

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

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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.

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BY HAND

RECORDATION NO. 9615-B Filed & Recorded

JUL 31 1978 10 33 AM

INTERSTATE COMMERCE COMMISSION

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[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.

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Lease of Railroad Equipment

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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 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

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

  
 Vice President and Treasurer

[Corporate Seal]

Attest:

  
 Assistant Secretary

HELEASCO ONE, INC.,

by *Ronald W. Turner*  
President

[Corporate Seal]

Attest:

*C. J. Caporale*  
Secretary



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

On this 27<sup>th</sup> day of July 1978, before me personally appeared Richard T. Foy, to me personally known, who, being by me duly sworn, says that he is a Vice President and Treasurer of CONSOLIDATED RAIL 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.

*Alfonso J. DiGregorio*  
Notary Public

ALFONSO J. DIGREGORIO

Notary Public, Philadelphia, Philadelphia Co.

My Commission Expires August 7, 1980

[Notarial Seal]

My Commission expires

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 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 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 Designation: 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