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INTERSTATE COMMERCE COMMISSION

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INTERSTATE COMMERCE COMMISSION

9722 C
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INTERSTATE COMMERCE COMMISSION

September 28, 1978

Consolidated Rail Corporation
Dated as of September 1, 1978
10.25% Conditional Sale Indebtedness

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I.C.C.
REGULATION BR.

Dear Sir:

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

1(a) Conditional Sale Agreement dated as of September 1, 1978, between United States Trust Company of New York, as Trustee, and General Motors Corporation (Electro-Motive Division);

(b) Agreement and assignment dated as of September 1, 1978, between General Motors Corporation (Electro-Motive Division) and Mellon Bank, N.A., as Agent;

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

(b) Assignment of Lease and Agreement dated as of September 1, 1978, between United States Trust Company of New York, as Trustee, and Mellon Bank, N.A., as Agent.

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

(1) Agent-Vendor-Assignee:

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

(2) Trustee-Vendee-Lessor:

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

(3) Builder-Vendor:

General Motors Corporation
(Electro-Motive Division)
La Grange, Illinois 60525

(4) Lessee:

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

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

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

Thirty-two (32) 2,000 h.p. Model GP38-2 diesel-electric locomotives bearing identifying numbers CR8224 through CR8255, both inclusive; and

Forty-two (42) 3,000 h.p. Model SD40-2 diesel-electric locomotives bearing identifying numbers CR6441 through CR6482, both inclusive.

There is also enclosed a check for $100 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agree-

ment and Assignment (together constituting one document) and the Lease of Railroad Equipment, and related Assignment of Lease and Agreement (together constituting one document).

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

Very truly yours,

John S. Herbert

John S. Herbert
As Agent for Consolidated Rail Corporation

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

Encls.

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BY HAND

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INTERSTATE COMMERCE COMMISSION

[CS&M Ref. 3909-023]

LEASE OF RAILROAD EQUIPMENT

(No. 1)

Dated as of September 1, 1978

between

CONSOLIDATED RAIL CORPORATION

and

UNITED STATES TRUST COMPANY OF NEW YORK,

as Trustee Under a Trust Agreement

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

LEASE OF RAILROAD EQUIPMENT (No. 1) dated as of September 1, 1978, between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (the "Lessee"), and UNITED STATES TRUST COMPANY OF NEW YORK, a New York corporation, not individually but solely as Trustee (the "Lessor") under Trust Agreement No. 1978-4 dated as of September 1, 1978, being an amendment to and restatement of an original Trust Agreement dated as of August 30, 1978 (the "Trust Agreement"), with the parties named in Annex A thereto as beneficiaries (the "Beneficiaries" or individually a "Beneficiary").

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

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

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

WHEREAS the parties contemplate that the Lessor will assign for security purposes certain of its rights in this Lease to the Vendor by an Assignment of Lease and Agreement dated as of the date hereof (the "Lease Assignment"), and the Lessee will consent thereto by a Consent and Agreement (the "Consent");

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter

mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

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

§ 2. Delivery and Acceptance of Units. The Lessor

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

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for the Units, 33 consecutive payments payable (i) on January 1, 1979 (such date being hereinafter called the "Basic Rent Commencement Date"), and (ii) on the 32 consecutive dates occurring semiannually following the Basic Rent Commencement Date (each of such 32 consecutive dates being hereinafter called a "Rental Payment Date"). The rental payable on the Basic Rent Commencement Date for each Unit shall be in an amount equal to the product of (a) the number of days elapsed from and including the Closing Date for such Unit to, but not including, the Basic Rent Commencement Date, times (b) .028985% of the Purchase Price of such Unit. The next 32 rental payments shall each be in an amount equal to the Semi-Annual Lease Factor (as hereinafter defined) of the Purchase Price of each Unit then subject to this Lease. As used herein, the term "Semi-Annual Lease Factor" means 4.881535% or such percentage as it may be adjusted pursuant to the next succeeding sentence or § 16 hereof. If the Lessor shall provide more than ~~30.7757~~% of 32.5761 the Purchase Price of the Units out of funds provided by the Beneficiaries (as distinguished from the CSA Indebtedness [as defined in the CSA]) or if the Lessor, the Lessee and the Builder agree to a Final Delivery Date (as defined in the CSA) occurring after December 29, 1978, the Lessee agrees that the rentals payable hereunder and the Casualty Value percentages set forth in Schedule B hereto will be appropri-

ately adjusted so as to preserve each Beneficiary's after-tax return on equity and periodic net cash flow and timing of recognition of income. Notwithstanding anything to the contrary set forth herein, the rentals and Casualty Value percentages, as adjusted pursuant to the next preceding sentence or § 16 hereof, shall be sufficient to satisfy the obligations of the Lessor under the CSA, regardless of any limitation of liability set forth therein.

In addition to the foregoing rentals, the Lessee agrees to pay to the Lessor as additional rentals amounts which, after deduction of any taxes payable in respect of such amounts, will be equal to the amounts (A) required by the Lessor to make the payments provided for (a) in the third from last sentence of the third paragraph of Paragraph 2 of the Participation Agreement and (b) in Paragraph 9 of the Participation Agreement and (B) required by the Lessor (in its capacity as Owner Trustee under the Trust Agreement) to make the payments to the Beneficiaries required to be made pursuant to the last paragraph of Section 4 of the Trust Agreement to the extent that the remaining cash and proceeds of the Investments (as defined therein) available to the Lessor as specified in said paragraph is insufficient to enable the Lessor to make such payment, in each case on the dates the Lessor is required to make such payments (without regard to any limitation of the obligation of the Lessor set forth therein) and the Lessor agrees to apply such rentals for such purposes.

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

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, but excluding all payments not assigned to the Vendor pursuant to the Lease Assignment, 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 Federal or other funds immediately available to the Vendor by 11:00 a.m., Pittsburgh 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 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 3, 6, 7, 9, 14 and 16 hereof) shall survive the expiration or termination of the term of this Lease and the full payment of all amounts payable under this Lease.

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

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identification number set forth in Schedule A hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Owned by a Bank or Trust Company. Ownership subject to a Conditional Sale Agreement filed under the Interstate Commerce Act, Section 20c", with appropriate changes thereof as from time to time may be required by law, in the opinion of the Vendor and the Lessor, in order to protect the Lessor's and the Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change

the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect that such statement has been so filed and deposited, that such filing and deposit will protect the Vendor's and the Lessor's rights in such Units and that no other filing, deposit or giving of notice with or to any Federal, state or local government or agency thereof is necessary to protect the rights of the Vendor and the Lessor in such Units.

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

§ 6. Taxes. The Lessee assumes responsibility for, and agrees to pay, hold harmless and indemnify on an after-tax basis the Lessor (both in its individual and trust capacity), the Vendor and the Beneficiaries and their successors and assigns (the "Indemnified Persons") against, all taxes, fees, withholdings, levies, imposts, duties, license and registration fees and other governmental charges of any nature whatsoever, including without limitation penalties, additions to tax and interest (all such taxes, fees, withholdings, levies, imposts, duties, license and registration fees, other governmental charges, penalties, additions to tax and interest being hereinafter called "Taxes"), imposed on, incurred by or asserted against any Indemnified Person or the Units or any thereof on account of, or with respect to, this Lease or the CSA or any document referred to herein or therein or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acquisition, acceptance or rejection of the Units or any thereof or the ownership, delivery, nondelivery, leasing, re-leasing, subleasing, possession, use, operation, maintenance, repair, condition, sale, return, abandonment or other application or disposition of the Units or any thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom; provided, however, that there shall be no indemnification hereunder for (i) any Taxes imposed on or measured

by any fees or compensation received by the persons who are the Lessor or the Vendor, and (ii) Federal income Taxes and income or franchise Taxes imposed on a Beneficiary or an Investor or their successors and assigns by any jurisdiction in which such Beneficiary, such Investor or their successors and assigns has an office, except to the extent that indemnification is provided for in § 16 hereof. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify each Indemnified Person to the extent required by this § 6 within ten days after receipt of a written request by such Indemnified Person for indemnification specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question; provided, however, that if any Taxes are being contested in accordance with § 16(e) hereof, any payment shall be made at the time therein provided.

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

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

To the extent that the Lessee may be prohibited by

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

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

The Lessee agrees to pay all amounts due under this § 6 free of any Taxes and to indemnify each Indemnified Person against any Taxes imposed by reason of any payment made by the Lessee so that the Indemnified Person to whom or for whose benefit the payment is made shall receive an amount which, net of any Taxes or other charges required to be paid by such Indemnified Person in respect thereof, shall be equal to the amount of payment otherwise required hereunder. Without limiting the foregoing, the amount which the Lessee shall be required to pay with respect to any Taxes subject to indemnification under this Section 6 shall be an amount sufficient so that, after considering the tax and other effects of the Taxes in question and the receipt of indemnification payments hereunder, the Indemnified Person will have the same anticipated after-tax rate of return on equity and periodic recovery of net cash flow as such Indemnified Person would have realized had such Taxes not been incurred or imposed.

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

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

§ 7. Maintenance; Casualty Occurrences; Insurance. The Lessee at its own expense will maintain and service each

Unit and comply with a preventive maintenance schedule consistent with the Builder's preventive maintenance schedules and which will include testing, repair and overhaul of each Unit so that each Unit will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations, and (c) desirable to and suitable for immediate purchase or lease and use by a Class I line-haul railroad (not then or prospectively a debtor in any insolvency or reorganization proceedings) in the event of resale or re-lease upon default by the Lessee. In no event shall any Unit be maintained or scheduled for maintenance on a basis less frequent than the maintenance or maintenance scheduling basis employed as of the date hereof by the Lessee for similar equipment.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, permanently returned to the Builder pursuant to any patent indemnity provision of the CSA, or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term of this Lease (or, if such taking, requisition or condemnation shall occur during a renewal term, for a period which shall exceed the then remaining renewal term), or by any other government or governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days (such occurrences being hereinafter called "Casualty Occurrences"), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly (but in any event within 30 days after such Casualty Occurrence) and fully notify the Lessor, the Beneficiaries and the Vendor with respect thereto. On the Rental Payment Date next succeeding such notice (but not earlier than the first Rental Payment Date following the Basic Rent Commencement Date) the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit then due and payable plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of such Rental Payment Date in accordance with Schedule B hereto referred to below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or permanent return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor

hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis and the Lessee may be a purchaser of such Unit and shall notify the Lessor prior to any such purchase by the Lessee. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing the Lessee shall be entitled to the net proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit permanently returned to the Builder pursuant to any patent indemnity provision of the CSA an amount equal to any net patent indemnity payment in respect of such Unit made by the Builder to the Vendor under the CSA. The Lessee will pay all costs and expenses in connection with the sale of any Unit pursuant to a Casualty Occurrence.

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

Whenever any Unit shall suffer a Casualty Occurrence after the final payment of rent in respect thereof is due pursuant to § 3 or § 13 hereof and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly (as provided above) and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 20% of the Purchase Price of such Unit, except that if the term of this Lease shall have been extended pursuant to § 13 hereof, then the applicable Casualty Value (i) shall be during the first and second five-year renewal terms the fair market value of such Unit, as of the Rental Payment Date on or next preceding the date of such Casualty Occurrence, determined as provided in the following sentence, and (ii) thereafter, shall be, if there is no second five-year renewal term, the fair market value of such Unit as of the last Rental Payment Date during such first five-year renewal term, or, if there is a second five-year renewal term, the fair market value of such Unit as of the last Rental Payment Date during such second five-year renewal term. For the purposes of the preceding sentence,

the term "fair market value" of a Unit shall, at the beginning of such first five-year renewal term, be equal to the Fair Market Purchase Price of such Unit at such time determined in accordance with the provisions of § 13 hereof, and shall decline or increase on a straight-line basis (computed on the basis of a 360-day year of twelve 30-day months) to the estimated Fair Market Purchase Price of such Unit at the end of such first five-year renewal term determined in accordance with the provisions of § 13 hereof, and the term "fair market value" of a Unit shall, at the beginning of such second five-year renewal term, be equal to the Fair Market Purchase Price of such Unit at such time determined in accordance with the provisions of § 13 hereof, and shall decline or increase on a straight-line basis (computed on the basis of a 360-day year of twelve 30-day months) to the estimated Fair Market Purchase Price of such Unit at the end of such second five-year renewal term determined in accordance with the provisions of § 13 hereof. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit or return to the Builder of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence, or any component thereof, at the best price obtainable on an "as is, where is" basis and the Lessee may be a purchaser of such Unit and shall notify the Lessor prior to any such purchase by the Lessee. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

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

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

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

The Lessee will, at all times prior to the return of the Units to the Lessor, at its own expense, cause to be carried and maintained casualty insurance and public liability insurance in respect of the Units at the time subject hereto, against such risks, in such amounts and on such terms and conditions as are satisfactory to the Lessor and the Vendor, and, in any event, not less comprehensive 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 of all the Units at any given time is less that what the deductible would be under the foregoing standard, then no casualty insurance need be carried. All policies with respect to such insurance shall name the Lessor (both in its individual and trust capacity), the Beneficiaries and the Vendor as additional named insureds or loss payees, as their interests may appear, shall provide for at least 30 days' prior written notice by the insurance carrier to the Lessor, the Beneficiaries and the Vendor in the event of cancelation, expiration or amendment (and the Lessee shall provide 30 days' prior written notice to the Lessor, the Beneficiaries, and the Vendor in any such event), shall include waivers by the insurer of all claims for

premiums against the Lessor, the Beneficiaries and the Vendor and shall provide that losses are payable notwithstanding, among other things, any act of negligence of the Lessee, the Lessor, the Beneficiaries or the Vendor, more hazardous use or occupation of the Units than that permitted by such policies, any breach or violation by the Lessee, the Lessor, the Beneficiaries or the Vendor of any warranty, declaration, condition or other provision contained in any such policy, or foreclosure, notice of sale or any other proceeding in respect of the Units, or any change in the title to or ownership of any of the Units. Each such insurance policy shall expressly provide that all of the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Lessee) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by the Lessor, the Beneficiaries or the Vendor. The Lessee shall, not later than June 15 of each year, commencing June 15, 1979, furnish to the Lessor and the Vendor a certificate of an independent insurance broker acceptable to the Lessor evidencing the maintenance of the insurance required hereunder and shall furnish certificates evidencing renewal 15 days prior to the expiration date of such policy or policies. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired so as to comply with the provisions of the first paragraph of this § 7, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

§ 8. Reports. On or before April 30 in each year,

commencing with the calendar year 1979, the Lessee will furnish to the Lessor and the Vendor a certificate signed by the Chief Mechanical Officer of the Lessee or another qualified engineer satisfactory to the Lessor and the Vendor (a) setting forth as of 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 (including a description and the cost of all additions, modifications or improvements made to the Units in the preceding year), (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof have been preserved or replaced, (c) setting forth the identification numbers of all Units which are then in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof and certifying that all such Units are in such condition, and (d) setting forth the identification numbers of all Units which are not in such condition. No later than 60 days after the delivery of such annual certificate, the Lessee will furnish the Lessor with a supplemental certificate of the Chief Mechanical Officer of the Lessee or other qualified engineer satisfactory to the Lessor and the Vendor setting forth the identification number of each Unit that was not certified in the preceding annual certificate as being in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof, and, as to each such Unit, (i) certifying that such Unit is in such condition as of the date of such supplemental certificate, or (ii) stating that such Unit is not in such condition. If such supplemental certificate shall not be delivered on or prior to the last date specified for such delivery in the preceding sentence (or within ten days after written notice of such failure to deliver by the Lessor to the Lessee) or shall state that such Unit is not in the required condition, such Unit shall be deemed to have suffered a Casualty Occurrence under § 7 hereof. The Lessor, at its sole expense, shall have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease but the Lessor shall have no obligation to do so.

The Lessee shall promptly notify the Lessor, the

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

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF THE LESSOR), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A to the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, subleasing, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, at all times to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal thereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, the Beneficiaries or the Vendor, adversely affect the property or rights of the Lessor, the Beneficiaries or the Vendor under this Lease or under the CSA. The Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value of the Units). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee (or such other party as may have title thereto), except to the extent such additions, modifications or improvements are described in the following sentence. Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of the provisions contained hereinabove, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the United States Department of Transportation or any other regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA) shall immediately be vested in the Lessor.

The Lessee shall pay, and shall protect, indemnify and hold the Lessor (both individually and in its trust capacity), the Beneficiaries and the Vendor, and their respective successors, assigns, agents and servants (hereinafter called "Indemnified Persons"), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising or alleged to arise out of this Lease or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent or other defects whether or not discoverable by any Indemnified Person or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Lease (except by the Lessor) or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of the Lease Assignment, the CSA or the Participation Agreement, including, without limitation, any claim arising out of any of the Lessor's obligations under the Lease Assignment, the CSA or the Participation Agreement, except to the extent such claim arises from an act or omission of the Lessor not related to the transactions contemplated by this Lease and the Participation Agreement. The Lessee shall be obligated under this § 9, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly

against the Lessee under this § 9 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, in the event of any failure by the Lessee to so do, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this § 9, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Lessor each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this § 9 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this § 9 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter.

The Lessee further agrees to indemnify, protect and hold harmless the Vendor, the Beneficiaries and the Lessor (both individually and in its trust capacity), as third party beneficiaries hereof, from and against any and all liabilities, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon

or accruing against the Vendor, the Beneficiaries and the Lessor because of the use in or about the construction or operation of any of the Units 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 Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against such Builder hereunder.

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

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

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

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

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

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Consent or in the Participation Agreement, and such default shall continue for 30 days after the earlier of (i) written notice from the Lessor or the Vendor to the Lessee specifying the default and

demanding that the same be remedied and (ii) the date on which such default shall first become known to any officer of the Lessee;

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

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

commenced, whichever shall be earlier;

(F) Section 77(j) of the Bankruptcy Act (or any successor provision thereto providing similar protection and benefits for creditors of railroads) is repealed, not carried forward in subsequent legislation or otherwise unavailable to the Lessor or the Vendor, and there shall then exist or thereafter be a default under, or an event shall occur or shall have occurred which, with the giving of notice or the lapse of time or both, would become a default under, any agreement or instrument then or thereafter binding upon the Lessee or to which it then is or thereafter becomes a party or to which any of its property is or thereafter becomes subject; or

(G) an Event of Default shall have occurred under the other Lease of Railroad Equipment dated as of September 1, 1978 (the "Other Lease"), between the Lessee and United States Trust Company of New York, acting as Trustee under another Trust Agreement dated as of September 1, 1978, with the Beneficiaries;

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

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents, subject to compliance with all mandatory requirements of law, enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the

Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to (A) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 6% per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated plus (B) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of any Federal, state or local government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall, in the reasonable opinion of the Lessor, be equal to all or such portion of the Investment Credit (as defined in § 16 hereof) lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 16 or any other provision of this Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as shall cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the ADR Deductions and the Interest Deduction (as such deductions are defined in § 16 hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a direct or indirect result of the breach of one or more of the representations, warranties

and covenants made by the Lessee in § 16 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessee or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default plus such sum as will pay or reimburse the Lessor for any interest, penalties or additions to tax incurred in connection with such loss, failure to claim, inability to claim, disallowance or recapture; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the Rental Payment Date on or next preceding the date of termination, over the net proceeds of such sale.

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

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due

hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf. The Lessee hereby waives any and all claims against the Lessor and the Vendor and their agent or agents for damages of whatever nature in connection with any retaking of any Unit in any reasonable manner. The Lessor and the Lessee agree that the Lessor shall be entitled to all rights (such rights being fundamental to the willingness of the Lessor to enter into this Lease) provided for in § 77(j) of the Bankruptcy Act or any comparable provision of any amendment thereto, or of any other bankruptcy act, so that the Lessor shall have the right to take possession of the Equipment upon an Event of Default under this Lease regardless of whether the Lessee is in reorganization.

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

If the Lessee fails to perform or comply with any agreement, covenant or condition contained in this Lease, and such nonperformance or noncompliance could, with the lapse of time and/or demand or failure to take action, result in an Event of Default under clause (A) or (C) of this § 10, the Lessor may, upon notice to the Lessee, itself perform or comply with such agreement, covenant or condition to the extent provided in Article 15(f) of the CSA, and the amount of the reasonable costs and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amounts at the rate of 10.25% per annum, shall be payable to the Lessor by the Lessee upon demand.

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

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

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance (which shall conform to the provisions of § 7 hereof), rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

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

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own expense, maintain and keep the Equipment in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All rent and per diem charges earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which 1/180 of the Semi-Annual Lease Factor, then applicable, of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor with respect to such Unit for each such day.

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

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no

obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's successors and assigns.

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

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

Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

The Lessee agrees that at all times during the term of this Lease, the Units will be used in a manner so as to constitute rolling stock of a domestic railroad corporation as defined in Section 48(a)(2)(B)(ii) of the Code (as hereinafter defined).

§ 13. Renewal and Purchase Options. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term or any extended term of this Lease, as the case may be, (i) elect to extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for one or two additional five-year periods commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, provided that no such extended term shall extend beyond a date ~~25~~ 26 years after the Basic Rent Commencement Date, at a Fair Market Rental (as defined below) payable in semiannual payments, commencing six months after the next preceding Rental Payment Date, in each year of such extended term; or (ii) after the first additional five-year rental period, as provided above, purchase all but not fewer than all of the Units then subject to this Lease, at a Fair Market Purchase Price (as defined below) payable at the end of such first additional five-year rental period; provided, however, that no option to extend the term of this Lease or purchase the Units may be exercised by the Lessee under this § 13 unless the same option to extend the term or purchase the Units is concurrently exercised by the Lessee under § 13 of the Other Lease. If mutually agreeable to the Lessee and the Lessor, any such purchase of the Units, pursuant to the next preceding sentence, shall be accomplished by the Lessee's purchase of the stock of the Beneficiaries other than American Security Bank, N.A., and the purchase of the interest of American Security Bank, N.A., in the Units.

Fair Market Rental and Fair Market Purchase Price shall be determined on the basis of, and shall be equal in amount to, the cash rental for a five-year period or the purchase price, as the case may be, which would obtain in an arm's-length transaction between an informed and willing lessee or purchaser and an informed and willing lessor or seller, as the case may be, under no compulsion to lease or sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental or purchase price and assuming that the Units have

been collected in one place on the lines of the Lessee as directed by the Lessor. If, after 60 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease or to exercise its purchase option, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental or Fair Market Purchase Price of the Units, such rental or purchase price shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such rental or purchase price by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, either party may request the American Arbitration Association to make such appointment, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental (and, in the case of a second renewal period, the Fair Market Purchase Price at the beginning and end of such second renewal period) of the Units subject to the proposed extended term, or the Fair Market Purchase Price, as the case may be, within 70 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental or Fair Market Purchase Price, as the case may be, of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from that of the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental or Fair Market Purchase Price, as the case may be. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental or Fair Market Purchase Price, as the case may be, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The Lessee shall bear all appraisal

procedure expenses; provided, however, that, if the Lessee shall exercise the option to renew or purchase with respect to which the appraisal was requested, such appraisal procedure expenses shall be borne equally by the Lessee and the Lessor.

Upon payment of the purchase price of any Unit, pursuant to an election by the Lessee to purchase the Units, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

§ 14. Return of Units upon Expiration of Term. The Lessor intends to retain the Units for re-lease at the expiration of the term of this Lease. As soon as practicable on or after the expiration of the original or any extended term of this Lease with respect to any Unit, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding 90 days following notification to the Lessor by the Lessee that all the Units have been assembled and delivered for storage and transport the same, at any time within such 90-day period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee (including the insurance required by § 7 hereof); and in the event that any Unit shall suffer a Casualty Occurrence during such storage period, the Lessee shall pay the Lessor the Casualty Value thereof as provided in § 7 hereof. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence or strict liability of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor or any prospective purchaser, lessee or user, such rights of inspection. Each Unit returned to the Lessor pursuant to this § 14 shall be in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof. The assembling, delivery, storage

and transporting of the Units as hereinbefore provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof. During any storage period, the Lessee will, at its own expense, maintain and keep the Units in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof and will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. The Lessee shall pay to the Lessor for each day from the date of such termination an amount equal to 1/180 of the Semi-Annual Lease Factor, then applicable, of the Purchase Price of such Unit.

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

§ 16. Indemnity for Federal and Other Income Tax Benefits. (a) Loss of Investment Credit, ADR Deductions, or Interest Deductions. Except as otherwise provided in § 16(b), if under any circumstance or for any reason whatsoever, any Beneficiary is not allowed or there shall be unavailable, deferred, lost or recaptured (in the year claimed by such Beneficiary or any time thereafter), in whole or in part:

(i) Investment Credits under section 38 of the Internal Revenue Code ("the Code") with respect to the Units, in 1978, of not less than 10% of Lessor's Cost (as defined in the Participation Agreement) of the Units (the "Investment Credit"); or

(ii) deductions for depreciation of the Units under section 167(a) of the Code computed pursuant to the double-declining balance, sum of the years-digits or straight-line method of depreciation (authorized by section 167(b), (1), (2) or (3) of the Code), as elected by Lessor from time to time, and the asset depreciation range system of section 1.167(a)-11 of the Income Tax Regulations and determined on the basis that the cost basis of the Units under section 167(g) of the Code is at least equivalent to Lessor's Cost (as so defined), and that the Units have an asset depreciation period of 12 years and a net salvage value of zero (the "ADR Deductions"); or

(iii) deductions for any interest and premium paid or accrued on the CSA Indebtedness (the "Interest Deduction");

(any such failure to allow, unavailability, deferral, loss or recapture being hereinafter called a "Loss"), then Lessee shall pay to such Beneficiary as an indemnity an amount which, after deduction of the net amount of all taxes which would be required to be paid at the highest corporate tax rates then applicable in respect of the receipt of such amount under the laws of all Federal, state or local governments and taxing authorities in the United States or in any foreign country which have jurisdiction to tax such Beneficiary, shall be equal to the sum of the aggregate amount of additional Federal, state and local income taxes which would be required to be paid from time to time as a result of any such Loss at the highest corporate tax rates applicable under such laws at such time, plus the aggregate amount of any interest, penalties or additions to tax payable with respect thereto. Any amount payable to a Beneficiary pursuant to this § 16(a) shall be payable not later than 30 days after receipt of a written demand therefor from such Beneficiary accompanied

by a written statement describing in reasonable detail such Loss and the computation of the amount so payable. Subject to the provisions of § 16(e), a Beneficiary may make such demand upon filing a tax return which, on advice of independent counsel reasonably acceptable to such Beneficiary and Lessee, reflects such Loss, or if such Loss is not reflected in a tax return, upon or after receipt by such Beneficiary of a written notice from a taxing authority making or proposing an adjustment resulting in such Loss, or at or after the time when such Beneficiary makes a tax payment as a result of such Loss.

(b) Exceptions. Lessee shall not be required to make any payment to a Beneficiary pursuant to the provisions of § 16(a) on account of any Loss which is a direct result solely of any one or more of the following causes:

(i) the failure by such Beneficiary to have sufficient Federal income tax liability against which to apply such investment credit or sufficient income to benefit from such deductions (after taking into account carrybacks and carryovers allowable by law);

(ii) the failure of Lessor or such Beneficiary to claim in a timely and proper manner (including the making of all required elections under the applicable Regulations) such credits and deductions in its income tax returns for the appropriate years;

(iii) a voluntary transfer by Lessor of ownership of the Units or voluntary disposition by such Beneficiary of its beneficial interest in the Units, if such transfer or disposition (A) shall occur at any time while no Event of Default has occurred and is continuing and (B) shall not be pursuant to the written consent of Lessee;

(iv) any amendment to, or change in, the tax laws governing the Investment Credit, the ADR Deductions or the Interest Deduction which is enacted after the date of execution of this Lease;

(v) any acts or omissions of the Beneficiaries or Lessor relating to the transactions contemplated hereby and inconsistent therewith; or

(vi) any event as a result of which Lessee has paid Casualty Value or an amount calculated by reference to Casualty Value, but only to the extent to which such Beneficiary is made whole for such Loss by reason of such payment.

(c) Additional Expenditures. If for any reason all or part of the cost or value of any alterations, modifications, improvements, additions, replacements, maintenance or repairs of or to the Units or any expenditures by Lessee in respect of the Units or any parts thereof ("Additional Expenditures") made by Lessee under and pursuant to the terms of this Lease or otherwise during the term of this Lease is required, pursuant to advice of independent counsel reasonably acceptable to such Beneficiary and Lessee or on audit by the Internal Revenue Service or other taxing authority, to be included in the gross income of any Beneficiary for income tax purposes (under circumstances in which such Beneficiary is not entitled to deduct such amount in the same taxable year), then Lessee shall pay such Beneficiary, not later than 30 days after receipt of a written demand therefor accompanied by a written statement describing in reasonable detail the computation of the amount payable, an amount which, taking into consideration any additional investment credit or depreciation deductions attributable to such Additional Expenditures and after deduction of the net amount of all taxes which would be required to be paid at the highest corporate tax rates then applicable in respect of the receipt of such amount under the laws of all Federal, state or local governments and taxing authorities in the United States or in any foreign country which have jurisdiction to tax such Beneficiary, shall be equal to the sum of the aggregate amount of additional Federal, state, local and foreign income taxes which would be required to be paid from time to time in respect of such inclusion at the highest corporate tax rates applicable under such laws at such time, and the aggregate amount of any interest, additions to tax or penalties payable with respect thereto. Subject to the provisions of § 16(e), a Beneficiary may make such demand upon filing a tax return which on advice of counsel reflects such inclusion, or if such inclusion is not reflected in a tax return, upon or after receipt by such Beneficiary of a written notice from a taxing authority making or proposing an adjustment resulting in such inclusion, or at or after the time when such Beneficiary makes a tax payment as a result of such inclusion.

(d) Foreign Source Losses. If any payments by Lessee under this Lease shall be characterized for Federal income tax purposes of any Beneficiary as gross income from sources without the United States and any part of the ADR Deductions and/or the Interest Deduction of such Beneficiary is required to be allocated to such gross income with the result that there is in any taxable period of such Beneficiary negative taxable income from sources without the United

States attributable to the Units ("Foreign Source Losses") and if such Foreign Source Losses result in a reduction of the foreign tax credits which would otherwise be available to such Beneficiary in such taxable period in the absence of such Foreign Source Losses, Lessee shall pay to such Beneficiary an amount which, after deduction of the net amount of all taxes which would be required to be paid at the highest corporate tax rates then applicable in respect of the receipt of such amount under the laws of any Federal, state or local government or taxing authority in the United States or in any foreign country which has jurisdiction to tax such Beneficiary, shall be equal to the amount of such reduction in foreign tax credits plus the aggregate amount of any interest, penalties or additions to tax payable with respect thereto.

(e) Proceedings. In the event a claim shall be made by the Internal Revenue Service or other taxing authority which, if successful, would result in an obligation on the part of Lessee to indemnify any Indemnified Person (as defined in § 6) pursuant to §§ 6, 16(a), 16(c) or 16(d), such Indemnified Person hereby agrees to exercise in good faith reasonable efforts to avoid requiring Lessee to pay such indemnity; provided, however, that, subject to the following paragraph, such Indemnified Person, in its reasonable discretion, may determine whether or not to undertake judicial or administrative proceedings beyond the level of an auditing agent with respect to any such claim, and provided further, that, subject to the following paragraph, such Indemnified Person shall not be required to take any action unless and until Lessee shall have furnished such Indemnified Person with an opinion of independent tax counsel satisfactory to such Indemnified Person to the effect that a meritorious defense exists to such claim and shall have secured payment to such Indemnified Person in a manner satisfactory to it for any liability or loss which such Indemnified Person may incur as a result of such claim and the contesting thereof and shall have agreed to pay such Indemnified Person on demand all costs and expenses which it may incur in connection with such claim, including, without limitation, (i) reasonable attorneys', accountants', engineers' and like professional fees and disbursements, and (ii) in the event that such Indemnified Person shall elect to contest the claim by paying the tax claimed and then seeking a refund thereof, or shall be required to make payment at the conclusion of the contest, the amount of such tax and interest, additions to tax and penalties thereon, if any, all in the manner and amount provided in §§ 6, 16(a), 16(c), or 16(d), as the case may be. In the case of any written claim or notice by the

Internal Revenue Service or other taxing authority which, if successful, would result in an indemnity payment by Lessee pursuant to §§ 6, 16(a), 16(c), or 16(d), such Indemnified Person agrees (i) within 30 days to notify Lessee in writing of such claim and of any action taken or proposed to be taken by the Internal Revenue Service or other taxing authority with respect thereto, (ii) if legally permitted, not to make payment of the tax claimed for at least 30 days after the giving of such notice provided that such delay in payment is not determined by such Indemnified Person to have adverse consequences, (iii) to give to Lessee any relevant information relating to such claim which may be particularly within the knowledge of such Indemnified Person, and (iv) if requested by Lessee, to consult with Lessee in good faith prior to taking any action to contest such claim, provided that should Lessee and such Indemnified Person disagree concerning any action to be taken in connection with contesting such claim, the decision of such Indemnified Person shall be controlling.

Notwithstanding the foregoing provisions of this § 16(e), (1) if requested by Lessee, such Indemnified Person shall obtain an opinion from independent counsel selected by such Indemnified Person and reasonably acceptable to Lessee as to whether the basis in law and in fact in favor of taxpayer's position with respect to such claim outweighs the basis in law and in fact in favor of the position of the Internal Revenue Service or other taxing authority, and, if such opinion is to such effect, such Indemnified Person shall, at Lessee's request, contest such claim at least to one judicial level in the forum and at the time chosen by such Indemnified Person provided that Lessee furnishes such Indemnified Person with security for the taxes claimed and costs and expenses as provided in the preceding paragraph, and if such Indemnified Person fails to make such contest it shall lose its rights to indemnity with respect to such claim; and (2) an Indemnified Person in its sole discretion (by written notice to Lessee) may unconditionally waive its rights to the indemnities set forth in §§ 6, 16(a), 16(c), or 16(d) with respect to any specifically designated liability indemnifiable under any of such provisions and refrain from contesting such specifically designated liability, in which event Lessee shall have no liability to such Indemnified Person hereunder with respect to such specifically designated liability, it being understood that any such waiver shall be

without prejudice to the rights of such Indemnified Person to indemnity with respect to any other liability indemnifiable under such provisions.

(f) Special Definitions. For purposes of this § 16, where appropriate, the term "Indemnified Person" (including "Beneficiary") shall mean the Indemnified Person in question and the affiliated group, within the meaning of section 1504 of the Code (or similar provisions of other tax laws), of which such Indemnified Person is a member. Also for such purposes, references to "corporate tax rates" shall include surtaxes as well as normal taxes.

(g) Federal Income Tax Changes. In the event an amendment to, or change in, the Internal Revenue Code affecting Federal income tax rates, the Investment Credit, the ADR Deductions or the Interest Deduction is (1) enacted by the 95th Congress, (2) enacted by the 96th Congress and effective on or before December 31, 1978, or (3) enacted by the 96th Congress and effective after December 31, 1978, but on or before July 1, 1979, the rental payments and Casualty Values shall be adjusted appropriately (either upwards or downwards, as the case may be, but if the amendment or change falls within the preceding clause (3), such adjustment shall not increase or reduce by more than 15 basis points the implicit interest cost to Lessee (as applied to Lessor's Cost) which would be applicable in the absence of such amendment or change falling within clause (3)) so that each Beneficiary's after-tax rate of return on equity and periodic net cash flow and timing of recognition of income shall not be affected by such change. All required adjustments in rental payments and Casualty Values shall be made with respect to the Rental Payment Date next following the fifteenth day after the date of enactment of the change in law which necessitates such adjustment and subsequent Rental Payment Dates, provided that any such downward adjustments shall be deferred, if necessary, so that (i) each installment of rent as so adjusted shall be, under any circumstances and in any event, an amount at least sufficient to pay in full any payment then required to be made on account of the principal of, and premium, if any, and interest on, the CSA Indebtedness then outstanding and (ii) Casualty Value as so adjusted shall, under any circumstance and in any event, not be less than an amount sufficient to pay in full, as of any date of payment thereof, the aggregate unpaid principal

amount of the CSA Indebtedness outstanding at the close of business as of such date of payment. If any adjustment in rent and/or Casualty Values is made under this § 16(g), conforming adjustments shall be made in the indemnity provisions of this § 16, if necessary, in order for such indemnity provisions properly to reflect the amendments or changes in law which resulted in such adjustment.

(h) Effect of Other Indemnities. Lessee's obligations under the indemnities provided for in this § 16 shall be those of a primary obligor whether or not the person indemnified shall also be indemnified with respect to the same matter under the terms of any other document or instrument, and the person seeking indemnification from Lessee pursuant to any provision of this § 16 may proceed directly against Lessee without first seeking to enforce any other right of indemnification.

§ 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount on the overdue rentals and other obligations for the period of time during which they are overdue at a rate per annum equal to the greater of (i) 11.25% or (ii) 1.35 times the "prime" or "base" rate of interest announced from time to time by Mellon Bank, N.A., or such lesser amount as may be legally enforceable. Interest hereunder shall be determined on the basis of a 360-day year for the actual number of days elapsed.

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

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

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

or addressed to either party at such other address as such

party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at Mellon Square, Pittsburgh, Pennsylvania 15230, Attention of Corporate Trust Division, and to the Beneficiaries at their addresses appearing in the Participation Agreement.

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

Except for the Participation Agreement and the CSA, 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.

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

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

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

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

CONSOLIDATED RAIL CORPORATION,

by _____
Vice President & Treasurer

[Corporate Seal]

Attest:

_____
Assistant Secretary

UNITED STATES TRUST COMPANY OF NEW YORK, not individually but solely as Trustee,

by _____
Assistant Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

STATE OF NEW YORK
~~COMMONWEALTH OF PENNSYLVANIA~~,)
) ss.:
COUNTY OF ~~PHILADELPHIA~~ NEW YORK,)

On this 28th day of September 1978, before me personally appeared R.T. Fox, to me personally known, who, being by me duly sworn, says that he is Vice President & Treasurer of CONSOLIDATED RAIL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Rita J. Bradley
Notary Public

[Notarial Seal]

RITA J. BRADLEY
NOTARY PUBLIC, State of New York
No. 30-4663401
Qualified in Nassau County
Certificate Filed in New York County
Commission Expires March 30, 1980

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

On this 28 day of September 1978, before me personally appeared GEORGE BOSWELL, to me personally known, who, being by me duly sworn, says that he/she is an Assistant Vice President of UNITED STATES TRUST COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Trustees, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Rita J. Bradley
Notary Public

[Notarial Seal]

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SCHEDULE A TO LEASE

Type	Builder	Quantity*	Lessee's Identification Numbers (Both Inclusive)*
3,000 h.p. Model SD40-2 Diesel Electric Locomotives	General Motors Corporation (Electro-Motive Division)	42	CR6441 through CR6482
2,000 h.p. Model GP38-2 Diesel Electric Locomotives	General Motors Corporation (Electro-Motive Division)	32	CR8224 through CR8255

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* It is understood and agreed that, notwithstanding anything to the contrary contained in this Schedule A or in the Lease of Railroad Equipment to which this Schedule A is annexed, Lease of Railroad Equipment (No. 1) dated as of September 1, 1978, between Consolidated Rail Corporation, as Lessee (the "Lessee"), and United States Trust Company of New York, as Trustee (the "Trustee"), will cover all units of Equipment delivered by the Builder and accepted by the Lessee on or before October 31, 1978, and that Lease of Railroad Equipment (No. 2) dated as of September 1, 1978, between the Lessee and the Trustee will cover all units of Equipment delivered by the Builder and accepted by the Lessee after October 31, 1978. After delivery of all of the Units covered by both Leases of Railroad Equipment, this Schedule A will be appropriately amended to describe only those Units covered by this Lease of Railroad Equipment.

SCHEDULE B TO LEASE

Casualty Value

Semiannual Dates Following the Basic Rent Commencement Date	Percentage of Purchase Price
Prior to First	103.401
First	104.845
Second	105.296
Third	106.205
Fourth	105.947
Fifth	106.383
Sixth	105.482
Seventh	98.834
Eighth	97.440
Ninth	96.875
Tenth	94.944
Eleventh	87.338
Twelfth	85.033
Thirteenth	83.571
Fourteenth	80.864
Fifteenth	72.441
Sixteenth	69.513
Seventeenth	67.336
Eighteenth	64.180
Nineteenth	61.797
Twentieth	58.517
Twenty-first	56.016
Twenty-second	52.734
Twenty-third	50.103
Twenty-fourth	46.710
Twenty-fifth	43.908
Twenty-sixth	40.442
Twenty-seventh	37.490
Twenty-eighth	33.969
Twenty-ninth	30.869
Thirtieth	27.298
Thirty-first	24.101
Thirty-second	20.360

SCHEDULE C TO LEASE

Certificate of Acceptance

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

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

TYPE OF EQUIPMENT: Diesel electric locomotive
MODEL:
DATE ACCEPTED:
NUMBER OF UNITS:
NUMBERED:
MANUFACTURER'S SERIAL NOS:

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

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

"Owned by a Bank or Trust Company. Ownership Subject to a Conditional Sale Agreement filed under the Interstate Commerce Act, Section 20c."

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

_____
Authorized Representative of Trustee and Lessee

BUILDER:

General Motors Corporation
(Electro-Motive Division)