effect with respect to the Equipment pursuant to § 7 hereof.

The Lessee shall furnish to the Lessor the reports

required to be furnished to the Lessor pursuant to Paragraph 10 of the Participation Agreement.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules. 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 of the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, 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 all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units and with all applicable interchange rules, 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 upon written notice to the Lessor and Vendor 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 reasonable opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the CSA. The Lessee, at its own cost and expense, may furnish other additions, modifications and improvements to the Units during the term of this Lease. Any additions, modifications and improvements made by the Lessee which are readily removable without causing material damage to the Units shall be owned by the Lessee and may be removed by the Lessee at any time during the term of this Lease or any renewal thereof and prior to the return thereof to the Lessor pursuant to § 11 or § 14 hereof, except additions, modifications and improvements required to maintain each Unit's eligibility for interchange service or to comply with the provisions of the first paragraph of § 7 or the first sentence of this paragraph.

The Lessee agrees to indemnify, protect and hold harmless the Lessor 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 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 ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any

accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease, or the transfer of title to the Equipment by the Vendor pursuant to any provision of the CSA. The indemnities arising under this paragraph shall continue in full force and effect with respect to all events, facts, conditions or other circumstances occurring or existing prior to the expiration or termination of the term of this Lease and return of the Units as provided in § 14 of this Lease; provided, however, that the foregoing indemnification shall not apply to any failure of payment of the principal of or interest on the CSA Indebtedness (as defined in the CSA) and shall not be deemed to operate as a guaranty of the residual value of any Unit. The amount the Lessee shall be required to pay with respect to any of its obligations under this paragraph shall include a payment to the indemnified party sufficient to restore such party to the same position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that the indemnified party would have been in had the liability or expense indemnified against not been incurred.

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

The Lessee 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.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (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 (an "Event of Default") shall occur:

(a) default shall be made in payment of any amount provided for in § 3 or § 7 of this Lease and such default shall continue for 10 business days, or default shall be made in payment of any other amount provided for in this Lease and such default shall continue for 10 business days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

(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 and shall fail or refuse to cause such assignment or transfer to be canceled and to recover possession of such Units within 15 days after written notice from the Lessor to the Lessee demanding the same;

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

(d) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and the Consent (as defined in the CSA) 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

(e) any other proceedings 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 or under the Consent), 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 and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

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

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

(ii) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its

agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, sell, operate, lease to others and enjoy the same free from any right of the Lessee 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, 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 clause of this part (ii) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the 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 (i) 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 and (ii) 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 failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

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

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessor may, 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 Lessor, take or cause to be taken by its agent or agents, immediate possession of each of the Units, and may remove the same from possession and use of the Lessee or any other person and for such purpose may enter upon the premises of the Lessee or any other premises where the Units may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities of the Lessee, subject to all mandatory requirements of due process of law.

If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor and shall give prompt telegraphic notice to the Association of American Railroads and all railroads

having possession of any Unit so to return such Units. Each Unit so delivered shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall:

(a) forthwith and in the usual manner 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 in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. 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 after such termination an amount equal to the amount, if any, by which the product of (i) a fraction the numerator of which is 10% and the denominator of which is 360, and (ii) the Purchase Price of such Unit for each such

day exceeds the actual earnings received by the Lessor on such Unit for each such day; such payment shall not affect the obligation of the Lessee to redeliver the Equipment pursuant to the first sentence of this paragraph.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of 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 (including, but not limited to, the rights under §§ 6, 7, 10 and 16 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns.

So long as no Event of Default or event which after notice or lapse of time or both would become an Event of Default shall have occurred and be continuing, and the Lessee shall have fully complied with all other provisions of this § 12, the Lessee shall be entitled to the possession and use of the Units on its own lines of railroad or lines over which it has trackage rights, and upon connecting and other carriers but only in the usual interchange of traffic in the continental United States and Canada, and only upon and subject to all the terms and conditions of this Lease; but the Lessee shall not sublease, assign, or otherwise make any disposition of the right to possession and use of the Units, except with the Lessor's prior written consent.

The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor, the Vendee or the Vendor not related to the ownership or leasing of, or the security title of the Vendor to, the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interest of the Lessor, the Vendor or the Lessee therein; except that this covenant will not be

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; and, furthermore, the Lessee shall be under no obligation to discharge any such lien, charge, security interest or encumbrance so long as it is contesting the same in good faith and by appropriate legal proceedings and the failure to discharge the same does not, in the opinions of the Lessor and the Vendor, adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the CSA.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all the lines of railroad of the Lessee; provided, however, that such assignee, lessee or transferee will not, upon the effectiveness of such merger, consolidation, lease or acquisition be in default under any provision of this Lease and that such acquisition or lease of railroad lines of the Lessee shall not alter in any way the Lessee's obligation to the Lessor and Vendor hereunder which shall be and remain those of a principal and not a surety.

§ 13. Renewal Options and Purchase Option.

The Lessor intends to retain the units for re-lease at the expiration of the term of this Lease. 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 nor more than nine months prior to the end of the original term or the first extended term of this Lease 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 an additional five year period commencing on the scheduled expiration of the original term or the first extended term of this Lease, as the case may be. Such extension shall be on the same terms and conditions as are contained in this Lease, except as to the amount of rentals, which shall be at a "Fair Market Rental"

(as defined in this § 13) payable quarterly in advance, and except as to applicable Casualty Values, which shall be as agreed upon between the Lessor and the Lessee at the time of such extension.

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 nor more than nine months prior to the end of the original term or any extended term of this Lease elect to purchase all but not fewer than all of the Units then covered by this Lease at a Fair Market Purchase Price (as defined in this § 13) payable at the end of the then current term of this Lease.

Fair Market Rental and Fair Market Purchase Price shall be determined on the basis of, and shall be equal in amount to, the rental or purchase price, as the case may be, which would obtain in an arm's length transaction between an informed and willing lessee (other than a lessee currently in possession) 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. 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, the same 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 thereof 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, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental or Fair Market Purchase Price, as the case may be, of the Units within 90 days after his appointment. If the parties shall have appointed a single appraiser the determination of the single appraiser appointed shall be final. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Associa-

tion as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and Fair Market Purchase Price and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

§ 14. Return of Units upon Expiration of Lease Term. As soon as practicable on or after the termination of the term of this Lease otherwise than pursuant to § 10 hereof (and in any event not later than 90 days after the termination of the term of this Lease), the Lessee will, at its own cost and expense, at the request of the Lessor, cause each Unit to be transported to such point or points on the Lessee's lines as shall be reasonably designated by the Lessor immediately prior to such termination and store each Unit for a period not exceeding 60 days from the date on which all of such Units are first placed in storage pursuant to this § 14; the assembly, delivery, storage and transporting of each Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, 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 intentional act of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, lessee or user, the rights of inspection granted under this sentence, and after any Unit has been stored for 60 days, any further storage of such Unit shall be at the Lessor's own risk and expense, except for cost or loss arising from the Lessee's negligent or intentional acts or omissions. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and (ii) meet the

standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. If any Unit suffers a Casualty Occurrence during any storage period provided for in this § 14, the Lessee shall pay to the Lessor the Casualty Value of such Unit as determined in accordance with § 7 hereof. All gross amounts earned in respect of any Unit shall, from and after the termination of this Lease as to such Unit, belong to and be the property of the Lessor. In the event that by the 60th day after the termination of the original or any extended term of this Lease the Lessee has not, at the request of the Lessor, caused all the Units to be transported to such point or points as shall have been designated by the Lessor pursuant to this § 14, the Lessee shall pay to the Lessor applicable per diem on all Units not so assembled for each day thereafter.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the CSA and any assignment hereof or thereof to be filed with the Interstate Commerce Commission 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 hereof and thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this § 15, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor; provided, however, that no such opinion of counsel need be furnished in respect of the filing of the CSA or the assignment thereof in Canada. This Lease and the CSA shall be filed with the Interstate Commerce Commission and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision shall be made for publication of notice of such deposit in The Canada Gazette prior to the delivery and acceptance hereunder of any Unit.

§ 16. Income Taxes. (a) This Lease is entered into on the mutual assumptions that the Lessor, as the beneficial owner of the Units, shall be entitled, for Federal, state and local income tax purposes, 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"), to an owner of property, including without limitation, the full 10% investment credit allowed under section 38 and related sections of the Code in respect of the aggregate Purchase Price of the Units (the "Investment Credit"), the maximum depreciation deduction with respect to the Units authorized under section 167 of the Code based on the aggregate Purchase Price of the Units utilizing the 12-year depreciable life prescribed for the Units in the Asset Guideline Class No. 00.25 in accordance with section 167(m) of the Code, employing the double declining balance method of depreciation, switching to the sum-of-the-years-digits method without the consent of the Commissioner of Internal Revenue when most beneficial to the Lessor, utilizing the half-year convention as provided in Reg. Sec. 1.167(a)-11(c)(2)(iii) (including 6 months of depreciation in 1978) and taking into account an estimated gross salvage value of 20% of the Purchase Price of the Units which will be reduced by 10% of the Purchase Price as provided in section 167(f) of the Code (the "ADR Deduction") and deductions with respect to interest payable under the CSA pursuant to section 163 of the Code (the "Interest Deduction").

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 or which would increase the amount of rentals required to be taken into income by the Lessor over the amount specified to be payable under this Lease on the dates due hereunder, except as specifically provided herein, and that the Lessee will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Lessor such records as will enable the Lessor to determine the extent to which it is entitled to the benefit of the Investment Credit, the ADR Deduction and the Interest Deduction with respect to the Units.

The Lessee represents and warrants that (i) at the time the Lessor becomes the beneficial owner of the Units, the Units will constitute "new section 38 property" within the meaning of sections 46 and 48 of the Code, and at the time

the Lessor becomes the beneficial owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (ii) at all times during the term of the Lease, each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code, and the Lessee will not at any time during the term of the Lease use or fail to use any Unit in such a way as to disqualify it as "section 38 property" within the meaning of section 48(a) of the Code; (iii) for Federal income tax purposes, all amounts includible in the gross income of the Lessor with respect to the Units and all deductions allowable to the Lessor with respect to the Units will be treated as derived from, or allocable to, sources within the United States; (iv) the Lessor will be entitled to deduct the interest on the CSA Indebtedness pursuant to section 163 of the Code; (v) the Lessee will maintain sufficient records to verify use of the Units in the manner above provided, which records will be made available for inspection and copying to the Lessor within 30 days after receipt of a written demand therefor; (vi) the Lessee will not claim that it is the owner of the Units at any time prior to the exercise thereby of any right to purchase the Units pursuant to § 13 hereof; and (vii) in determining the ADR Deduction, the Lessor may depreciate the Purchase Price of the Units under the most accelerated method of depreciation under section 167(b) of the Code over the 12-year depreciable life prescribed in Asset Guideline Class No. 00.25 to a gross salvage value of 0% of the Purchase Price, calculated on the assumptions that each Unit will be placed in service at the time such Unit becomes subject hereto and that the basis of each Unit is at least equal to its Purchase Price.

If by reason of the inaccuracy in law or in fact of any of the representations and warranties set forth in the preceding paragraph or the breach by the Lessee of any of its agreements hereunder or any act or omission of the Lessee inconsistent with the mutual assumptions as to the tax consequences to the Lessor described in the first paragraph of this § 16(a) (unless such act or omission is required by the terms hereof) or the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee in connection with the delivery of the opinion to the Lessor by its special tax counsel, or the sale or other disposition of any Unit or the interest of the Lessor therein after the occurrence of an Event of Default hereunder the Lessor shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of or shall be required to recapture all or any portion of the

Investment Credit, the ADR Deduction or the Interest Deduction with respect to all or part of any Unit or if for Federal income tax purposes any item of income, loss or deduction with respect to any Unit is treated as derived from, or allocable to, sources without the United States (any such loss, disallowance, recapture or treatment being hereinafter called a "Loss"), then in any such case the Lessee shall pay to the Lessor on each of the dates provided herein thereafter for payment of the installments of rental hereunder, commencing with the first such date following the date on which the liability of the Lessee hereunder shall become fixed as hereinafter provided, such sums which (after deduction of all taxes required to be paid by the Lessor on the payment of such sums under the laws of the United States or any political subdivision thereof or any foreign taxing authority, in each case calculated on the assumption that such tax is payable at the highest then applicable marginal tax rate), when taken together with the rental installments due on such dates hereunder which are to be distributed to the Lessor, will, in the reasonable opinion of the Lessor, maintain the Lessor's after-tax return on and rate of recovery of investment and the annual net cash flows (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) in respect of such Unit hereunder at the same level that would have been available if such Loss had not occurred, and the Lessee shall in addition forthwith pay to the Lessor an amount which (after the deduction of any additional taxes required to be paid by the Lessor in respect of the receipt of such amount calculated on the assumption that such taxes are payable at the highest then applicable marginal tax rate) shall be equal to the amount of any interest or penalty which may be imposed in connection with such Loss. In the event that this Lease is terminated with respect to any Unit prior to the time the Lessee is obligated to make payments to the Lessor as set forth in the preceding sentence (either because no such payment obligation had become fixed under such sentence prior to such termination or because the due date of such payment or payments shall occur following such termination), then the Lessee shall pay to the Lessor, in lieu of such payment or payments, on or before 30 days after the liability of the Lessee in respect of such termination hereunder shall become fixed as hereinafter provided, such lump sum (calculated in the same manner as set forth in the preceding sentence) as shall be necessary in the reasonable opinion of the Lessor to maintain the Lessor's after-tax return on and rate of recovery of investment and the annual net cash flows (computed on the same assumptions as utilized by the Lessor in

originally evaluating this transaction) in respect of such Unit hereunder at the same level that would have been available if such Loss had not occurred. In determining the extent to which the Lessor receives credit for any foreign tax against its Federal income tax liability, it shall be assumed that credit is received for all other foreign taxes claimed as credits for the taxable year in question before credit is received for any foreign taxes indemnified hereunder which are claimed as credits for such year.

Anything in the preceding paragraph to the contrary notwithstanding, the Lessee shall not be required to make any payment to the Lessor provided for therein if the Lessor shall have suffered any Loss with respect to all or part of any Unit solely as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 7 hereof;

(ii) a voluntary transfer or other voluntary disposition by the Lessor of any interest in such Unit or the voluntary reduction by the Lessor of its interest in the rentals from such Unit hereunder (other than pursuant to the Lease Assignment, as defined in the CSA), unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the failure of the Lessor to claim in a timely manner the Investment Credit, the ADR Deduction, the Interest Deduction (unless the Lessor shall have received an opinion of its tax counsel to the effect that it is not entitled to make such claim);

(iv) the failure of the Lessor to have sufficient income to benefit from the Investment Credit, the ADR Deduction or the Interest Deduction, as applicable; or

(v) an act or omission by the Lessor inconsistent with the mutual assumptions as to the tax consequences to the Lessors described in the first paragraph of this § 16(a) (unless required by the terms hereof).

In the event a claim shall be made against the Lessor which, if successful, would result in payments by the Lessee hereunder and if, in the opinion of the Lessor's or the Lessee's independent tax counsel who is acceptable to the Lessor (herein referred to as Counsel), a bona fide defense to such claim exists, the Lessor shall, upon request and at the expense of the Lessee, contest such matter in such forum as the Lessor in its sole

judgment, shall select; provided, however, that the Lessor shall not be obligated to take any such legal or other appropriate action unless its Loss exceeds \$15,000 for the taxable year involved and it has received an opinion from Counsel that there is a reasonable basis for contesting such matter and the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested. The Lessor may, at its option, take such action prior to making payment of any tax and interest and/or penalty attributable to such claim (a "Tax Payment") or may make such Tax Payment and then sue for a refund. If the Lessor takes such action prior to making such Tax Payment, such sums payable hereunder need not be paid by the Lessee while such action is pending; provided that the Lessee shall pay the liabilities and expenses relating to such action when and as the same shall become due. In such case, if the Final Determination shall be adverse to the Lessor, the sums payable hereunder shall be computed by the Lessor as of the date of such Final Determination, the Lessor shall notify the Lessee of such computation and furnish copies thereof to the Lessee, and the Lessee shall commence payment thereof on the rental payment date hereunder next succeeding such Final Determination and, on or before such rental payment date, the Lessee shall pay to the Lessor as an additional payment hereunder an amount which (after deduction of all taxes required to be paid by the Lessor on the payment of such sums under the laws of the United States or any political subdivision thereof or any foreign taxing authority, in each case calculated on the assumption that such tax is payable at the highest then applicable marginal tax rate) shall be equal to all interest and penalty paid by the Lessor in respect of such Final Determination, together with interest thereon from the date such payment is made by the Lessor to the date the Lessee reimburses the Lessor therefor at the rate of 12% per annum. If the Lessor makes such Tax Payment prior to contesting the matter, and then sues for a refund, the sums payable hereunder shall commence to be payable by the Lessee on the first rental payment date hereunder after the Lessor notifies the Lessee that such Tax Payment has been made and, on or before such rental payment date, the Lessee shall pay to the Lessor as an additional payment hereunder an amount which (after deduction of all taxes required to be paid by the Lessor on the payment of such sums under the laws of the United States or any political subdivision thereof or any foreign taxing authority, in each case calculated on the assumption that such tax is payable at the highest then applicable marginal tax rate), shall be equal to all interest and penalty paid by the Lessor included in such Tax Payment. If the Lessor sues for a refund after making such Tax Payment, and if the Final Determination shall be in favor of the Lessor, no future payments shall be due hereunder in respect of such matter (or an appropriate reduc-

tion shall be made if the Final Determination is partly in favor of and partly adverse to the Lessor). In addition, the Lessee and the Lessor shall adjust their accounts so that (a) the Lessor pays to the Lessee (x) an amount equal to the amount of the tax indemnity theretofore paid by the Lessee to the Lessor in respect of the Tax Payment (or a proportionate part thereof if the Final Determination is partly adverse to the Lessor) on or before such next succeeding rental payment date together with interest thereon at the interest rate then being paid on tax overpayments by the United States for the period such sums were paid to the Lessor to the date the Lessor pays to the Lessee an amount equal to such sums, and (y) the amount of any penalty or interest refunded to the Lessor as a result of such Final Determination and any interest paid to the Lessor by the government on such refund, promptly upon receipt thereof and (b) the Lessee pays to the Lessor an amount equal to interest at the rate of 12% per annum on the amount of the tax refund made in respect of the Tax Payment (excluding any interest or penalty included therein) for the period from the date of the original payment of the Tax Payment by the Lessor to the date such tax refund is received by the Lessor less the amount received by the Lessor as interest on the refund that was not otherwise paid to the Lessee under clause (a)(x) of this sentence. If any such claim referred to above shall be made by the Internal Revenue Service and the Lessee shall reasonably have requested the Lessor to contest such claim as above provided and shall have duly complied with all of the terms of this § 16(a), the Lessor may elect not to contest any such claim despite the request of the Lessee, made in accordance with the terms of this paragraph, or to discontinue any proceedings previously commenced as a consequence of such request, and thereupon the Lessee shall be relieved of all liability to indemnify the Lessor with respect to the Tax Benefits involved in respect of such claim. In the event the Lessee is relieved of its obligation to indemnify the Lessor pursuant to the preceding sentence and the Lessee has paid any sums hereunder in indemnification of the Lessor (including interest and penalties), the Lessor will pay to the Lessee all such sums (including such sums paid as interest and penalties) plus interest thereon at 12% per annum for the period from the date or dates of the payment of any such sum to the date the Lessor makes such payment to the Lessee.

"Final Determination" for the purpose of the preceding paragraph, means a final decision of a court of competent jurisdiction after all allowable appeals have been exhausted by either party to the action. Neither concession by the Lessor of any of the aforementioned claims in the over-all settlement of a controversy with the Internal Revenue Service either at the administrative level or at the court level nor the failure to recover a refund in whole or in part with

respect to such claims which failure is the result of a set-off against a claim for refund based upon such claims where the matters set off do not relate to such claims will constitute an adverse "Final Determination" causing the aforementioned additional payments to accrue to the Lessor, unless such over-all settlement or set-off of a tax controversy with the Internal Revenue Service is approved by the Lessee in a separate agreement with the Lessor and the Lessee. If the Lessee does not request the Lessor to contest a claim, then the Lessee's liability hereunder shall become fixed when the Lessee receives notice of a Loss from the Lessor.

In the event payments shall be due the Lessor under this § 16, the Casualty Values set forth in § 7 hereof shall be adjusted accordingly.

§ 16(b). In the event and to the extent that the cost of any replacement, improvement and/or addition to any Unit or any expenditure by the Lessee in respect of any Unit ("Additional Expenditures") made by the Lessee, under and pursuant to the terms hereof or otherwise, is required to be included in the gross income of the Lessor for Federal, state or local income tax purposes at any time prior to the time such Unit is disposed of in a taxable transaction, then the Lessee hereby agrees that it will pay to the Lessor on each of the dates for payment of the installments of rental hereunder in respect of such Unit commencing with the first such date following the date on which such inclusion is required, such sums which (after deduction of all taxes required to be paid by the Lessor with respect to the receipt thereof under the laws of the United States or any political subdivision thereof at the highest marginal corporate rates), when taken together with the rental installments due on such dates hereunder in respect of such Unit, will, in the reasonable opinion of the Lessor, maintain the Lessor's after-tax return on and rate of recovery of investment and the annual net cash flows (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) in respect of such Unit under this Lease at the same level that would have been available if the cost or value of such Additional Expenditures had not been treated as income to the Lessor.

In the event that the Lessee shall pay all or any portion of any installment of rent hereunder prior to the date upon which such payment is required to be made, the Lessee shall pay to the Lessor an amount which, after deduction of all taxes and other charges in respect of the receipt

of such amount under the laws of any Federal, state or local governmental or taxing authority in the United States or under the laws of any foreign country or subdivision of any taxing authority thereof, shall be equal to the excess of (A) the taxes and other charges payable by the Lessor in that year as a result of the receipt of such installment of rental over (B) the taxes and other charges that would have been payable in that year by the Lessor had such installment of rent been paid by the Lessee on the date upon which such payment is required to be made hereunder.

§ 16(c). For purposes of this § 16, the term "Lessor" shall include any affiliated group of which the Lessor is a member if consolidated joint, or combined returns are filed for such affiliated group for Federal, state or local income tax purposes.

§ 16(d). All payments provided to be made to the Lessor by the Lessee pursuant to this § 16 shall be made by wire transfer of immediately available funds to such bank in the continental United States for the account of the Lessor as it from time to time shall have directed the Lessee in writing.

§ 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, interest at a rate per annum equal to 11% on the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 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, 1200 Philadelphia Pike, Wilmington, Delaware 19809, Attention of President; and

(b) if to the Lessee, at 1310 Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, Attention of Vice President and 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 Three Girard Plaza, Philadelphia, Pennsylvania 19101, Attention of Corporate Trust Division.

§ 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, 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.

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

§ 20. Governmental Guarantees; Waiver of Priority. 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 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 guarantee 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 guarantee or commitment to be provided at the same time as such other rolling stock financing arrange-

ment 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.

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 Lease to be entitled to the same 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.

§ 21. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the assignment hereof 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.

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

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

CONSOLIDATED RAIL CORPORATION,

by

[Corporate Seal]

Vice President and Treasurer

Attest:

Assistant Secretary

HELEASCO ONE, INC.,

by

President

[Corporate Seal]

Attest:

Secretary

SCHEDULE 1 TO LEASE

<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
100-ton open-top general service hopper cars AAR Mechanical Designa- tion: HT	DF 3400- 486	Johnstown, Pennsylvania	341	CR-487825- CR-488165	\$29,280	\$9,984,480	August- September, 1978, at Johnstown, Pennsylvania

SCHEDULE 2 TO LEASE
CASUALTY VALUES

Rental Payment No.	Percentage of Purchase Price	Rental Payment No.	Percentage of Purchase Price
1	101.035	31	64.572
2	102.034	32	63.170
3	102.536	33	61.735
4	102.945	34	60.264
5	103.257	35	58.756
6	103.469	36	57.225
7	103.576	37	55.668
8	103.597	38	54.085
9	103.528	39	52.474
10	103.366	40	50.838
11	103.107	41	49.174
12	102.762	42	47.482
13	95.919	43	45.761
14	95.394	44	44.012
15	94.774	45	42.233
16	94.070	46	40.438
17	93.278	47	38.666
18	92.397	48	36.924
19	91.457	49	35.216
20	90.482	50	33.542
21	83.060	51	31.906
22	82.013	52	30.317
23	80.928	53	28.779
24	79.809	54	27.295
25	78.655	55	25.867
26	77.465	56	24.458
27	76.238	57	23.057
28	74.977	58	21.664
29	67.271	59	20.278
30	65.940	60	18.905
		Thereafter	20.000

AL-1
ANNEX D
TO
CONDITIONAL SALE AGREEMENT

ASSIGNMENT OF LEASE AND AGREEMENT dated as of June 1, 1978 (this "Assignment"), by and between HELEASCO ONE, INC., (hereinafter called the "Lessor" or the "Vendee") and GIRARD BANK, as Agent (the "Vendor") under a Participation Agreement dated as of the date hereof.

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

WHEREAS, in order to provide security for the obligations of the Lessor under the CSA and as an inducement to the Vendor to invest in the CSA Indebtedness (as defined in the CSA), the Lessor agrees to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, 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 as Vendee under the CSA, all the Lessor's right, title and interest, powers, privileges, and other benefits 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 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 the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, 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. Notwithstanding the foregoing, so long as no Event of Default shall have occurred and be continuing under the Lease, the Payments shall not be deemed to include payments made by the Lessee to the Vendee pursuant to §§ 6 and 16 of the Lease.

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 to satisfy the obligations of the Lessor under the CSA and Paragraph 8 of the Participation Agreement, and, 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; provided, however, that if an event of default as provided in paragraph (a) of Article 15 of the CSA or event which with the lapse of time and/or demand provided for in the CSA could constitute such an event of default, shall have occurred and be continuing, no portion of any such Payments shall be paid to the Lessor. The Vendor shall notify the Lessor at the address set forth in the Lease if the Vendor shall not receive any rental payment under the first paragraph of § 3 of the Lease when due; 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. This Assignment is executed only as security and 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 all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee against, and only against, the Lessor or persons other than the Vendor.

3. The Lessor will faithfully abide by, perform and discharge each and every obligation and agreement which the Lease provides are 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 or in any manner release the Lessee of or from the obligations, conditions and agreements to be performed by the Lessee, 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.

4. The Lessor does hereby constitute the Vendor the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to demand, receive 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.

5. Upon the full discharge and satisfaction of all sums due from the Lessor under the CSA, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor.

6. 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.

7. 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 or further assure the interest of the Vendor hereunder.

8. 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 assignee shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

9. This Assignment shall be governed by the laws of the Commonwealth of Pennsylvania, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

10. The Lessor shall cause copies of all notices 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 Paragraph 10 of the Participation Agreement, or at such other address as the Vendor shall designate.

11. The Vendor agrees with the Lessor that, so long as no event of default under the CSA has occurred and is continuing, the Vendor will not 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 by the Lessor to the Vendor by this Assignment to the extent they are for the sole benefit of the Lessor and not required to satisfy the obligations of the Lessor under the CSA, without the prior consent of the Lessor.

12. Notwithstanding any other provision of this Assignment (including, but not limited to, any provision of the first paragraph of Paragraph 1 and Paragraph 3 hereof), so long as there is no event of default under the CSA, and to the extent that the Vendor does not seek to receive and collect any Payments under the Lease in excess of the amounts required to discharge the obligations of the Lessor under the CSA or amounts payable under § 16 of the Lease, this Assignment shall not limit or in any way affect the Lessor's right to receive and collect any Payments under the Lease in excess of the obligations of the Lessor under the CSA, or empower the Vendor to waive or release the Lessee's

obligation to pay the same, and the Lessor shall continue to be empowered to demand, sue for, collect and receive any and all of such excess amounts and amounts payable under § 16 of the Lease, but the Lessor shall not take any action under subparagraph (ii) of § 10 of the Lease without the written consent of the Vendor.

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

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

HELEASCO ONE, INC.,

by

[Corporate Seal]

President

Attest:

Secretary

GIRARD BANK, as Agent,

by

[Corporate Seal]

Vice President

Attest:

Assistant Secretary

STATE OF DELAWARE,)
) ss.:
COUNTY OF NEW CASTLE,)

On this day of 1978, before me, personally appeared Donald W. Turner, to me personally known, who, being by me duly sworn, says that he is President of HELEASCO ONE, INC., that the corporate seal affixed to the foregoing instrument is the seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

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

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

Notary Public

[Notarial Seal]

My Commission expires

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 are hereinafter called the "Payments") due and to become due under the Lease or otherwise in respect of the Units (as defined in the Lease) leased thereunder, directly to Girard Bank, as Agent (the "Vendor"), the assignee named in the Lease Assignment, at Three Girard Plaza, Philadelphia, Pennsylvania 19101, Attention of Corporate Trust Division (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) in accordance with the provisions of the Lease Assignment, 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;

(3) the Vendor shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease;

(4) the Lease shall not, without the prior written consent of the Vendor, be terminated or modified, 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; and

(5) it will mail or deliver one copy of all notices, statements, documents or schedules given or delivered by it pursuant to the Lease or Lease Assignment to the Vendor.

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 Commonwealth of Pennsylvania and, for all purposes, shall be construed in accordance with the laws of said Commonwealth.

CONSOLIDATED RAIL CORPORATION,
as Lessee,

by

[Corporate Seal]

Vice President

Attest:

Assistant Secretary

The foregoing Consent and Agreement is hereby
accepted, as of June 1, 1978.

GIRARD BANK, as Agent,

by

Vice President

CONDITIONAL SALE AGREEMENT

Dated as of June 1, 1978

between

HELEASCO ONE, INC.,
as Vendee,

and

BETHLEHEM STEEL CORPORATION,
as Builder and Vendor.

10% Conditional Sale Indebtedness due July 1, 1993

CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT dated as of June 1, 1978, between BETHLEHEM STEEL CORPORATION, a Delaware corporation (hereinafter called the "Builder" or the "Vendor" as the context may require, all as more particularly set forth in Article 1 hereof) and HELEASCO ONE, INC., a Delaware corporation (the "Vendee").

WHEREAS the Builder agrees to construct, sell and deliver to the Vendee, and the Vendee agrees to purchase, the railroad equipment described in Annex B hereto (the "Equipment");

WHEREAS the Vendee is entering into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") with Consolidated Rail Corporation (the "Lessee") substantially in the form of Annex C hereto; and

WHEREAS Girard Bank (hereinafter sometimes called the "Assignee" or the "Vendor") is acting as agent for certain investors (the "Investors") pursuant to the Participation Agreement dated as of the date hereof (the "Participation Agreement"), among the Assignee, the Lessee, the Vendee and the Investors.

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 dated as of the date hereof (the "CSA Assignment") between the Builder and the Assignee, as agent.

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

in this Agreement, means, before any such assignment, the Builder, as the context may require, 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.

In case of such assignment, the Vendee will assign to the Vendor, as security for the payment and performance of all the Vendee's obligations hereunder, all right, title, and interest of the Vendee in and to the Lease, pursuant to an Assignment of Lease and Agreement substantially in the form of Annex D hereto (the "Lease Assignment") and the Lessee shall consent thereto pursuant to a Consent and Agreement substantially in the form attached to Annex D (the "Consent").

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Annex B hereto and will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for, 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 U.S. 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.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of Equipment to the Vendee at the place specified in Annex B hereto (or if Annex B does not specify a place, at the place designated by the Vendee), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of the Equipment shall not be made until this Agreement and the Lease 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 provided, further, that

the Builder shall not have any obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clauses (c) or (d) of Article 15 hereof or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default. The Builder agrees not to deliver any unit of the Equipment hereunder (a) following receipt of written notice from the Vendee or the Assignee of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, until such time as such written notice may be canceled by a further written notice, and (b) until it receives notice from the Assignee that the conditions contained in Paragraph 6 of the Participation Agreement have been met and from the Vendee that the conditions contained in Paragraph 7 of the Participation Agreement have been met.

Any unit of Equipment not delivered at the time of receipt 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 28, 1978, by reason of noncompliance with the conditions referred to in the preceding paragraph or the causes set forth in the next 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 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 relating thereto (as defined in the Participation Agreement) 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 it 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 authorized inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Prior to delivery, each unit of the Equipment shall be presented to an inspector of the Vendee for inspection at the place specified for delivery or at the plant of the Builder specified in Annex B hereto, 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 (as defined in the Lease); provided, however, that the Builder shall not thereby be relieved of its warranties referred to in Article 13 hereof.

On delivery by the Builder hereunder of units of Equipment 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 warranties 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 may be agreed to by the Builder, the Vendee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased as set forth in the invoice or invoices (the "Invoice or Invoices") of the Builder delivered to the Vendee; and, if the Purchase Price is other than the base price or prices set forth in Annex B, the Invoice or Invoices shall be accompanied by, or have endorsed thereon, the approval of the Vendee and the Lessee. If on any Closing Date (as hereinafter defined in this Article) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made under this Agreement 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 the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as aforesaid).

The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Vendee 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 business day (not later than December 28, 1978, such date being herein called the "Cut-Off Date"), occurring not more than ten business days following presentation by the Builder to the Vendee of the Invoices (with copies to the Lessee) and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Lessee by written notice delivered to the Vendee and the Assignee 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 Philadelphia, 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 cash 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 an amount equal to (i) 26.25% of the aggregate Purchase Price of such Group up to the Maximum Purchase Price, plus, (ii) to the extent the Vendee shall have agreed, any amount by which the aggregate Purchase Price exceeds the Maximum Purchase Price; and

(b) in 59 quarterly installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (herein called the "CSA Indebtedness") shall be payable on each January 1, April 1, July 1 and October 1 beginning January 1, 1979 to and including July 1, 1993 (or if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the CSA Indebtedness shall bear interest from the Closing Date in respect of which such CSA Indebtedness was incurred at the rate of 10% per annum, payable (to the extent accrued) (i) on October 1, 1978, and (ii) on each Payment Date thereafter. 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 amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto and the aggregate of such installments of principal will completely amortize the CSA Indebtedness. The Vendee will furnish to the Vendor promptly after each 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 except that interest payable on October 1, 1978, shall be calculated on an actual elapsed day basis.

The Vendee will pay, to the extent legally enforce-

able, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at the rate of 11% per annum (the "Penalty Rate").

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 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 Vendor agrees that the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under and pursuant this Agreement, including any liability arising out of or in connection with the performance of its obligations hereunder (excluding only the obligations set forth in subparagraph (a) of the third paragraph of this Article 4 and the proviso in the third paragraph of Article 12 hereof) shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be required to be made by the Vendee only to the extent that the Vendee or any assignee of the Vendee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the preceding sentence, the Vendor agrees that the Vendee shall have no personal liability to make any payments under this Agreement except from the "income and proceeds from the Equipment". In addition, the Vendor agrees that the Vendee (i) makes no representation or warranty, and is not responsible for, the execution, validity, sufficiency or enforceability of the Lease insofar as it relates to the Lessee (or any document relative thereto) or of any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease or the Consent; 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 assignee of the Vendee at any time after the occurrence of any such event of default and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 10 or any other provision of the Lease and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time, only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee or any assignee of the Vendee 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 assignee of the Vendee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Notwithstanding anything to the contrary contained in Article 15 or 16 hereof, the Vendor agrees that in the event it 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, it 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 or the Vendee's interest in the Lease for the full unpaid Purchase Price of the Equipment and accrued interest thereon and all other payments and obligations hereunder.

ARTICLE 5. Security Interest in the Equipment.
The Vendor shall and hereby does retain a security interest

in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, 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.

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, at the Vendee's expense, (a) execute a bill or bills of sale for the Equipment releasing its security 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 at its address referred to in Article 20 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand 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 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 by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security interest 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 or the Lessee 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 security interest 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; Insurance. The Vendee agrees that, at the Vendee's own cost and expense, it will be responsible for ordinary maintenance and repairs required to maintain and keep all of the units of the Equipment which are subject to this Agreement in good operating order, repair and condition and eligible for interchange service.

In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, or permanently rendered unfit for use from any

cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except a requisition for use by the United States Government for a stated period not in excess of the remaining term of this Agreement (such occurrences being hereinafter 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 next succeeding date for the payment of interest on the CSA Indebtedness (each such date being hereinafter called a "Casualty Payment Date"), the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal due on such date) to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the CSA Indebtedness and the Vendee will promptly furnish to the Vendor a revised schedule of payments of principal and interest thereafter to be made. In the event of the requisition for use (which is not a Casualty Occurrence) of any unit of the Equipment, 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 date as of which such Casualty Value shall be

determined (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 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 from the Lessee's insurance coverage any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall, subject to the Vendor having received payment of the Casualty Value hereunder, 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 or units 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.

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 identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the 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 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 operations involving the Equipment may extend, with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, and with all applicable interchange rules, 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 Equipment by the Builder to the Vendee, to the possession of such 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. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Vendor, it being agreed that such consent shall not be unreasonably withheld for changes in § 6 or § 16 of the Lease which are not intended or necessary to satisfy the obligations of the Vendee under this Agreement or the security provided to the Vendor under this Agreement or the Lease Assignment.

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 Vendee's interests in the Lease and the payments to be made thereunder equal or superior to the Vendor's security interest 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 security interest 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), 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, equal or superior to the Vendor's security interest therein, but the Vendee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this

Agreement or in and to the Lease and the payments to be made thereunder.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to or a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any 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 tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the release of the 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 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 by it of each unit of the Equipment under this Agreement, the Builder will have good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature other than this Agreement, the Assignment and the Lease.

The agreement of the parties relating to warranties of material and workmanship and patent indemnification

are set forth in Items 3 and 4, respectively, of Annex A hereto.

ARTICLE 14. Assignments. The Vendee will not (a) except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment or (b), without the prior written consent of the Vendor, sell, assign or otherwise dispose of its rights under this Agreement. Any such sale, assignment or disposition which may be made by the Vendee to another party shall be subject to the assumption by such party of all of the obligations of the Vendee hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the 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 and the Lessee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's 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 in such manner 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 CSA Indebtedness or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the 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, as the case may be, 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 12 business days after the date such payment is due and payable; or

(b) 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 shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified,

stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Lease and the Consent 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 proceeding shall be commenced by or against the Vendee or the Lessee for any relief 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 the obligations hereunder or under the Lease, the Lease Assignment, the Consent or the Participation Agreement of the Vendee or the Lessee, as the case may be), 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 or the Lessee under this Agreement, the Lease, the Lease Assignment, the Consent and/or the Participation Agreement, as the case may be, shall not have been (and shall not continue to be), 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 its or their property in connection with any such proceedings in such manner that such obligations 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 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) an Event of Default shall have occurred under the Lease; provided, however, that an Event of Default under paragraph (a) of § 10 of the Lease shall not be deemed to be an event of default hereunder if, prior to the expiration of the 12 business day period provided by subparagraph (a) of Article 15 hereof, the Vendee shall make payment of all amounts in default under subparagraph (a) of Article 15 hereof;

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) cause the Lease immediately upon such notice to terminate (and the Vendee acknowledges the right of the Vendor to terminate the Lease), but without affecting the indemnities which by the provisions of the Lease survive its termination and/or (ii) declare (hereinafter called a "Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of the CSA Indebtedness and interest thereon shall bear interest from the date of such Declaration of Default at the Penalty 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, and to collect such judgment out of any property of the Vendee, subject to the provisions of Article 4 hereof, wherever situated. The Vendee shall promptly notify the Vendor of any event of which the Vendee has actual knowledge which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or 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 par-

ties 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 understood and 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. At any time during the continuance of a Declaration of Default, the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 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 in the premises, 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 may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee and the Lessee by telegram or registered mail, addressed as provided in Article 20 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the 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 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.

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 any unit 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 City, New York, 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 or the Lessee may bid for and become the purchaser of the Equipment, or any unit

thereof, so offered for sale, provided that the Lessee may not so bid if it shall have caused the Event or Events of Default in respect of which the relevant Declaration of Default was made. The Vendee and the Lessee shall be given written notice of such sale or the making of a contract for such sale not less than ten days prior thereto, by telegram or registered mail. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where fewer than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee and the Vendee to purchase or provide a purchaser, within 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 any 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 duly granted to the Vendee or the Lessee shall not otherwise affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to 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 Penalty 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 such reasonable expenses 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, waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Recording. The 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 and the CSA Assignment, 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 modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Vendee.

ARTICLE 20. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first class mail, postage prepaid, at the following addresses:

(a) to the Lessee, at 1310 Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, attention of Vice President and Treasurer,

(b) to the Vendee, at 1200 Philadelphia Pike, Wilmington, Delaware 19809, Attention of President,

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

(d) to the Assignee, at Three Girard Plaza, Philadelphia, Pennsylvania 19101, Attention of Corporate Trust Division,

(e) to any assignee of the Vendor, or of the Vendee, at such address as may have been furnished in writing to the Vendee or the Vendor, 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 to this Agreement.

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

The obligations of the Vendee under the second 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 hereunder pursuant to Article 15 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

ARTICLE 22. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act 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. The Vendee warrants that its principal place of business is located in the State of Delaware.

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.

BETHLEHEM STEEL CORPORATION,

by

[CORPORATE SEAL]

Vice President

Attest:

Assistant Secretary

HELEASCO ONE, INC.,

by

[CORPORATE SEAL]

Ronald W. Turner
President

Attest:

C. J. Caporale
Secretary

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

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

Notary Public

[Notarial Seal]

My Commission expires

STATE OF DELAWARE,)
) ss.:
COUNTY OF NEW CASTLE,)

On this 27th day of July 1978, before me personally appeared Donald W. Turner, to me personally known, who, being by me duly sworn, says that he is President of HELEASCO ONE, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation, by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Francis A. Bailey
Notary Public

[Notarial Seal]

My Commission expires

SCHEDULE I

Allocation Schedule
of Each \$1,000,000 of CSA Indebtedness
Payable, in. (i) One Interim Payment,
and (ii) 59 Quarterly Installments
Commencing on January 1, 1979

Installment No.		Debt Service	Interest Payment	Principal Recovery	Ending Principal
(Interim Payment)	(10/1/78)	\$ *	\$ *	\$ -0-	\$1000000.00
1	(1/1/79)	33296.81	25000.00**	8296.81	991703.19
2	(4/1/79)	33296.81	24792.58	8504.23	983198.96
3	(7/1/79)	33296.81	24579.97	8716.84	974482.12
4	(10/1/79)	33296.81	24362.05	8934.76	965547.36
5	(1/1/80)	33296.81	24138.68	9158.13	956389.23
6	(4/1/80)	33296.81	23909.73	9387.08	947002.15
7	(7/1/80)	33296.81	23675.05	9621.76	937380.39
8	(10/1/80)	33296.81	23434.51	9862.30	927518.09
9	(1/1/81)	33296.81	23187.95	10108.86	917409.23
10	(4/1/81)	33296.81	22935.23	10361.58	907047.65
11	(7/1/81)	33296.81	22676.19	10620.62	896427.03
12	(10/1/81)	33296.81	22410.68	10886.13	885540.90
13	(1/1/82)	33296.81	22138.52	11158.29	874382.61
14	(4/1/82)	33296.81	21859.57	11437.24	862945.37
15	(7/1/82)	33296.81	21573.63	11723.18	851222.19
16	(10/1/82)	33296.81	21280.55	12016.26	839205.93
17	(1/1/83)	33296.81	20980.15	12316.66	826889.27
18	(4/1/83)	33296.81	20672.23	12624.58	814264.69
19	(7/1/83)	33296.81	20356.62	12940.19	801324.50
20	(10/1/83)	33296.81	20033.11	13263.70	788060.80
21	(1/1/84)	33296.81	19701.52	13595.29	774465.51
22	(4/1/84)	33296.81	19361.64	13935.17	760530.34
23	(7/1/84)	33296.81	19013.26	14283.55	746246.79
24	(10/1/84)	33296.81	18656.17	14640.64	731606.15
25	(1/1/85)	33296.81	18290.15	15006.66	716599.49
26	(4/1/85)	33296.81	17914.99	15381.82	701217.67
27	(7/1/85)	33296.81	17530.44	15766.37	685451.30
28	(10/1/85)	33296.81	17136.28	16160.53	669290.77
29	(1/1/86)	33296.81	16732.27	16564.54	652726.23
30	(4/1/86)	33296.81	16318.16	16978.65	635747.58
31	(7/1/86)	33296.81	15893.69	17403.12	618344.46
32	(10/1/86)	33296.81	15458.61	17838.20	600506.26

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

** This figure will be reduced if any Closing Date occurs after September 30, 1978.

<u>Installment No.</u>		<u>Debt Service</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Ending Principal</u>
33	(1/1/87)	33296.81	15012.66	18284.15	582222.11
34	(4/1/87)	33296.81	14555.55	18741.26	563480.85
35	(7/1/87)	33296.81	14087.02	19209.79	544271.06
36	(10/1/87)	33296.81	13606.78	19690.03	524581.03
37	(1/1/88)	33296.81	13114.53	20182.28	504398.75
38	(4/1/88)	33296.81	12609.97	20686.84	483711.91
39	(7/1/88)	33296.81	12092.80	21204.01	462507.90
40	(10/1/88)	33296.81	11562.70	21734.11	440773.79
41	(1/1/89)	33296.81	11019.34	22277.47	418496.32
42	(4/1/89)	33296.81	10462.41	22834.40	395661.92
43	(7/1/89)	33296.81	9891.55	23405.26	372256.66
44	(10/1/89)	33296.81	9306.42	23990.39	348266.27
45	(1/1/90)	33296.81	8706.66	24590.15	323676.12
46	(4/1/90)	33296.81	8091.90	25204.91	298471.21
47	(7/1/90)	33296.81	7461.78	25835.03	272636.18
48	(10/1/90)	33296.81	6815.90	26480.91	246155.27
49	(1/1/91)	33296.81	6153.88	27142.93	219012.34
50	(4/1/91)	33296.81	5475.31	27821.50	191190.84
51	(7/1/91)	33296.81	4779.77	28517.04	162673.80
52	(10/1/91)	33296.81	4066.84	29229.97	133443.83
53	(1/1/92)	33296.81	3336.10	29960.71	103483.12
54	(4/1/92)	21583.73	2587.08	18996.65	84486.47
55	(7/1/92)	18599.32	2112.16	16487.16	67999.31
56	(10/1/92)	18401.36	1699.98	16701.38	51297.93
57	(1/1/93)	18200.68	1282.45	16918.23	34379.70
58	(4/1/93)	17937.63	859.49	17078.14	17301.56
59	(7/1/93)	17734.10	432.54	17301.56	0.00
TOTALS		1877187.75	877187.75	1000000.00	

Annex A
to
Conditional Sale Agreement

- Item 1: Bethlehem Steel Corporation, a Delaware corporation, Bethlehem, Pennsylvania 18016, Attention of Manager of Railroad Product Sales (the "Builder").
- Item 2: The Equipment shall be settled for in not more than three Groups of units of Equipment delivered to and accepted by the Vendee.
- Item 3: The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the the Conditional Sale Agreement to which this Annex A is attached (hereinafter in this Annex A called "this Agreement") and warrants that the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Lessee and not manufactured by the Builder) and workmanship under normal use and service, the Builder's obligation under this Item 3 being limited to making good at its plant any part or parts of any unit of such Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Vendee, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. EXCEPT FOR THE OBLIGATIONS AND LIABILITIES OF THE BUILDER UNDER ARTICLES 2, 3 AND 4 OF THIS AGREEMENT AND ITEM 4 OF THIS ANNEX A, THE FOREGOING WARRANTY OF THE BUILDER IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER, and the Builder does not assume or authorize any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid. It is further agreed that in no event shall the Builder be liable for indirect or consequential damages of any kind.

The Builder further agrees 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.

Item 4: The Builder agrees (except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder) to indemnify, protect and hold harmless the Vendee and, as third party beneficiary hereof, the Lessee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, the Lessee, or its or their assigns, because of the use in or about the construction or operation of any of such Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. Pursuant to § 9 of the Lease the Lessee likewise will indemnify, protect and hold harmless the Builder and the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Builder and the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Lessee every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee and purchased

or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Lessee or the Vendee or the users of the Equipment all and every such further assurance as may be reasonably requested by the Lessee or the Vendee to more fully effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Lessee of any claim known to the Builder as a result of which liability may be charged against the Lessee hereunder and the Vendee will give notice to the Builder of any claim known to the Vendee from which liability may be charged against the Builder hereunder. The undertakings set forth herein shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement or the satisfaction, discharge or the termination of this Agreement in any manner whatsoever.

- Item 5: The Maximum Purchase Price referred to in Article 4 of this Agreement is \$9,984,480 plus $\frac{100}{73,75}$ of the amount (the "Increased Investors' Amount") by which the Investors' commitments are increased pursuant to the first paragraph of Paragraph 2 of the Participation Agreement.
- Item 6: The maximum CSA Indebtedness referred to in Article 4 of this Agreement is \$7,375,000 plus the Increased Investors' Amount.

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 Road Numbers (Both Inclusive)</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
100-ton open-top general service hopper cars AAR Mechanical Designation: HT	DF 3400-486	Johnstown, Pennsylvania	341	CR-487825- CR-488165	\$29,280	\$9,984,480	August- September 1978, at Johnstown, Pennsylvania

ANNEX C
to
Conditional Sale Agreement

[CS&M Ref. 5406-001]

LEASE OF RAILROAD EQUIPMENT

Dated as of June 1, 1978

between

CONSOLIDATED RAIL CORPORATION,
as Lessee,

and

HELEASCO ONE, INC.,
as Lessor.

Lease of Railroad Equipment

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Schedule I--Schedule of Equipment

Schedule 2--Casualty Values

LEASE OF RAILROAD EQUIPMENT dated as of June 1, 1978, between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (the "Lessee"), and HELEASCO ONE, INC., a Delaware corporation (the "Lessor").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with Bethlehem Steel Corporation (the "Builder"), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule 1 hereto (the "Equipment");

WHEREAS the Builder is assigning its interests in the CSA to Girard Bank, acting as Agent (together with its successors and assigns, called the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Lessee, the Lessor, the Vendor and the parties named in Schedule A thereto;

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

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

§ 1. Net Lease. This Lease is a net lease; the Lessee's obligations hereunder shall be absolute and unconditional, and, except as herein provided, the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the CSA, or against the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect

in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, any prohibition or restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. The Lessor will cause the Units to be delivered to the Lessee at the point within the United States of America at which the Units are 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, shall accept delivery of such Unit and the Lessee shall execute and deliver to the Lessor a certificate of acceptance (the "Certificate of Acceptance") in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, 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.

§ 3. Rentals. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease one interim payment and 60 consecutive quarterly payments payable in advance. The interim payment for each such Unit is payable on October 1, 1978, and shall be in an amount equal to the product of the Purchase Price (as defined in the CSA) for such Unit multiplied by .027778% for each day elapsed from and including the Closing Date (as defined in the CSA) for such Unit under the CSA to but not including October 1, 1978. The 60 quarterly payments are payable on the Closing Date for such Unit and thereafter on January 1, April 1, July 1 and October 1 in each year, commencing January 1, 1979, to and including July 1, 1993. Each such quarterly payment shall be in an amount equal to 2.45564% of the Purchase Price of each such Unit then subject to this Lease.

The Lessee shall pay as additional rental the following: (i) on the Cut-Off Date (as defined in Paragraph 8 of the Participation Agreement), an amount equal to any Investment Deficiency payable by the Lessor pursuant to the first paragraph of Paragraph 8 of the Participation Agreement plus any amount payable by the Lessor in respect of interest on any Surplus Deposit pursuant to clause (a) of the final paragraph of Paragraph 8 of the Participation Agreement, and (ii) on October 1, 1978, an amount equal to any interim interest payable by the Lessor pursuant to clause (b) of the final paragraph of Paragraph 8 of the Participation Agreement.

The rental payments hereinbefore set forth are subject to adjustment pursuant to § 16 hereof.

If any rental payment date referred to above is not a business day the rental otherwise payable on such date shall be payable on the next business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Philadelphia, 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, but excluding payments due to the Lessor by reason of § 16 hereof) if and to the extent provided in any

assignment of this Lease to the Vendor, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the CSA, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in immediately available funds to the Vendor by 11:00 a.m., Philadelphia time, on the date such payment is due.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 14 hereof, shall terminate 90 days after 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 of the term of 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 at its own expense will cause each Unit to be kept numbered with the road number set forth in Schedule 1 hereto, or in the case of any Unit not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED

UNDER THE INTERSTATE COMMERCE ACT, SECTION 20c", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and 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 or permit any such Unit to be placed 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 or permit to be changed the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to such effect. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

Except as provided in the 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.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, Federal or foreign taxes (other than any United States Federal income tax payable by the Lessor in consequence of the receipt of payments provided for herein and, to the extent that the Lessor receives credit therefor against its United States Federal income tax liability, any foreign income tax, and other than the aggregate of all state or local taxes measured by net income based on such receipts and value added taxes in lieu of such net income taxes up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state and other than any state franchise tax which is not based on or measured by net income, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines

or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions") hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the CSA, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the interest of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as such imposition remains unpaid and Lessee is contesting in its own name and in good faith and by appropriate legal or administrative proceedings such impositions, or the Lessor is required to contest such impositions as provided in this § 6, and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Lessor or the Vendor under the CSA. The Lessee agrees to give the Lessor notice of such contest brought in Lessee's name within 30 days after institution thereof and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall pay the Lessor on presentation of an invoice therefor if the Lessor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Lessor) or the Lessee shall have approved the payment thereof, and the Lessor agrees to give the Lessee written notice promptly after it first obtains knowledge of the making of such charge or levy, and agrees to take such other action as may reasonably be requested by the Lessee for the purpose of contesting payment or obtaining refund of all or a portion of such imposition, as hereinafter provided in this § 6.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative provision of the CSA not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed imposi-

tions hereunder) to the Lessor to fulfill completely its obligations pursuant to said provision; provided, however, that the Lessor shall have contested (if required to do so under this § 6) such impositions in good faith and to the extent permitted under the CSA.

In the event any returns, statements or reports with respect to impositions involving any Unit 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 such Units, as shall be satisfactory to them or, where not so permitted, will notify the Lessor and the Vendor of such requirement and will prepare and deliver such reports to them within a reasonable period of time prior to the time such reports are to be filed in such manner as shall be satisfactory to them.

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

In the event the Lessee may be prohibited by law or is impaired from contesting in its own name any imposition covered by this § 6 in respect of which the Lessee would otherwise be required to make payments to the Lessor pursuant hereto, the Lessor shall, upon request and at the expense of the Lessee, take all legal and other appropriate action reasonably requested by the Lessee to contest such imposition. The Lessor shall not be obligated to take any such action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein. The Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action taken by the Lessor or Lessee under this § 6. The Lessee shall be entitled to any refund received by the Lessor or the Lessee in respect of any imposition paid 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.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, state-

ments, 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.

The amount which the Lessee shall be required to pay with respect to any imposition which is subject to indemnification under this § 6 shall be an amount sufficient to restore the Lessor to the same net after tax rate of return and after tax cash position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that the Lessor would have been in had such imposition not been imposed.

§ 7. Maintenance; Casualty Occurrences; Insurance.

The Lessee agrees that, at the Lessee's own cost and expense, it will be responsible for ordinary maintenance and repairs required to maintain and keep all of the Units which are subject to this Lease in good operating order, repair and condition and eligible for interchange service.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, or permanently rendered unfit for use from any cause other than obsolescence, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government for a stated period not in excess of the then remaining term of the CSA (such occurrences being hereinafter called "Casualty Occurrences"), during the term of this Lease, or until such Unit shall have been returned in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice (other than the Closing Date rental payment date) the Lessee shall pay to the Lessor an amount equal to a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule referred to below plus, in the case of any payment made on October 1, 1978, the rental payment due on said date. 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 or complete destruction of such Unit) the Lessor shall be

entitled to recover possession of such Unit and the Lessee shall pay all costs of removal of such Unit and of freight to the place designated pursuant to § 14 hereof.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule 2 hereto opposite such date; provided, however, that if the Casualty Value for any Unit as of such payment date as determined pursuant to Schedule 2 reflects an amount representing investment credit recapture to the Owner that is greater or lesser than the actual amount of investment credit recapture incurred by the Lessor as a result of the Casualty Occurrence to such Unit, the Casualty Value for such Unit as so determined shall be appropriately decreased or increased so as to reflect the actual amount of investment credit recapture incurred by the Lessor as a result of the Casualty Occurrence to such Unit.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease at the expiration of the original or extended term thereof and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly 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 20% of the Purchase Price of such Unit (unless such termination occurs after the term of this Lease has been extended pursuant to § 13 hereof, in which case the amount of such Casualty Value shall be as agreed upon between the Lessor and the Lessee at the time of such extension). 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), the Lessor shall be entitled to recover possession of such Unit.

The Lessor hereby irrevocably appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, before or after the expiration of this Lease, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, has made any payments required by § 6 hereof or by § 16 hereof and no Event of Default or event which after notice or lapse of time or both would have 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 for use (which is not a Casualty Occurrence) by the United States Government (the "Government") of any Unit during the term of this Lease or any renewal thereof, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease, 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, 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 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, 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 Equipment 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, with such carriers 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. 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, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to such 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 from the Lessee's insurance coverage in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§ 8. Reports and Inspection. On or before April 30 in each year, commencing with the calendar year 1979, the Lessee will furnish to the Lessor and the Vendor (a) an accurate statement (i) 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, (ii) 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 and by the CSA have been preserved or replaced and (iii) setting forth a description of the insurance in effect with respect to the Equipment pursuant to § 7 hereof, and (b) a certification of insurance coverage from the Lessee's independent broker stating the amounts of such insurance in effect and the amount of deductible. The Lessor, at its sole cost and 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 may request during the continuance of this Lease. The Lessee shall promptly notify the Lessor and the Vendor of any material changes or any material proposed changes of which the Lessee has knowledge in its insurance coverage in effect with respect to the Equipment pursuant to § 7 hereof.

The Lessee shall furnish to the Lessor the reports

required to be furnished to the Lessor pursuant to Paragraph 10 of the Participation Agreement.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules. 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 of the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, 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 all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units and with all applicable interchange rules, 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 upon written notice to the Lessor and Vendor 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 reasonable opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the CSA. The Lessee, at its own cost and expense, may furnish other additions, modifications and improvements to the Units during the term of this Lease. Any additions, modifications and improvements made by the Lessee which are readily removable without causing material damage to the Units shall be owned by the Lessee and may be removed by the Lessee at any time during the term of this Lease or any renewal thereof and prior to the return thereof to the Lessor pursuant to § 11 or § 14 hereof, except additions, modifications and improvements required to maintain each Unit's eligibility for interchange service or to comply with the provisions of the first paragraph of § 7 or the first sentence of this paragraph.

The Lessee agrees to indemnify, protect and hold harmless the Lessor 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 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 ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any

accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease, or the transfer of title to the Equipment by the Vendor pursuant to any provision of the CSA. The indemnities arising under this paragraph shall continue in full force and effect with respect to all events, facts, conditions or other circumstances occurring or existing prior to the expiration or termination of the term of this Lease and return of the Units as provided in § 14 of this Lease; provided, however, that the foregoing indemnification shall not apply to any failure of payment of the principal of or interest on the CSA Indebtedness (as defined in the CSA) and shall not be deemed to operate as a guaranty of the residual value of any Unit. The amount the Lessee shall be required to pay with respect to any of its obligations under this paragraph shall include a payment to the indemnified party sufficient to restore such party to the same position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that the indemnified party would have been in had the liability or expense indemnified against not been incurred.

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

The Lessee 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.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (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 (an "Event of Default") shall occur:

(a) default shall be made in payment of any amount provided for in § 3 or § 7 of this Lease and such default shall continue for 10 business days, or default shall be made in payment of any other amount provided for in this Lease and such default shall continue for 10 business days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

(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 and shall fail or refuse to cause such assignment or transfer to be canceled and to recover possession of such Units within 15 days after written notice from the Lessor to the Lessee demanding the same;

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

(d) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and the Consent (as defined in the CSA) 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

(e) any other proceedings 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 or under the Consent), 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 and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

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

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

(ii) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its

agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, sell, operate, lease to others and enjoy the same free from any right of the Lessee 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, 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 clause of this part (ii) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the 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 (i) 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 and (ii) 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 failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

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

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessor may, 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 Lessor, take or cause to be taken by its agent or agents, immediate possession of each of the Units, and may remove the same from possession and use of the Lessee or any other person and for such purpose may enter upon the premises of the Lessee or any other premises where the Units may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities of the Lessee, subject to all mandatory requirements of due process of law.

If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor and shall give prompt telegraphic notice to the Association of American Railroads and all railroads

having possession of any Unit so to return such Units. Each Unit so delivered shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall:

(a) forthwith and in the usual manner 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 in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. 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 after such termination an amount equal to the amount, if any, by which the product of (i) a fraction the numerator of which is 10% and the denominator of which is 360, and (ii) the Purchase Price of such Unit for each such

day exceeds the actual earnings received by the Lessor on such Unit for each such day; such payment shall not affect the obligation of the Lessee to redeliver the Equipment pursuant to the first sentence of this paragraph.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of 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 (including, but not limited to, the rights under §§ 6, 7, 10 and 16 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns.

So long as no Event of Default or event which after notice or lapse of time or both would become an Event of Default shall have occurred and be continuing, and the Lessee shall have fully complied with all other provisions of this § 12, the Lessee shall be entitled to the possession and use of the Units on its own lines of railroad or lines over which it has trackage rights, and upon connecting and other carriers but only in the usual interchange of traffic in the continental United States and Canada, and only upon and subject to all the terms and conditions of this Lease; but the Lessee shall not sublease, assign, or otherwise make any disposition of the right to possession and use of the Units, except with the Lessor's prior written consent.

The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor, the Vendee or the Vendor not related to the ownership or leasing of, or the security title of the Vendor to, the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interest of the Lessor, the Vendor or the Lessee therein; except that this covenant will not be

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; and, furthermore, the Lessee shall be under no obligation to discharge any such lien, charge, security interest or encumbrance so long as it is contesting the same in good faith and by appropriate legal proceedings and the failure to discharge the same does not, in the opinions of the Lessor and the Vendor, adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the CSA.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all the lines of railroad of the Lessee; provided, however, that such assignee, lessee or transferee will not, upon the effectiveness of such merger, consolidation, lease or acquisition be in default under any provision of this Lease and that such acquisition or lease of railroad lines of the Lessee shall not alter in any way the Lessee's obligation to the Lessor and Vendor hereunder which shall be and remain those of a principal and not a surety.

§ 13. Renewal Options and Purchase Option.

The Lessor intends to retain the units for re-lease at the expiration of the term of this Lease. 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 nor more than nine months prior to the end of the original term or the first extended term of this Lease 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 an additional five year period commencing on the scheduled expiration of the original term or the first extended term of this Lease, as the case may be. Such extension shall be on the same terms and conditions as are contained in this Lease, except as to the amount of rentals, which shall be at a "Fair Market Rental"

(as defined in this § 13) payable quarterly in advance, and except as to applicable Casualty Values, which shall be as agreed upon between the Lessor and the Lessee at the time of such extension.

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 nor more than nine months prior to the end of the original term or any extended term of this Lease elect to purchase all but not fewer than all of the Units then covered by this Lease at a Fair Market Purchase Price (as defined in this § 13) payable at the end of the then current term of this Lease.

Fair Market Rental and Fair Market Purchase Price shall be determined on the basis of, and shall be equal in amount to, the rental or purchase price, as the case may be, which would obtain in an arm's length transaction between an informed and willing lessee (other than a lessee currently in possession) 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. 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, the same 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 thereof 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, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental or Fair Market Purchase Price, as the case may be, of the Units within 90 days after his appointment. If the parties shall have appointed a single appraiser the determination of the single appraiser appointed shall be final. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Associa-

tion as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and Fair Market Purchase Price and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

§ 14. Return of Units upon Expiration of Lease Term. As soon as practicable on or after the termination of the term of this Lease otherwise than pursuant to § 10 hereof (and in any event not later than 90 days after the termination of the term of this Lease), the Lessee will, at its own cost and expense, at the request of the Lessor, cause each Unit to be transported to such point or points on the Lessee's lines as shall be reasonably designated by the Lessor immediately prior to such termination and store each Unit for a period not exceeding 60 days from the date on which all of such Units are first placed in storage pursuant to this § 14; the assembly, delivery, storage and transporting of each Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, 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 intentional act of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, lessee or user, the rights of inspection granted under this sentence, and after any Unit has been stored for 60 days, any further storage of such Unit shall be at the Lessor's own risk and expense, except for cost or loss arising from the Lessee's negligent or intentional acts or omissions. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and (ii) meet the

standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. If any Unit suffers a Casualty Occurrence during any storage period provided for in this § 14, the Lessee shall pay to the Lessor the Casualty Value of such Unit as determined in accordance with § 7 hereof. All gross amounts earned in respect of any Unit shall, from and after the termination of this Lease as to such Unit, belong to and be the property of the Lessor. In the event that by the 60th day after the termination of the original or any extended term of this Lease the Lessee has not, at the request of the Lessor, caused all the Units to be transported to such point or points as shall have been designated by the Lessor pursuant to this § 14, the Lessee shall pay to the Lessor applicable per diem on all Units not so assembled for each day thereafter.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the CSA and any assignment hereof or thereof to be filed with the Interstate Commerce Commission 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 hereof and thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this § 15, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor; provided, however, that no such opinion of counsel need be furnished in respect of the filing of the CSA or the assignment thereof in Canada. This Lease and the CSA shall be filed with the Interstate Commerce Commission and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision shall be made for publication of notice of such deposit in The Canada Gazette prior to the delivery and acceptance hereunder of any Unit.

§ 16. Income Taxes. (a) This Lease is entered into on the mutual assumptions that the Lessor, as the beneficial owner of the Units, shall be entitled, for Federal, state and local income tax purposes, 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"), to an owner of property, including without limitation, the full 10% investment credit allowed under section 38 and related sections of the Code in respect of the aggregate Purchase Price of the Units (the "Investment Credit"), the maximum depreciation deduction with respect to the Units authorized under section 167 of the Code based on the aggregate Purchase Price of the Units utilizing the 12-year depreciable life prescribed for the Units in the Asset Guideline Class No. 00.25 in accordance with section 167(m) of the Code, employing the double declining balance method of depreciation, switching to the sum-of-the-years-digits method without the consent of the Commissioner of Internal Revenue when most beneficial to the Lessor, utilizing the half-year convention as provided in Reg. Sec. 1.167(a)-11(c)(2)(iii) (including 6 months of depreciation in 1978) and taking into account an estimated gross salvage value of 20% of the Purchase Price of the Units which will be reduced by 10% of the Purchase Price as provided in section 167(f) of the Code (the "ADR Deduction") and deductions with respect to interest payable under the CSA pursuant to section 163 of the Code (the "Interest Deduction").

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 or which would increase the amount of rentals required to be taken into income by the Lessor over the amount specified to be payable under this Lease on the dates due hereunder, except as specifically provided herein, and that the Lessee will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Lessor such records as will enable the Lessor to determine the extent to which it is entitled to the benefit of the Investment Credit, the ADR Deduction and the Interest Deduction with respect to the Units.

The Lessee represents and warrants that (i) at the time the Lessor becomes the beneficial owner of the Units, the Units will constitute "new section 38 property" within the meaning of sections 46 and 48 of the Code, and at the time

the Lessor becomes the beneficial owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (ii) at all times during the term of the Lease, each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code, and the Lessee will not at any time during the term of the Lease use or fail to use any Unit in such a way as to disqualify it as "section 38 property" within the meaning of section 48(a) of the Code; (iii) for Federal income tax purposes, all amounts includible in the gross income of the Lessor with respect to the Units and all deductions allowable to the Lessor with respect to the Units will be treated as derived from, or allocable to, sources within the United States; (iv) the Lessor will be entitled to deduct the interest on the CSA Indebtedness pursuant to section 163 of the Code; (v) the Lessee will maintain sufficient records to verify use of the Units in the manner above provided, which records will be made available for inspection and copying to the Lessor within 30 days after receipt of a written demand therefor; (vi) the Lessee will not claim that it is the owner of the Units at any time prior to the exercise thereby of any right to purchase the Units pursuant to § 13 hereof; and (vii) in determining the ADR Deduction, the Lessor may depreciate the Purchase Price of the Units under the most accelerated method of depreciation under section 167(b) of the Code over the 12-year depreciable life prescribed in Asset Guideline Class No. 00.25 to a gross salvage value of 0% of the Purchase Price, calculated on the assumptions that each Unit will be placed in service at the time such Unit becomes subject hereto and that the basis of each Unit is at least equal to its Purchase Price.

If by reason of the inaccuracy in law or in fact of any of the representations and warranties set forth in the preceding paragraph or the breach by the Lessee of any of its agreements hereunder or any act or omission of the Lessee inconsistent with the mutual assumptions as to the tax consequences to the Lessor described in the first paragraph of this § 16(a) (unless such act or omission is required by the terms hereof) or the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee in connection with the delivery of the opinion to the Lessor by its special tax counsel, or the sale or other disposition of any Unit or the interest of the Lessor therein after the occurrence of an Event of Default hereunder the Lessor shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of or shall be required to recapture all or any portion of the

Investment Credit, the ADR Deduction or the Interest Deduction with respect to all or part of any Unit or if for Federal income tax purposes any item of income, loss or deduction with respect to any Unit is treated as derived from, or allocable to, sources without the United States (any such loss, disallowance, recapture or treatment being hereinafter called a "Loss"), then in any such case the Lessee shall pay to the Lessor on each of the dates provided herein thereafter for payment of the installments of rental hereunder, commencing with the first such date following the date on which the liability of the Lessee hereunder shall become fixed as hereinafter provided, such sums which (after deduction of all taxes required to be paid by the Lessor on the payment of such sums under the laws of the United States or any political subdivision thereof or any foreign taxing authority, in each case calculated on the assumption that such tax is payable at the highest then applicable marginal tax rate), when taken together with the rental installments due on such dates hereunder which are to be distributed to the Lessor, will, in the reasonable opinion of the Lessor, maintain the Lessor's after-tax return on and rate of recovery of investment and the annual net cash flows (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) in respect of such Unit hereunder at the same level that would have been available if such Loss had not occurred, and the Lessee shall in addition forthwith pay to the Lessor an amount which (after the deduction of any additional taxes required to be paid by the Lessor in respect of the receipt of such amount calculated on the assumption that such taxes are payable at the highest then applicable marginal tax rate) shall be equal to the amount of any interest or penalty which may be imposed in connection with such Loss. In the event that this Lease is terminated with respect to any Unit prior to the time the Lessee is obligated to make payments to the Lessor as set forth in the preceding sentence (either because no such payment obligation had become fixed under such sentence prior to such termination or because the due date of such payment or payments shall occur following such termination), then the Lessee shall pay to the Lessor, in lieu of such payment or payments, on or before 30 days after the liability of the Lessee in respect of such termination hereunder shall become fixed as hereinafter provided, such lump sum (calculated in the same manner as set forth in the preceding sentence) as shall be necessary in the reasonable opinion of the Lessor to maintain the Lessor's after-tax return on and rate of recovery of investment and the annual net cash flows (computed on the same assumptions as utilized by the Lessor in

originally evaluating this transaction) in respect of such Unit hereunder at the same level that would have been available if such Loss had not occurred. In determining the extent to which the Lessor receives credit for any foreign tax against its Federal income tax liability, it shall be assumed that credit is received for all other foreign taxes claimed as credits for the taxable year in question before credit is received for any foreign taxes indemnified hereunder which are claimed as credits for such year.

Anything in the preceding paragraph to the contrary notwithstanding, the Lessee shall not be required to make any payment to the Lessor provided for therein if the Lessor shall have suffered any Loss with respect to all or part of any Unit solely as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 7 hereof;

(ii) a voluntary transfer or other voluntary disposition by the Lessor of any interest in such Unit or the voluntary reduction by the Lessor of its interest in the rentals from such Unit hereunder (other than pursuant to the Lease Assignment, as defined in the CSA), unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the failure of the Lessor to claim in a timely manner the Investment Credit, the ADR Deduction, the Interest Deduction (unless the Lessor shall have received an opinion of its tax counsel to the effect that it is not entitled to make such claim);

(iv) the failure of the Lessor to have sufficient income to benefit from the Investment Credit, the ADR Deduction or the Interest Deduction, as applicable; or

(v) an act or omission by the Lessor inconsistent with the mutual assumptions as to the tax consequences to the Lessors described in the first paragraph of this § 16(a) (unless required by the terms hereof).

In the event a claim shall be made against the Lessor which, if successful, would result in payments by the Lessee hereunder and if, in the opinion of the Lessor's or the Lessee's independent tax counsel who is acceptable to the Lessor (herein referred to as Counsel), a bona fide defense to such claim exists, the Lessor shall, upon request and at the expense of the Lessee, contest such matter in such forum as the Lessor in its sole

judgment, shall select; provided, however, that the Lessor shall not be obligated to take any such legal or other appropriate action unless its Loss exceeds \$15,000 for the taxable year involved and it has received an opinion from Counsel that there is a reasonable basis for contesting such matter and the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested. The Lessor may, at its option, take such action prior to making payment of any tax and interest and/or penalty attributable to such claim (a "Tax Payment") or may make such Tax Payment and then sue for a refund. If the Lessor takes such action prior to making such Tax Payment, such sums payable hereunder need not be paid by the Lessee while such action is pending; provided that the Lessee shall pay the liabilities and expenses relating to such action when and as the same shall become due. In such case, if the Final Determination shall be adverse to the Lessor, the sums payable hereunder shall be computed by the Lessor as of the date of such Final Determination, the Lessor shall notify the Lessee of such computation and furnish copies thereof to the Lessee, and the Lessee shall commence payment thereof on the rental payment date hereunder next succeeding such Final Determination and, on or before such rental payment date, the Lessee shall pay to the Lessor as an additional payment hereunder an amount which (after deduction of all taxes required to be paid by the Lessor on the payment of such sums under the laws of the United States or any political subdivision thereof or any foreign taxing authority, in each case calculated on the assumption that such tax is payable at the highest then applicable marginal tax rate) shall be equal to all interest and penalty paid by the Lessor in respect of such Final Determination, together with interest thereon from the date such payment is made by the Lessor to the date the Lessee reimburses the Lessor therefor at the rate of 12% per annum. If the Lessor makes such Tax Payment prior to contesting the matter, and then sues for a refund, the sums payable hereunder shall commence to be payable by the Lessee on the first rental payment date hereunder after the Lessor notifies the Lessee that such Tax Payment has been made and, on or before such rental payment date, the Lessee shall pay to the Lessor as an additional payment hereunder an amount which (after deduction of all taxes required to be paid by the Lessor on the payment of such sums under the laws of the United States or any political subdivision thereof or any foreign taxing authority, in each case calculated on the assumption that such tax is payable at the highest then applicable marginal tax rate), shall be equal to all interest and penalty paid by the Lessor included in such Tax Payment. If the Lessor sues for a refund after making such Tax Payment, and if the Final Determination shall be in favor of the Lessor, no future payments shall be due hereunder in respect of such matter (or an appropriate reduc-

tion shall be made if the Final Determination is partly in favor of and partly adverse to the Lessor). In addition, the Lessee and the Lessor shall adjust their accounts so that (a) the Lessor pays to the Lessee (x) an amount equal to the amount of the tax indemnity theretofore paid by the Lessee to the Lessor in respect of the Tax Payment (or a proportionate part thereof if the Final Determination is partly adverse to the Lessor) on or before such next succeeding rental payment date together with interest thereon at the interest rate then being paid on tax overpayments by the United States for the period such sums were paid to the Lessor to the date the Lessor pays to the Lessee an amount equal to such sums, and (y) the amount of any penalty or interest refunded to the Lessor as a result of such Final Determination and any interest paid to the Lessor by the government on such refund, promptly upon receipt thereof and (b) the Lessee pays to the Lessor an amount equal to interest at the rate of 12% per annum on the amount of the tax refund made in respect of the Tax Payment (excluding any interest or penalty included therein) for the period from the date of the original payment of the Tax Payment by the Lessor to the date such tax refund is received by the Lessor less the amount received by the Lessor as interest on the refund that was not otherwise paid to the Lessee under clause (a)(x) of this sentence. If any such claim referred to above shall be made by the Internal Revenue Service and the Lessee shall reasonably have requested the Lessor to contest such claim as above provided and shall have duly complied with all of the terms of this § 16(a), the Lessor may elect not to contest any such claim despite the request of the Lessee, made in accordance with the terms of this paragraph, or to discontinue any proceedings previously commenced as a consequence of such request, and thereupon the Lessee shall be relieved of all liability to indemnify the Lessor with respect to the Tax Benefits involved in respect of such claim. In the event the Lessee is relieved of its obligation to indemnify the Lessor pursuant to the preceding sentence and the Lessee has paid any sums hereunder in indemnification of the Lessor (including interest and penalties), the Lessor will pay to the Lessee all such sums (including such sums paid as interest and penalties) plus interest thereon at 12% per annum for the period from the date or dates of the payment of any such sum to the date the Lessor makes such payment to the Lessee.

"Final Determination" for the purpose of the preceding paragraph, means a final decision of a court of competent jurisdiction after all allowable appeals have been exhausted by either party to the action. Neither concession by the Lessor of any of the aforementioned claims in the over-all settlement of a controversy with the Internal Revenue Service either at the administrative level or at the court level nor the failure to recover a refund in whole or in part with

respect to such claims which failure is the result of a set-off against a claim for refund based upon such claims where the matters set off do not relate to such claims will constitute an adverse "Final Determination" causing the aforementioned additional payments to accrue to the Lessor, unless such over-all settlement or set-off of a tax controversy with the Internal Revenue Service is approved by the Lessee in a separate agreement with the Lessor and the Lessee. If the Lessee does not request the Lessor to contest a claim, then the Lessee's liability hereunder shall become fixed when the Lessee receives notice of a Loss from the Lessor.

In the event payments shall be due the Lessor under this § 16, the Casualty Values set forth in § 7 hereof shall be adjusted accordingly.

§ 16(b). In the event and to the extent that the cost of any replacement, improvement and/or addition to any Unit or any expenditure by the Lessee in respect of any Unit ("Additional Expenditures") made by the Lessee, under and pursuant to the terms hereof or otherwise, is required to be included in the gross income of the Lessor for Federal, state or local income tax purposes at any time prior to the time such Unit is disposed of in a taxable transaction, then the Lessee hereby agrees that it will pay to the Lessor on each of the dates for payment of the installments of rental hereunder in respect of such Unit commencing with the first such date following the date on which such inclusion is required, such sums which (after deduction of all taxes required to be paid by the Lessor with respect to the receipt thereof under the laws of the United States or any political subdivision thereof at the highest marginal corporate rates), when taken together with the rental installments due on such dates hereunder in respect of such Unit, will, in the reasonable opinion of the Lessor, maintain the Lessor's after-tax return on and rate of recovery of investment and the annual net cash flows (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) in respect of such Unit under this Lease at the same level that would have been available if the cost or value of such Additional Expenditures had not been treated as income to the Lessor.

In the event that the Lessee shall pay all or any portion of any installment of rent hereunder prior to the date upon which such payment is required to be made, the Lessee shall pay to the Lessor an amount which, after deduction of all taxes and other charges in respect of the receipt

of such amount under the laws of any Federal, state or local governmental or taxing authority in the United States or under the laws of any foreign country or subdivision of any taxing authority thereof, shall be equal to the excess of (A) the taxes and other charges payable by the Lessor in that year as a result of the receipt of such installment of rental over (B) the taxes and other charges that would have been payable in that year by the Lessor had such installment of rent been paid by the Lessee on the date upon which such payment is required to be made hereunder.

§ 16(c). For purposes of this § 16, the term "Lessor" shall include any affiliated group of which the Lessor is a member if consolidated joint, or combined returns are filed for such affiliated group for Federal, state or local income tax purposes.

§ 16(d). All payments provided to be made to the Lessor by the Lessee pursuant to this § 16 shall be made by wire transfer of immediately available funds to such bank in the continental United States for the account of the Lessor as it from time to time shall have directed the Lessee in writing.

§ 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, interest at a rate per annum equal to 11% on the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 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, 1200 Philadelphia Pike, Wilmington, Delaware 19809, Attention of President; and

(b) if to the Lessee, at 1310 Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, Attention of Vice President and 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 Three Girard Plaza, Philadelphia, Pennsylvania 19101, Attention of Corporate Trust Division.

§ 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, 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.

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

§ 20. Governmental Guarantees; Waiver of Priority. 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 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 guarantee 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 guarantee or commitment to be provided at the same time as such other rolling stock financing arrange-

ment 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.

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 Lease to be entitled to the same 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.

§ 21. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the assignment hereof 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.

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

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

CONSOLIDATED RAIL CORPORATION,

by

[Corporate Seal]

Vice President and Treasurer

Attest:

Assistant Secretary

HELEASCO ONE, INC.,

by

President

[Corporate Seal]

Attest:

Secretary

SCHEDULE 1 TO LEASE

<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
100-ton open-top general service hopper cars AAR Mechanical Designa- tion: HT	DF 3400- 486	Johnstown, Pennsylvania	341	CR-487825- CR-488165	\$29,280	\$9,984,480	August- September, 1978, at Johnstown, Pennsylvania

SCHEDULE 2 TO LEASE
CASUALTY VALUES

Rental Payment No.	Percentage of Purchase Price	Rental Payment No.	Percentage of Purchase Price
1	101.035	31	64.572
2	102.034	32	63.170
3	102.536	33	61.735
4	102.945	34	60.264
5	103.257	35	58.756
6	103.469	36	57.225
7	103.576	37	55.668
8	103.597	38	54.085
9	103.528	39	52.474
10	103.366	40	50.838
11	103.107	41	49.174
12	102.762	42	47.482
13	95.919	43	45.761
14	95.394	44	44.012
15	94.774	45	42.233
16	94.070	46	40.438
17	93.278	47	38.666
18	92.397	48	36.924
19	91.457	49	35.216
20	90.482	50	33.542
21	83.060	51	31.906
22	82.013	52	30.317
23	80.928	53	28.779
24	79.809	54	27.295
25	78.655	55	25.867
26	77.465	56	24.458
27	76.238	57	23.057
28	74.977	58	21.664
29	67.271	59	20.278
30	65.940	60	18.905
		Thereafter	20.000

AL-1
ANNEX D
TO
CONDITIONAL SALE AGREEMENT

ASSIGNMENT OF LEASE AND AGREEMENT dated as of June 1, 1978 (this "Assignment"), by and between HELEASCO ONE, INC., (hereinafter called the "Lessor" or the "Vendee") and GIRARD BANK, as Agent (the "Vendor") under a Participation Agreement dated as of the date hereof.

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

WHEREAS, in order to provide security for the obligations of the Lessor under the CSA and as an inducement to the Vendor to invest in the CSA Indebtedness (as defined in the CSA), the Lessor agrees to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, 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 as Vendee under the CSA, all the Lessor's right, title and interest, powers, privileges, and other benefits 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 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 the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, 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. Notwithstanding the foregoing, so long as no Event of Default shall have occurred and be continuing under the Lease, the Payments shall not be deemed to include payments made by the Lessee to the Vendee pursuant to §§ 6 and 16 of the Lease.

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 to satisfy the obligations of the Lessor under the CSA and Paragraph 8 of the Participation Agreement, and, 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; provided, however, that if an event of default as provided in paragraph (a) of Article 15 of the CSA or event which with the lapse of time and/or demand provided for in the CSA could constitute such an event of default, shall have occurred and be continuing, no portion of any such Payments shall be paid to the Lessor. The Vendor shall notify the Lessor at the address set forth in the Lease if the Vendor shall not receive any rental payment under the first paragraph of § 3 of the Lease when due; 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. This Assignment is executed only as security and 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 all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee against, and only against, the Lessor or persons other than the Vendor.

3. The Lessor will faithfully abide by, perform and discharge each and every obligation and agreement which the Lease provides are 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 or in any manner release the Lessee of or from the obligations, conditions and agreements to be performed by the Lessee, 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.

4. The Lessor does hereby constitute the Vendor the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to demand, receive 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.

5. Upon the full discharge and satisfaction of all sums due from the Lessor under the CSA, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor.

6. 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.

7. 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 or further assure the interest of the Vendor hereunder.

8. 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 assignee shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

9. This Assignment shall be governed by the laws of the Commonwealth of Pennsylvania, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

10. The Lessor shall cause copies of all notices 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 Paragraph 10 of the Participation Agreement, or at such other address as the Vendor shall designate.

11. The Vendor agrees with the Lessor that, so long as no event of default under the CSA has occurred and is continuing, the Vendor will not 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 by the Lessor to the Vendor by this Assignment to the extent they are for the sole benefit of the Lessor and not required to satisfy the obligations of the Lessor under the CSA, without the prior consent of the Lessor.

12. Notwithstanding any other provision of this Assignment (including, but not limited to, any provision of the first paragraph of Paragraph 1 and Paragraph 3 hereof), so long as there is no event of default under the CSA, and to the extent that the Vendor does not seek to receive and collect any Payments under the Lease in excess of the amounts required to discharge the obligations of the Lessor under the CSA or amounts payable under § 16 of the Lease, this Assignment shall not limit or in any way affect the Lessor's right to receive and collect any Payments under the Lease in excess of the obligations of the Lessor under the CSA, or empower the Vendor to waive or release the Lessee's

obligation to pay the same, and the Lessor shall continue to be empowered to demand, sue for, collect and receive any and all of such excess amounts and amounts payable under § 16 of the Lease, but the Lessor shall not take any action under subparagraph (ii) of § 10 of the Lease without the written consent of the Vendor.

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

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

HELEASCO ONE, INC.,

by

President

[Corporate Seal]

Attest:

Secretary

GIRARD BANK, as Agent,

by

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

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 are hereinafter called the "Payments") due and to become due under the Lease or otherwise in respect of the Units (as defined in the Lease) leased thereunder, directly to Girard Bank, as Agent (the "Vendor"), the assignee named in the Lease Assignment, at Three Girard Plaza, Philadelphia, Pennsylvania 19101, Attention of Corporate Trust Division (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) in accordance with the provisions of the Lease Assignment, 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;

(3) the Vendor shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease;

(4) the Lease shall not, without the prior written consent of the Vendor, be terminated or modified, 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; and

(5) it will mail or deliver one copy of all notices, statements, documents or schedules given or delivered by it pursuant to the Lease or Lease Assignment to the Vendor.

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 Commonwealth of Pennsylvania and, for all purposes, shall be construed in accordance with the laws of said Commonwealth.

CONSOLIDATED RAIL CORPORATION,
as Lessee,

by

[Corporate Seal]

Vice President

Attest:

Assistant Secretary

The foregoing Consent and Agreement is hereby
accepted, as of June 1, 1978.

GIRARD BANK, as Agent,

by

Vice President

AGREEMENT AND ASSIGNMENT

Dated as of June 1, 1978

between

BETHLEHEM STEEL CORPORATION,
as Builder,

and

GIRARD BANK,
as Agent.

AGREEMENT AND ASSIGNMENT dated as of June 1, 1978, between BETHLEHEM STEEL CORPORATION (the "Builder") and GIRARD BANK, as Agent (the "Assignee") under a Participation Agreement dated as of the date hereof (the "Participation Agreement"), a copy of which has been delivered to the Builder.

WHEREAS the Builder and Heleasco One, Inc. (the "Vendee") have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA") covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Vendee of the railroad equipment described in Annex B to the CSA (the "Equipment"); and

WHEREAS the Vendee and Consolidated Rail Corporation (the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") providing for the lease to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: that in consideration of the sum of One Dollar and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Builder in and to each unit of the Equipment when and as severally delivered to and accepted by the Vendee, and when and as payment is made by the Assignee to the Builder of the amount required to be paid pursuant to Section 4 hereof;

(b) all the right, title and interest of the Builder in and to the CSA (except the right to construct and deliver the Equipment and the right to receive the payments specified in subparagraph (a) of the third paragraph of Article 4 thereof and reimbursement for taxes paid or incurred by the Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the CSA on

account of the indebtedness in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this Section 1, all the Builder's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA, provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver the Equipment in accordance with the CSA or with respect to its warranties and agreements referred to in Article 13 of the CSA or relieve the Vendee from its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 of the CSA, it being agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 14 of the CSA, all obligations of the Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall construct the Equipment in full accordance with the CSA and will deliver the same upon completion to the Vendee in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of the Equipment under the CSA it had legal title to such unit

and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the CSA, the rights of the Lessee under the Lease and the rights of the Assignee under this Assignment; and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Vendee thereunder. The Builder will not deliver any unit of the Equipment to the Vendee under the CSA until the CSA and the Lease have been filed in accordance with Section 20c of the Interstate Commerce Act and deposited in the Office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filing and deposit have occurred).

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, the Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of 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. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend

against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Annex A to the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to the Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price of the units of the Equipment being settled for on such Closing Date which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee (with a copy to the Vendee) on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel:

(a) a bill or bills of sale from the Builder to the Assignee transferring to the Assignee all right, title and interest of the Builder in such units, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the CSA, the Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the

CSA, the rights of the Lessee under the Lease and the rights of the Assignee under this Assignment, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to such units as contemplated by Article 3 of the CSA and § 2 of the Lease;

(c) an invoice for such units accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) an opinion of counsel for the Builder, dated as of the Closing Date, addressed to the Assignee and the Vendee, to the effect that the aforesaid bill or bills of sale have been duly authorized, executed and delivered by the Builder and are valid and effective to vest in the Assignee all right, title and interest of the Builder in such units, free from all claims, liens, security interests and other encumbrances at the time of delivery (other than those created by the CSA and the rights of the Lessee under the Lease and the rights of the Assignee under this Assignment) arising from, through or under the Builder; and

(e) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the satisfaction of all of the conditions contained in Paragraph 6 of the Participation Agreement and the Assignee having on deposit, pursuant to the terms of the Participation Agreement, sufficient funds available to make such payment and upon payment by the Vendee of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 4 of the CSA. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse

to the Assignee, all the rights, titles, interests, powers, privileges and remedies assigned to the Assignee pursuant to Section 1 hereof insofar as they relate to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA. In the event of any such assignment, any such subsequent assignee shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, the Vendee and their successors and assigns, that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee, the CSA is, in so far as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms and that it is now in force without amendment thereto;

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

(c) agrees that, subsequent to the payment to it of the full Purchase Price of the Equipment and upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA.

SECTION 7. This Assignment shall be governed by the laws of New York, provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing of the CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Assign-

ment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment 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, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

BETHLEHEM STEEL CORPORATION,

by

[Corporate Seal]

Vice President

Attest:

Assistant Secretary

GIRARD BANK, as Agent,

by

[Corporate Seal]

Vice President

Attest:

Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
CITY OF LEHIGH,)

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

Notary Public

[Notarial Seal]

My Commission expires

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

On this day of 1978, before me per-
sonally appeared , to me personally
known, who being by me duly sworn, say that he is a Vice
President of GIRARD BANK, that one of the seals affixed to
the foregoing instrument is the corporate seal of said corpo-
ration, that said instrument was signed and sealed on behalf
of said corporation by authority of its Board of Directors,
and he acknowledged that the execution of the foregoing
instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of June 1, 1978.

HELEASCO ONE, INC.,

by

Ronald W. Turner
President